BMO NESBITT BURNS

Trust Planning for the Disabled

If you have a loved one who is financially dependent on you due to a disability, you may want to consider setting up a Trust. A Trust can provide financial security for an individual who is not capable of earning sufficient income or managing their own money, because of physical or mental infirmity. In some provinces, the Trust can also preserve the disabled individual's right to provincial disability benefits.

Depending on the circumstances, a discretionary Trust, sometimes called a *Henson Trust*, can be used. This Trust provides a "back-up" source of funds in case additional support is required, but the value of the fund will not be included in the disabled person's assets in the calculation to determine eligibility for provincial benefits. However, this strategy may not work to preserve the right to provincial benefits in all provinces.

Generally, a Henson Trust provides a great deal of discretion to the Trustee in determining whether to distribute or withhold capital and income to the disabled beneficiary. As well, the Henson Trust must have beneficiaries in addition to the disabled person.

The choice of a Trustee is very important, since the Trust may be in existence for many years, perhaps decades. The Trustee should have a clear understanding of the nature of a Henson Trust, and he or she should have familiarity with the living requirements and lifestyle of the disabled beneficiary. For these (and other) reasons, it may be prudent to appoint a professional Trustee.

Even if the person suffers from a less debilitating disability, or an intermittent one as in the case of some mental illnesses, their financial needs or lifestyle may be far greater than what can be supported by government benefits. In this case, a Trust may still be desirable to provide financial security and protect the person from themselves or others, including creditors. In some circumstances the restrictive terms often found in a Henson type Trust may not be necessary. The Trust document can state that the purpose of the Trust is to ensure a particular lifestyle can be maintained for the benefit of the disabled person, or a certain guaranteed income can be specified.

Often a Henson Trust is created even if provincial benefits are not being received, just in case the person qualifies in the future. The Trust can authorize the Trustees to be more generous if appropriate.

A Trust created in your Will may be preferred. The Trust will be entitled to the marginal tax rates, and the 21 year rule that triggers capital gains in an inter-vivos Trust will be delayed until 21 years after death. The Trust may also be funded with life insurance proceeds.

In addition to this estate planning strategy for the benefit of a financially dependant disabled loved one, it is possible to provide a rollover (deferring the tax) of RRSP proceeds of a deceased parent to an RDSP of a financially dependant child.

Contact your BMO Nesbitt Burns Investment Advisor for more information on planning for a disabled loved one, or for assistance in finding an estate planning professional.

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Note: Some terms are capitalized for purposes of greater clarity in the context of this discussion only.