

Trusts can help when tragedy strikes



**MERRICK
WEALTH**

By
**Peter
Merrick**

Trusts are not just for the wealthy or families with a special needs child who require Henson trusts. Contrary to general belief, trusts can be useful for a significant group of people.

A testamentary trust (one which is included in a will) is especially valuable for tax reduction when a family has young children. The tax savings for survivors are indeed significant. Let's look at an example.

John Smith and his wife Jane have one child. When John dies, he leaves his life insurance proceeds of \$200,000 in trust, with all other property going directly to his wife. He indicates that the beneficiaries are his child and wife, and the trustee is his wife. She is free to spend the money in the trust in the interests of the child – fees for summer camp, purchasing a computer, or any-

thing that furthers the child's advancement in life – and if desired she also can receive money from the trust.

Now let's say the \$200,000 insurance proceeds are invested and earn three per cent interest for a sum of \$6,000. If there was no trust, and surviving spouse, Jane Smith, was working and earning \$38,000 per year, as well as receiving the insurance money herself, her marginal rate of tax in Ontario would go from 22 per cent to 33 per cent.

She would then need to pay another \$2,000 in taxes. With the trust however, the earnings are declared in the hands of the child, therefore no tax is incurred and her taxation stays at the lower rate.

Even if the sum received from the trust is greater than the personal exemption, the additional amount would, in all likelihood, only be taxed at 22 per cent.

Kenneth Pope is a lawyer in Ottawa who specializes in the area of Henson trusts and providing financial security for families with a disabled or special-needs member. He says, "A lawyer's best practice for estate planning purposes is to create an initial trust arrangement with a nominal bequest of \$100, which can later be funded with the parents' insurance or grandparents' gifts, when appropriate."

It could also be that a grand-

parent wishes to establish a trust for their grandchild, with one or both parents as trustees.

They have the authority to spend the money in any way they deem appropriate for the benefit of the child, and the income would again be taxed in the hands of the grandchild, at the lower rate. Should the parents decide to forgo their inheritance to fund the grandchild's trust, this can be referred to as a 'skip generation trust.' It is an extremely flexible and valuable planning tool in many cases.

If a family member with special needs is receiving Ontario disability support benefits, and if they are left an inheritance, that inheritance is considered an asset and will disqualify them from benefits unless special arrangements are made in the parents' will.

The only real solution to this inequity is a Henson trust, created by the parents' will. Only available since 1989, when the case after which it is named was upheld by the Ontario Court of Appeal, it places estate assets in the care and control of a trustee to be administered for a beneficiary. Inheritances placed in a properly prepared absolute discretionary trust are not the asset of the child and will not affect provincial benefits.

Many families have members who require assistance in handling

their daily affairs, regardless of their other abilities. Special beneficiaries often benefit from guidance in handling large sums of money or significant assets, temporarily or on an ongoing basis.

Some beneficiaries may be unable or unwilling to seek guidance, and may at some point be left without care unless special provisions are put into place.

To solve these problems a Henson trust must be created, during your lifetime (inter vivos) or according to the terms of your will (testamentary). These trusts are invaluable in planning for your child's care when you are no longer there.

These special arrangements are necessary to properly ensure that loved ones will be given the extra care they deserve, and that inheritances will not be wasted. Specialized legal counsel is necessary to

ensure that the drafting of wills follows the court-tested arrangements required, and to continually consider any changes in provincial regulations and new case law.

When a client considers the modest fees involved in establishing a trust, offset by saving thousands of dollars as demonstrated in the Smith family illustration, the belief that trusts are only for the wealthy becomes nothing more than a myth.

Peter Merrick, BA, FMA, CFP, FCSI is the president of Merrick Wealth Management Inc., a fee-for-service financial planning and benefit consulting firm in Toronto. He can be contacted at: (416) 854-1776 or peter@merrickwealth.com or visit www.merrickwealth.com.

Most audit committees happy with CFO

By **GUNDI JEFFREY**

Chief financial officers are an audit committee's best friend, according to a new survey by KPMG's Audit Committee Institute (ACI) and the Institute of Corporate Directors (ICD).

The two bodies decided to co-sponsor this first-ever annual survey of audit committee members of Canadian public companies to better understand the challenges and issues these committees currently face.

"Audit committees have now moved past the phase of understanding what they have to do, and are now struggling with how they do it," explained Axel Thesberg, KPMG's Canadian managing partner for professional practice and risk management.

"In some areas, audit committee members are feeling comfortable that they're going about things in the right way, but in other areas they're definitely less comfortable," Thesberg added.

"Also, in specific areas, the audit committee members' sense of comfort appears to differ significantly with the size of company involved."

More than 100 audit committee members described their current practices, emerging

trends and future contentious issues for the survey. A few highlights include:

- More than 80 per cent are very satisfied with the interaction and support they receive from their CFO, rising to 94 per cent among companies with revenues of more than \$1 billion.
- Two out of three respondents rate their audit committee as being very effective and also feel it has become more effective over the past year.
- The full audit committee most often conducted reviews of the quarterly and annual financial statements and MD&A, as well as earnings press releases, before public release. Many audit committees also review the company's annual information form before it is issued. In less than half the companies surveyed, the audit committee chair also reviews these financial documents while, in about a quarter, the non-executive board chair or lead director also performs a review.
- More than 70 per cent are not fully satisfied with their audit committee's oversight of internal control over financial reporting and about one-third of those respondents definitely thought that their oversight needed

improvement. Respondents also indicated they were concerned that essential compliance activities – including Section 404 of the *Sarbanes-Oxley Act* – may detract from substantial discussions of company issues and adversely affect the audit committee's overall effectiveness by requiring an inordinate amount of time and attention.

- Only one in four respondents indicated they are very satisfied with the board's or audit committee's oversight of risk management, and respondents from companies with revenues exceeding \$1 billion appear more generally satisfied than those from smaller companies.
- Most respondents (87 per cent) were not fully confident that their whistle-blower procedures permit employees to feel comfortable reporting behaviour they believe is questionable.

"Basically, many survey respondents appear to feel their audit committees have adapted well – and rapidly – to a dramatically new corporate governance environment," said ACI executive director Michael Meagher. "Yet, as our survey results suggest, their journey continues."

The 2007 survey is underway.

ROCK YOUR PROFESSION

Tuesday, June 5, 2007 - Calgary Stampede
CANADA'S LARGEST EVENT FOR ACCOUNTANTS WILL NOW ROCK CALGARY!

The Financial Technology Show's Western Edition is now being held in Calgary. With over 25,000 ft² of exhibits featuring all of Canada's leading accounting and payroll software solutions, plus two free seminars that may qualify for Professional Development Credit.

Pre-Register today at
www.FinancialTechnologyShow.com
 and attend for FREE, or unregistered attendance is \$20 at the door. Visit the website for a complete list of current exhibitors, or for more info call 416-282-1600.

The
Financial Technology
 Show

ROCK YOUR PROFESSION!

CALGARY SHOW SPONSORS:

MEDIA PARTNER: **THE BOTTOM LINE**
The Independent Voice for Canada's Accounting and Financial Professionals