



Legal Notes

By Donna Neff, B.A. (Hon.), LL.B., T.E.P. and Natalie Sanna, B.A. (Hon.), LL.B

When a child inherits

By Donna Neff and Natalie Sanna

As a parent, you may wonder what happens if your child under the age of 18 (referred to as a 'minor') inherits from you or someone else. A child may inherit in a number of ways:

- the child could be named as a beneficiary in a Will;
- the child could inherit from a relative who dies without a Will (referred to as 'dying intestate') if the child is one of the legal beneficiaries under the intestacy laws of Ontario; or
- the child could be named as a beneficiary of a life insurance policy or any other asset where a beneficiary can be named, such as a segregated fund, an RRSP/RRIF, or death benefit.

In Ontario, a minor child is not permitted to receive a substantial inheritance directly, monetary or otherwise. Many parents of a minor child are surprised to learn that they do not automatically have the right to control an inheritance received by their minor child.

Inheritances under

\$10,000 may be paid to the parent of a minor child so long as the funds are used for a specific purpose to benefit the child. A Will may include a trust that appoints a parent or other person to act as 'trustee' of the minor child's inheritance. If there is no trust, a parent can only control a minor child's inheritance by applying to the Court to be appointed the minor child's Guardian of Property. Whether appointed by the Will as a trustee or by the Court as a guardian, the parent must manage the inheritance for the minor child's benefit and according to the terms of the Will or the Court Order.

If there is no trust in the Will, an executor can pay the child's inheritance into Court. By doing so, the executor is discharged from further responsibility to the extent of the amount paid into Court. The executor does not need to monitor the Court's handling of the money, how it is invested, or keep any further records.

When a minor child is left an inheritance, the Office of the

Children's Lawyer (OCL) may become involved. An office within the Ministry of the Attorney General for Ontario, the OCL's mandate is to represent personal and property rights of minors and unborn children, including estate and trust matters.

Parents may also be surprised to learn that when a child reaches the age of 18, he or she can demand that the inheritance be handed over to him or her if the inheritance is not being held in a trust. The child can also demand a full accounting of all transactions affecting the inheritance unless previously approved by the Court.

A parent (or other person leaving a gift to a child) who wishes to defer payment of the child's inheritance beyond the age of 18 must include a trust in his or her Will. In a trust, the parent can specify that partial payments of the inheritance can be made at various ages with income (what the trust assets earn) being paid out regularly.

This season of giving also reminds us to consider charitable gifts when considering how to distribute our estate. This can be a meaningful way to honor our children. In addition, a charitable gift can provide tax savings to the estate. We encourage you to explore this aspect of estate planning with your lawyer or tax professional.

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Natalie Sanna, B.A. (Hon.), LL.B., is a once-practicing lawyer who works as a Law Clerk for Neff Law Office Professional Corporation. She works with 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.

Sleeping Children Around the World gives bed kits to children

If you are considering looking for a worthwhile recipient of some year-end donations, you may want to consider "Sleeping Children Around the World".

Sleeping Children Around the World

(SCAW) is a Canadian-based charity whose mission is: "through free-will donations and in partnership with volunteers, to give bed kits to needy children in developing countries, thus helping them to face the

challenges of the coming day." This organization has now distributed over 1 million bed kits around the world.

A \$35 donation purchases a bed kit for a child, which will be distributed by a SCAW

volunteer; you will receive a photo of the child who is the recipient of your gift.

To contact SCAW and to make an online donation, please visit the website www.scaw.org.



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