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*TAX*MATTERS

Strategies for kids with special needs

Know your options

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There is nothing more joyful than the birth of a child. It is a very emotional time for parents and grandparents as they make lofty plans for the baby's future while juggling new responsibilities and obligations.

Those feelings of elation, however, can take a serious and unfortunate detour if the child is born with a disability or becomes disabled later in life.

After the initial fears and anxieties calm down, parents of children with special needs must address a variety of practical tax and estate planning issues to ensure their child receives the best help they can afford.

Here is a list of planning issues to be considered if your child or family member has special needs.

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Your will: More than half of Canadian adults do not have a will. This document is particularly important for dealing with the needs of a disabled child and for issues of guardianship. If you don't have a will, the complex procedure to determine who is actually entitled to receive your estate must go through the legal system.

Depending on the situation, this expensive and avoidable exercise could take crucial funds away from potential heirs, including the disabled child.

Henson Trust: This is an important component of your will when dealing with a disabled dependent. An income-related strategy providing government help, it is widely considered to be one of the most tax-efficient ways to save for a disabled child.

You will need the help of an experienced wills and estate lawyer to put it all together.

Without this kind of trust, you may be inadvertently keeping a child from funds that could otherwise pay for helpful programs and other important government services.

Trustees: Responsible for overseeing assets left in a Henson Trust for your child, the trustee's role often continues until the trust is terminated. This person has absolute discretion in how the funds can be spent; needless to say, selecting a trustee is a serious issue.

The most important factor here is to make sure the person appointed as trustee not only knows how all the different benefits work, but is also aware of the needs of the child.

Rachel Blumenfeld, a partner and disability specialist with law firm Miller Thomson, offers this advice to families contemplating the use of a trustee in the future:

"I've worked with parents who have spent a lot of time putting together a binder of information about their child, their needs and their wishes," says Rachel. "I find it helps when they are putting together their wills and helps them decide how they want to construct their legal documents."

Powers of attorney: The Lawyers' Professional Indemnity Company reports that 71 per cent of Canadians do not have a signed power of attorney, which is a legal document that gives someone else the right to act on your behalf in certain matters.

There are two kinds of powers of attorney: one for your

property and one for your health. If you become incapacitated, have you thought about who is going to look after your special needs child?

Before you put down the person's name as your power of attorney, take some time and talk to the person to ensure he or she is willing to take on that responsibility.

In this particular case, you will want someone who knows how you want your child to be looked after.

Estate Directory: This is also a good time to make sure you have updated your estate directory. This is a list of where all your important papers are kept and any passwords you need to get onto certain websites. You can find one at: *www.illnessPROTECTION.com/estateplanningtoolkit.php*

Registered Disability Savings Plans (RDSPs): Canadians have RRSPs to help look after their financial needs upon retirement. There is also a registered disability savings plan (RDSP) to help family and friends look after at least some of the financial needs of a disabled child. Contributors are allowed to contribute a total $200,000 lifetime limit to a disabled person's RDSP.

They don't receive a tax deduction for the contribution, but in many circumstances, their contribution is matched by the federal government and grows tax-free like an RRSP.

Canada Disability Savings Grant (CDSG): This is part of the RDSP program in which the federal government contributes matching grants ranging from 100 per cent to 300 per cent, depending on the amount contributed and the beneficiary's family income. The maximum is $3,500 a year, with a lifetime limit of $70,000.

If possible, avoid contributing the entire lifetime amount in a single shot because it limits you to get only one year's worth of the grant. Better to spread out the money over several years to maximize government matching contributions. Investments within the RDSP grow tax-free like an RRSP until the money is withdrawn.

RRSP/RRIF Beneficiaries: Since 2010, parents and grandparents can roll over their RRSPs and RRIFs at death to the RDSPs of financially dependent children and grandchildren on a tax-deferred basis.

Under normal circumstances, the assets in an RRSP or RRIF can be left to a child or grandchild, but is subject to tax, which in some cases can mean a hefty tax bill.

But the government allows as much as $200,000 to be rolled into an RDSP (note that the amount of funds cannot exceed the beneficiary's available RDSP contribution room). While this will count towards the beneficiary's lifetime contribution limit, it will not be matched by the CDSG.

Money paid out of an RDSP does not affect the parents' eligibility for federal benefits (e.g., the Canada Child Tax Benefit).

Disability Tax Credit (DTC): This is a non-refundable tax credit that a person with a severe and prolonged impairment in physical or mental functions can claim to reduce the amount of income tax paid during a year; it includes a supplement for those under 18.

Those eligible for a DTC may be able to claim the disability amount on their income tax and benefit return.

Most Canadians don't claim the DTC because they don't know about it. Companies like National Benefit Authority (NBA) specialize in helping people recover up to $40,000 from Canada Revenue Agency.

"We retroactively claim back up to 10 years' worth of credits that the individual did not claim on their own," says NBA president Akiva Medjuck. "We have 120 specially trained staff who review your family's tax returns for up to 10 years and optimize your previous returns to effectively claim all the money that you should have claimed all those years ago but didn't."

Children under 18 with qualified disabilities can generally receive about $2,200 in DTCs a year.

Life insurance: Life insurance is a major plank of any good estate planning strategy, but especially so when there is a child with special needs to consider.

Life insurance will ensure there is income replacement when the parents die to cover the costs of ongoing care.

The special needs child cannot be the beneficiary so a trust is often set up and looked after by a trustee. Alternatively, an annuity can be created to provide a monthly payout during the child's lifetime.

Disability, critical illness and long term care insurance: Looking after the needs of a disabled child can be financially challenging for parents – not to mention mentally and emotionally exhausting too.

Parents need to properly cover their income-replacement through insurance if they can't

work. There is nothing worse than also being challenged financially while having to look after a disabled family member.

Health spending account (HSA): Consider setting up a health spending account if you are incorporated or self-employed.

It can allow you to deduct expenses that would qualify as a medical tax credit. Instead of paying for services with after-tax dollars, you would be able to deduct the costs. This should be reviewed as part of your overall financial plan.

Another strategy called "cost-plus" may allow you to deduct medical expenses using your group plan at work. Speak with your Human Resources contact at work about this possibility.

Work with a knowledgeable advisor: There are a number of programs parents can use to help save for their disabled child's future. It is important to work with a financial planner knowledgeable about the ins and outs of disability benefits to make sure the disabled person does not become ineligible for provincial disability benefits.

There is not a parent or grandparent I know who would not do everything in their power to ensure the future financial stability of a child with special needs.

The list above is by no means exhaustive, and I encourage you to explore every potential avenue. ❐

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