



# DISABLED CHILDREN

## Protecting a special child requires a special estate plan.

If you have a child, including an adult child, with a disability, you will want to pay particular attention to meeting their special needs when you are gone. You may need to make special provisions in your will.

You may have savings in an RRSP or RRIF, which can be used for the benefit of your disabled child. There are several ways to accomplish this, but naming your disabled child as the beneficiary on the plan is probably not the best. You should also consult your lawyer before leaving a sum of money outright to a disabled child.

Regulations under the *Ontario Disability Support Program Act* (ODSPA) disqualify a person from receiving public benefits if he has over \$5,000.00 in assets. Leaving your estate outright to your child may inadvertently prevent her from accessing needed funds and benefits.

You can leave a house to your child without interfering with ODSPA benefits, and you can also leave a vehicle. Some disabled beneficiaries, however, may not be able to cope with using a vehicle or caring for a house. A better way might be to leave the house in trust for the benefit of the child, who can continue to live there, while someone else looks after it.

The ODSPA Regulations do allow up to \$100,000.00 to be put in a special trust, without disentitling the disabled child to benefits. You can do this in your will or during your lifetime. These trusts are, however, not enshrined in the legislation, and the regulations can be changed by the Ministry.

You have a legal obligation to care for a dependent child, even if your family has promised to look after him. Leaving money outright to one child, who is asked to care for a disabled sibling, can create a problem. The child with the money has a conflict of interest if she has to choose between a disabled sibling and her own spouse and children.

One of the best ways to look after a disabled child in your will is by using a special discretionary trust called a "Henson" trust. A Henson trust holds money or property for the child, and leaves it entirely up to the trustee how much will be paid to the child and on what terms. This allows the trust to be held for your child without affecting his or her benefits.

The trustee of a Henson trust should be someone who can manage money well, who is completely trustworthy, who knows your child's needs, who is not in a conflict of interest, and who will be around for your child's lifetime. It may take more than one trustee to get all of the necessary qualities.

*Cunningham Swan offers a broad range of legal services to individual and corporate clients in the private and public sectors in Kingston and Southeastern Ontario. We welcome your inquiry: Cunningham Swan Carty Little & Bonham LLP, Suite 300, Smith Robinson Building, 27 Princess Street, Kingston, ON, K7L 1A3; Telephone: 613.544.0211; Facsimile: 613.542.9814; Email: [info@cswan.com](mailto:info@cswan.com). This factsheet does not constitute legal advice.*