

# Planning Issues and Opportunities for Family Members with Disabilities

CALU Associate Members Forum  
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# Issues

- Henson Trusts – when are they appropriate?
- RDSPs and Wills & Trusts
- RRSP/RRIF rollovers – trusts, RDSPs
- Family trusts
- Substitute Decision-Making
- Executors and trustees



# “Henson Trust”

- *Ontario v. Henson* (1987) 28 ETR 121, aff'd 1989, 36 ETR 192 (Ont. C.A.)
  - Assets held in a discretionary trust for disabled beneficiary not included as assets for purposes of eligibility for ODSP
  - Beneficiary has no rights to income or capital apart from what is paid to her



# Planning issue: Is a Henson Trust appropriate?

- Restrictive
- Henson Trust funded by sale of residence, life insurance
  - Income generated in Henson Trust v. amount of provincial benefits – consider whether disabled beneficiary should go off provincial benefits
  - Life insurance declaration should include Henson trust
- Provincial benefits end at 65



# Planning Issue: RDSPs and Wills/Trusts

- Consider including direction to fund RDSP
  - Guardian is the Account Holder
- Can a Henson Trust fund RDSP?



# Planning issue: RRSP and RRIF rollovers

- Rollover on death to a disabled dependant child or grandchild
  - Defers tax on the RRSP/RRIF
- Issues:
  - What constitutes “financial dependence”?
  - Rollover to a trust?



# RRSP/RRIF rollovers – proposed amendments

- Where “lifetime benefit trust” is annuitant of “qualifying trust annuity” (after 2005)
- LBT:
  - “Beneficiary” is disabled spouse or disabled + dependant child/grandchild of deceased
  - Trust is a personal trust under which:
    - No person other than the Beneficiary may, during the Beneficiary’s lifetime, receive or obtain the use of the income or capital of the LBT
    - Trustees empowered to pay amounts from LBT to the Beneficiary
    - Trustees required to consider needs of the Beneficiary (comfort, care, maintenance) in determining to pay or not out of the LBT



# RRSP/RRIF rollover to an RDSP

- March 2010 Federal Budget
- Similar rules as with the direct rollover
- Amount rolled cannot exceed the beneficiary's contribution "room"
  - Will not attract CDSG
  - Consider if all should be used at once
  - Election required
- Specific provision in Will required?





# Issues to consider

- Does a Henson Trust qualify?
  - required to consider needs of the Beneficiary
- Are there other beneficiaries upon the expiry of the accumulations period (21 years)?
- Equalizing with other children



# Planning issue: Residence trust

- ODSP recipient can own principal residence
- Or, hold residence in a testamentary trust for benefit of ODSP recipient
- Will ODSP be sufficient to pay expenses?
- Can there be a “Residence fund”?



# Planning issue: Family trusts

- Incorporate a Henson trust in the family trust?
- Payment to ODSP recipient should be to trust for him/her



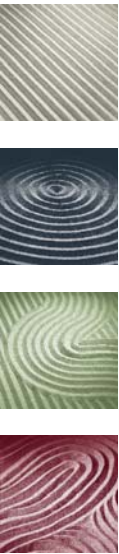
# Planning issue: Substitute decision-making

- Can person grant a POA?
- Is a guardianship order required?
  - Disabled person no longer a minor
  - Dealing with ODSP, CPP
  - RDSP legislation
- Guardian of Property
  - Replace PGT as statutory guardian
    - “over-the-counter” procedure
  - Obtain Guardianship Order



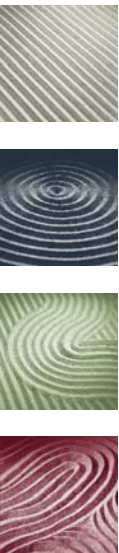
# Personal Care

- Power of Attorney for Personal Care
- Guardian of the person
  - Court proceeding
  - Management plan
- Consent and Capacity Board hearing for specific decisions



# Planning issue: Choosing Executors and Trustees

- Often most difficult decision
- Siblings?
- Trust company?
- Advisory team?
- Cost



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