



Legal Notes

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Estate planning for a child with a disability

Estate planning for parents who have a child with a disability involves special considerations. Of special concern may be how best to protect any government benefits that your child may be receiving. Although this article is written to describe a situation where it is someone's child that has a disability, the information is relevant for anyone with a disability.

ONTARIO DISABILITY SUPPORT PLAN

If certain financial criteria are met, an adult with a disability may qualify for income supports (help paying for living expenses) and/or employment supports (help finding and preparing for a job). These benefits are paid under the Ontario Disability Support Program (ODSP).

ODSP benefits may end if a person receives an inheritance. Unless an inheritance is large enough to provide total support for the child's lifetime, it is important that parents and other family members know if a child (or grandchild) might be getting ODSP payments now or in the future.

HENSON TRUST

With proper estate planning, a large inher-

itance can be sheltered in a discretionary trust. Often referred to as a Henson trust (the name of the family who first pioneered this approach), such trusts are most often included in the Will of anyone leaving an inheritance for the child. However, such trusts can also be set up during a parent's lifetime.

To qualify, a number of key features must be included in the trust. For example, the person looking after the trust (called a 'trustee') must have the right to decide if and when payments will be made from the trust and in what amounts. Because of the trustee's 'absolute discretion' regarding payments, the person with a disability cannot demand payment from the trust. As a result, our courts have decided that the trust assets are not under the control of the person receiving ODSP and therefore cannot be considered when determining ODSP eligibility.

There is no limit on the amount held in a Henson trust. However, payments made to an ODSP recipient must be no more than \$6,000 in any 12-month period unless payments are made for qualifying disability-related or education expenses (as defined by the regulations governing ODSP).

DISABILITY EXPENSE TRUST

Regulations governing ODSP provide for another type of trust commonly referred to as a 'disability expense trust'. This kind of trust is helpful if an ODSP recipient receives an inheritance directly because the person who died did not have a Henson trust in his or her Will. This type of trust allows an ODSP recipient to inherit up to \$100,000 as long as it is transferred to a disability expense trust within specific time limits and certain conditions are met. For example, the disability expense trust funds may only be used to benefit the person who inherited the funds and the value of the trust can never exceed \$100,000, including any interest or other revenue earned by the trust.

CONCLUSION


If you have a child with a disability, you'll want to be confident that your estate planning is properly done to ensure your child's financial

future is the best that it can possibly be.

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She works with Donna and her clients to implement estate plans and prepare wills and powers of attorney that address the client's goals in providing for children, elderly loved ones, persons with disabilities, and charitable causes.



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