With in-depth knowledge of your clients’ financial particulars, you can play a crucial role in helping them develop an estate plan.

Unfortunately, many Canadians shy away from estate planning, believing it’s strictly for the wealthy or the retired. Your challenge is to convince them otherwise. Fidelity can help.

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- An interactive investor guide to show investors why they need an estate plan, what’s involved in developing that plan, and how you can help.

- A handy advisor guide to help you initiate effective estate-planning discussions with clients.

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Passing On: An Estate Planning Toolkit For Financial Advisors

1. Knowledgeable Advisors Key In Estate Planning Process
2. Final Details: Working With A Dying Client
3. Three Big Estate Planning Cases (And What Their Outcomes Mean To You)
4. Estate Encore: The Advisor.ca-Advisor’s Edge Estate Planning Archives
5. Your Estate Planning Glossary And Web Resource Cheat Sheet
A thorough estate plan is likely to involve a number of professional players, including lawyers and accountants. However, according to at least two frontline experts, the key player in the estate planning process is the financial advisor, and advisors should be prepared to seize the opportunity.

Glenn Stephens, a Toronto-based lawyer and national director of professional advisory services for Equinox Financial Group, says the financial advisor is the person most likely to motivate the client to make sure a proper estate plan is in place.

"Lawyers and accountants tend to be reactive whereas the financial advisor...almost invariably is the person who started the ball rolling in the first place, who got the client worried about the consequences of not planning," says Stephens, who is also the author of *Estate Planning With Life Insurance*.

**Opportunities Abound**

Referring specifically to estate planning for business owners, Stephens calls this niche an "untapped opportunity" based on his almost weekly interactions with business clients who have usually not done enough planning. Stephens’ colleague, Equinox president and CEO Kevin Wark, says the same holds true for personal estate planning.

"People may have a will but they may have gone to the Grand & Toy to pick it up or have talked to a lawyer who’s not totally familiar with
estate planning," says Wark, a Certified Financial Planner who has also worked as a tax lawyer and authored the book *Everything You Need To Know About Estate Planning.* "As a result, they are not taking full advantage of all the opportunities that exist under the Income Tax Act and products that could help them solve some needs."

**Fundamental Elements**

According to Wark, the aim of a personal estate plan is to provide peace of mind that upon a death or disability, there won't be too much of a financial, physical or emotional burden on the client's family. To peace of mind, Stephens adds the caveat of "done tax efficiently." A solid plan may include some or all of the following elements:

- wills
- powers of attorney
- family trusts
- charitable gifting programs
- estate freezes
- buy-sell agreements
  - (for small business owners)
- living wills
- funeral/memorial plans

On the business side, Wark notes that the fundamental aspect of an estate plan is to allow the business owner to transition out of the business with sufficient income to maintain the lifestyle the client desires in retirement and to achieve any goals the client has for his business.

"If there are no family members [to take over the business], [is the business owner] prepared to wind it up or [does he] want it to continue, and if so, are there employees within the business who might be prepared to take it over or are there competitors who might be prepared to buy the business when he's ready to retire?" says Wark.

Wark describes the business estate planning process as more challenging due to the variety of tools that can be used in the process. Buy-sell agreements, family trusts, estate freezing and capital gains crystallization are some of the tools that can be brought into play depending on the client's situation.

**We Are Family**

Inevitably, both business and personal estate plans will involve clients' children, a generation that shouldn't be overlooked by a prudent advisor. Wark says the trick is to introduce the kids to their parents' estate plan.

"The financial advisor...almost invariably is the person who started the ball rolling in the first place, who got the client worried about the consequences of not planning..."
and then "key in" on an appropriate time to bring the kids on board as full clients in their own right. "I think they really need to understand their parents’ plans first because that has a significant impact in terms of what may be in their estate later on," says Wark.

Wark advises that when dealing with an intergenerational transfer of wealth, clear and open communication is essential, especially when dealing with a complicated or controversial plan. "The more controversial a plan is, it's probably more difficult to do the communication," says Wark. "But it's also more important to be upfront and get [family members] used to the idea."

Stephens adds that intergenerational transfers of wealth definitely represent an opportunity for advisors, but one that isn't exactly overlooked. "I think for the more sophisticated advisor who's already doing estate planning, most of them are sharp enough to try to get to know the next generation, but it's a key point because it's obvious that that's the generation who's going to inherit the wealth," says Stephens.

Looking to go over the basics of estate planning with your clients and prospects? You can find a brand new estate planning PowerPoint presentation at www.advisor.ca/images/other/estateplan.ppt.

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Quick Tips To Hone Your Estate Planning Skillset:

Here are three quick tips from estate planning experts and authors Kevin Wark and Glenn Stephens to take your estate planning business up a notch:

1. Get educated:
   Read books, take courses and earn professional designations such as the CFP.

2. Find a mentor:
   Look for a mentor within the business, whether it's an advisor already doing estate planning or a lawyer or an accountant.

3. Network with accountants and lawyers:
   Educate them about what you do and what products and services you provide.

Says Stephens: "In being educated, joining professional associations, mingling with lawyers and accountants, the ultimate objective is really to be perceived as an advisor and not a salesperson... if you're perceived by lawyers and accountants as an advisor, then they're going to want to bring their clients to you and that's the ultimate compliment that could be paid to a financial advisor."
Talking to a client who is near death might be the hardest conversation you ever have as a financial advisor.

Prominent American financial advisor Nick Murray has long argued that excellent advisors manage the emotions, not the money, of their clients. Murray has said that the business of advice is about understanding and speaking to the emotions of clients, about going to "places in the heart." Such an advisor, says Murray, can help clients deal with the painful turning points in their financial lives, and pass on their wealth to future generations.

"I always told clients I anticipated meeting with their family the afternoon of their funeral to explain what we'd done," wrote Murray in the April 2000 edition of Advisor's Edge magazine.

But what about the conversation before that, the last one you have with the dying client?

Getting Comfortable With Discomfort

"Death is never comfortable, so don't expect to feel comfortable if you're dealing with a client that's facing a health crisis or dying," financial advisor and consultant Sandra Foster told Advisor.ca. "Comfort is not what you're supposed to feel. So become comfortable with your discomfort."

The style of communicating with a dying client can depend on where he or she is in dealing with their mortality, explained Foster, the founder of Headspring Consulting in Toronto and author of the estate planning guide You Can't Take It With You. Invariably, the client will give cues as to what is the appropriate level and style of interaction.

"This is where your technical skills, your human skills and your ability to communicate with people really become valuable to your clients and their family," Foster said.

Responding To Circumstances

Financial advisors should gauge the sense of urgency of the client's ill-
ness and the status of their estate plan to determine what aspects need to be completed, updated or altered, she added. Advisors may find it's appropriate to modify how they deal with the client, given the circumstances. An example of this might be putting a portfolio on conservative "autopilot" so that it does not require a lot of the client's energy.

Some terminally ill clients may actually derive comfort from going through their documents and finalizing their estate plan, said Foster. "It gives some clients the ability to say, 'Yes, I've taken care of business, now I can get on with what I need to get on with.'"

**Family Matters**

For the client's family, Foster recommends helping them make sure they know where to find all necessary documents, files, contact information and an executor checklist. This approach can give the survivors some sense of control over the process of death even though they don't have any control over the event.

"If there's not an organized plan, then you may be at the point where rather than having an ideal estate plan – one that minimizes the tax and all of that – you get a real basic plan so you don't have an intestacy situation," she added.

"An unplanned death is a mess: a morass of unanswered questions; a white-flag surrender of responsibilities to various courts and government officials; a formula for resentment and bitterness among survivors," wrote trust and estate planner Barry Seltzer of Toronto in his book *No One Should Have An Unplanned Death.*

**Getting Personal**

In an industry that focuses so much on positive moments in a person's life, such as the birth of children or retirement, the end of a client's life can present a dramatic shift for the advisor. "Death is one of those natural life events that isn't positive. Do you go to the funeral? Do you go to the memorial service? Probably yes, but take those cues from the personal side of who you are, not from the business side," observed Foster.

When a client is dying, it can be an intimate moment in the relationship with his or her advisor. Depending on the relationship, the advisor can also use his or her personal comfort level to shape the appropriate distance or closeness for their interaction.

"Consider what your own personal experiences are with death and dying, and your own fears. Or if you haven't had a lot of experience, don't let that hold you back," said Foster, who notes that advisors can learn a great deal from working with a dying client.

**Jim MacDonald** is managing editor of Advisor.ca and can be reached at jmacdonald@advisor.ca.

For a primer on how to speak to clients and family members in times of mourning, see *The Language of Loss* on the following page.
"Bereavement is a darkness impenetrable to the imagination of the unbe-reaved."
– Iris Murdoch, British writer, philosopher

The group **Bereavement Services – Support and Education** (www.bereavement.net) of Dundas, Ontario, posted pointers on its Web site on how to express compassion and caring to those in mourning. The organization says it is better to acknowledge the death somehow, because silence can be hurtful. Here are some of the suggestions:

"I'm so sorry," said with heartfelt sympathy.

"Is there anything I can do that would help?" said in a sincere voice.

"I'll be your support person – don’t hesitate to call."

"Call me if you need anything."

Here are statements that the organization feels should be avoided:

"I know just how you feel." (Don’t say this if you have never experienced the death of a loved one.)

"It was God's will."

"These things happen for a reason."

The **Grief Recovery Institute** (www.grief-recovery.com) of St. Williams, Ontario, cites examples of "killer clichés" to avoid:

"Time heals all wounds."

"You should be over it by now."

"You have to keep busy."

For some people, keeping busy is bad advice. Says the institute:

"Many grievers follow this incorrect advice and work two or three jobs. They fill their time with endless tasks and chores. At the end of any given day, asked how they feel, invariably they report that their heart still feels broken; that all they accomplished by staying busy was to get exhausted."

– J.M.
The following three cases are arguably among the most significant in Canadian estate planning history. Here is a summary of what happened and what the outcomes mean to Canadian advisors involved in estate planning today:

Stone v. Stone

Harry Stone met and wed Sarah Stone more than 25 years ago. It was a second marriage for both of them, and they each had children from previous relationships. In March 1995, doctors diagnosed Mr. Stone with lung cancer and informed him that he only had a few months to live; not surprisingly, he became particularly interested in estate planning.

A successful Ontario-based businessman with a net worth of about $2 million, Harry did not want any of his estate to go to Sarah’s children. He drew up a will, leaving Sarah a mere $250,000 and gave her the right to stay in the matrimonial home for as long as she lived, after which it would become the property of Ian and Maxine (Harry’s children from his previous marriage). Harry then proceeded secretly to transfer the ownership of his remaining property to Ian and Maxine, including business assets and a vacation property in Florida. Harry died a few months later.

Unhappy with this arrangement, Mrs. Stone turned to the law. If Harry had left all his assets to his son and daughter in the will, Sarah could have easily applied for an equalization payment under the Family Law Act. But because the transfers had taken place while Harry was still alive, the situation was unclear – so they went to court.

The Ontario courts eventually decided that Harry’s estate plan was actually a "fraudulent conveyance" meant
to keep assets out of his widow's hands. Harry's children Ian and Maxine were ordered to return the assets to the estate, and the trial judge awarded Sarah an equalization payment of over $800,000.

*What does this outcome mean to estate planners?*

There's more to estate planning than what's in the will. Clients may distribute assets before they die, but they should be made aware of the fact that their decisions can still be reversed by a court if it decides survivors have been treated unjustly. Rather than being kept in the dark, spouses should be consulted during the estate planning process.

Ontario v. Henson

It should come as no surprise that parents would want to leave money in their will to look after a mentally handicapped child. This is exactly what Leonard Henson wished to do for his daughter Audrey.

Unfortunately, a regulation under the Ontario Family Benefits Act prevented any person with "liquid assets" of more than $3,000 from collecting disability support payments from the government. Essentially, by leaving Audrey money, Mr. Henson was preventing his daughter from collecting her monthly pension – she would only be able to collect again once the inheritance had been exhausted.

Taking the matter to court, Henson's lawyers were able to prove that in fact the money held in trust for Audrey was not a "liquid asset" because it was held in absolute discretion – meaning that funds could only be paid at the discretion of the trustee(s), not at the request of the beneficiary. The absolute discretionary trust arrangement was nicknamed a "Henson Trust," and today provides one of the best ways to plan for a disabled loved one.

*What does this outcome mean to estate planners?*

It's no longer an either-or decision; by using a Henson-type trust, clients can now leave money to help look after mentally disabled relatives without jeopardizing their disability support payments.

Clients may distribute assets before they die, but they should be made aware of the fact that their decisions can still be reversed by a court if it decides survivors have been treated unjustly.
Royal Bank v. North American Life

Saskatchewan-based Dr. Ramgotra transferred his RRSPs to North American Life from Royal Bank, converted the funds to a RRIF, and started receiving regular payments. He named his wife as beneficiary under the contract. A little over two years later, Dr. Ramgotra went bankrupt.

Royal Bank claimed that, because Dr. Ramgotra had transferred the funds within five years of going bankrupt, the funds should still be subject to his creditors because "the interest of the settlor did not pass" (basically, that he was really just moving around his own money).

Dr. Ramgotra and North American Life argued that, because of the preferred beneficiary designation there was indeed a transfer of interest and, besides that, the funds were in an insurance contract (a protected asset class under the Saskatchewan Insurance Act).

The case went all the way to the Supreme Court of Canada and, much to the relief of insurance and financial planners, it was decided that the funds were legally out of the creditors' reach.

What does this outcome mean to estate planners?

Prior to Dr. Ramgotra's case, there had been concerns about whether or not insurance products with preferred beneficiaries would be afforded protection from creditors. This case helped to dispel those doubts. While the laws do vary from province to province, it appears that business owners who use insurance products to save for retirement and transmit assets to heirs will be "safe" under insurance legislation.

For more original articles on estate planning, be sure to check out the May issue of Advisor's Edge. To view archived Advisor's Edge articles or to sign up for a free one-year subscription, go to: www.advisor.ca/advisor/edge/index.ep

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Looking for even more estate planning information? Here are some handy links to articles and case studies that have previously been featured on Advisor.ca or in Advisor's Edge:

**Estate Planning – Wealth Of Advice:**
Ways to protect your clients’ estates are always evolving and improving. As a follow-up to "Probate Protection," here are two case studies that offer other components that can help you design the best estate plan for your clients. The first case deals with the benefits of living wills, while the second case discusses the effect of the repeal of the U.S. estate tax on a client’s portfolio:
(www.advisor.ca/advisor/edge/archives/index.ep!?document_id=%20ADVE110107)

**Joint Spousal Trusts And Alter-Ego Trusts – Effective Will Substitutes:**
Recent changes to legislation mean that clients over the age of 65 now have more flexibility when planning the distribution of their estate. Alter-ego trusts can be used not only to avoid probate costs, but also to allow for privacy and flexibility in the estate-planning process. The following PDF document explains how alter-ego trusts are used:
(www.advisor.ca/images/other/Alter%20ego%20trusts1_931.pdf)

**Selecting An Executor:**
One of the most important decisions in the estate plan is to appoint an executor who has the knowledge and character to carry out the directives of the will, and to act in the best interest of the beneficiaries. The fol-
lowing article sets out some of the advantages and disadvantages of options for selection of an executor: (www.advisor.ca/advisor/practice/guest/guest_column/index.epl?id=8769)

**Business Estate Capital, Estate Planning And Social Capital:**
"Conventional estate planning looks only at the amount you keep" and leaves out the control clients exert over what is done with the taxes, notes Malcolm Scarratt, a Calgary planner with Manulife Financial who specializes in philanthropic giving. "It's all your wealth, so why would you plan only for the amount you keep?" Apart from maximizing their own estates, business owners could also boost a community's social capital – Scarratt's preferred term for charitable donations – by using insurance policies and estate-freeze techniques to minimize or eliminate taxes on death. That creates "a huge opportunity from a planning perspective as well as a financial perspective": (www.advisor.ca/advisor/news/today/index.epl?id=18665)

**CAFP Journal Highlights On Estate And Tax Planning:**
When it comes to estate planning, advisors are often most concerned about ensuring that assets pass through to beneficiaries without getting tied up in probate. But that may not be the most tax-efficient practice, Terry McBride explains: (www.advisor.ca/advisor/news/today/index.epl?id=18283)

**Estate Planning – Probate Protection:**
Multiple wills may be necessary if your client holds assets – particularly real estate – in different jurisdictions. Clients who have no foreign assets may still benefit from writing more than one will, depending on the nature and value of their assets (for example, multiple wills can be an effective way to reduce probate fees). Here are the full details: (www.advisor.ca/advisor/edge/archives/index.epl?document_id=%20ADVEDGE110106)

**Passing It On:**
When it comes to providing intergenerational planning for families, Les Wiens goes beyond the usual tools of life insurance and joint ownership of assets. Wiens’s strategy is to focus on tax-effective ways for his clients to maximize the value of their estates for their beneficiaries while they are alive by providing the adult child with an advance on his inheritance. Here’s how Wiens has carries this off: (www.advisor.ca/advisor/edge/archives/index.epl?document_id=ADVEDGE010101)

**Family-Owned Businesses:**
The statistics on the survival of family businesses from one generation to the next are not very encouraging. On a consistent basis, the survival rate averages around 30%. When you’re speaking to clients about the succession of their family businesses, here are a few things you should keep in the back of your mind: (www.advisor.ca/advisor/practice/guest/guest_column/index.epl?id=5973)

**Family Ties:**
Christian Boucher’s challenge was to create a tax-efficient estate plan for his client. When Marie Robichard (not her real name) wanted to update her estate plan, Boucher (a former Advisor of the Year Award winner)
needed to find a way to transfer Robichard’s estate – currently worth about $15 million – as tax-effectively as possible to her daughter Isabel, 42, and granddaughter Madeline, age 18. Click here to find what strategy Boucher followed: (www.advisor.ca/advisor/edge/archives/index.epl?document_id=ADVEDGE050001)

Give Your Clients A Safety Net That’s Big Enough For Everyone:
John and Mary, both 55, have worked hard over the years to save for their retirement and acquire additional assets. Their focus is on a comfortable retirement, yet they are concerned that they may lose up to 50% of their registered assets and 25% of capital gains to taxation after the second death – leaving their children with far less than planned. What effective financial planning solutions could be offered to minimize John and Mary’s tax burden? Click here to find out: (www.advisor.ca/advisor/practice/guest/guest_column/index.epl?id=13539)

For more estate planning information, be sure to check out the May issue of Advisor’s Edge. To view archived Advisor’s Edge articles or to sign up for a free one-year subscription, go to: www.advisor.ca/advisor/edge/index.epl

Looking for even more estate planning information? Why not take advantage of the knowledge of your peers in Advisor.ca’s Talvest Town Hall online discussion forum? Just go to:
Administrator: A court-appointed individual who administers the estate in scenarios where there is no will, an executor was not named in the will or all named executors have died or are unwilling/unable to act.

Alter ego trust: A trust created after 1999 by an individual who is at least 65 years old, for the individual's exclusive benefit. Until the individual's death, no other person may receive or otherwise obtain the use of trust income or capital. [To read about alter ego trusts and their tax consequences, go to: (www.advisor.ca/advisor/search/full_article.epl?id=20771).

Beneficiary: A person (or organization or charity) who receives a benefit (such as a life insurance policy or annuity) or gift under a will.

Capital gain: Profit realized when an asset (such as stocks, bonds or real estate) is sold or otherwise disposed of. Such a gain will often result in tax consequences. Currently, 50% of the capital gain is taxable.

Codiciil: A properly witnessed, written change or addition to a will, usually used for relatively minor revisions.

Discretionary trust: A type of trust where the trustee can control the allocation of income and capital to beneficiaries.

Estate: The sum total of an individual's assets. Can include items such as monies, personal property, business interests, receivables, etc.

Estate planning: The process of arranging the efficient transfer of an individual's assets at the time of his death to his chosen beneficiaries.

Executor/Executrix: The person(s) or institution appointed to administer an estate in accordance with the terms and conditions of a will. [For an article on choosing an executor,
Fair market value: The price of an asset sold by a willing vendor to a knowledgeable purchaser, neither party being under duress.

Family trust: A living (inter vivos) trust set up by a parent or grandparent for other family members to lessen income taxes and transfer property upon death. [For 10 reasons to use a family trust, go to: (www.moneysense.ca/eng/life/experts/showexpert.jsp?feedname=QKE_TAX_EXPERTS_CESTNICK&cid=532816).]

Fiduciary duty: An individual or institution having a lawful responsibility to act in the best interests of another party.

Guardian: The person(s) appointed in a will or by the court to take custody of minor children and their assets in the event of their parents' death or disability. For individuals with young children (or a dependent with a mental or physical disability), naming a guardian is highly recommended.

Holographic will: A will written completely in the handwriting of the person making it, signed and dated, but not witnessed. May not be a valid will in some jurisdictions.

Inter vivos trust: This type of trust is created during the lifetime of the settlor (the person creating the trust). Also known as a living will.

Intestate: A person who dies without a will. A partial intestacy is where a valid will does not address the entire estate.

Issue: All persons who are descended from a common ancestor. It is broader than the term "children," which is limited to the one generation.

Joint tenancy: A form of joint ownership of assets where the death of one of the joint owners results in the immediate transfer of ownership of the asset to the surviving joint owner or owners. This transfer is deemed to have taken place at the time of death.

Legacy: A gift of personal property or money given by a will. Also known as a bequest.

Net worth statement: Balance sheet showing what an individual owns (assets) versus what he owes (liabilities). [To access your own printable net worth worksheet, go to: (www.royalbank.com/cgi-bin/retirement/ws_networth.pl).]

Personal net worth: A person's total assets, less total liabilities. The difference is their equity. [To do a quick personal net worth calculation, go to: (www.altamira.com/altamira/toolkit/networth+calculator.htm).]

Power of attorney: A legal document that grants one person the authority to act on behalf of the person granting the power of attorney on various matters. [For an introduction to powers of attorney in Canada, including a sample power of attorney, go to: (www.duhaime.org/capower.htm#drafting).]

Probate: A court declaration that
certifies the validity of the will. It also confirms the executor(s) named within. [For a list of probate tax rates by province, go to: (www.aimfunds.ca/AIM/Resources/Taxes/Tax_Bulletins/TBPROPE.pdf).]

**Settlor:** The individual who establishes a trust.

**Spousal trust:** A trust under which the settlor’s spouse (and nobody else) is entitled to all of the income for his or her lifetime.

**Testamentary trust:** A trust created under a will that only takes effect after death.

**Testate:** The name given to a person who dies with a valid will, or the act of dying with a valid will.

**Testator/Testatrix:** The person who has made a will.

**Trust:** A legal structure in which one person (the settlor) transfers legal title to a trustee to manage the property for the benefit of a person or institution (beneficiaries).

**Trustee:** A person or a trust company responsible for administering assets on behalf of someone else. The trustee takes legal title to the trust property and is required to follow the terms of the trust. Settlors may name joint or co-trustees, who exercise equal authority.

**Will:** The legal statement of a person’s (testator’s) wishes concerning the disposal of his or her property after death. [For an introduction to wills in Canada, go to: (www.duhaime.org/ca-wills.htm).]