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The Conference for Advanced Life Underwriting

2019 | Vol. 3

Message from the Chair

Roger Sinclair

Many of our members attended one of our nine regional meetings in the fall. I had the pleasure to host the meetings in Ottawa and Halifax. Thanks to our speakers, President & CEO Guy Legault, tax advisors Kevin Wark and Angela Ross (who presented at the two Toronto sessions), CALU board members and the Advocis' board members. I hope you found the information useful. If you were not able to join us in person, I invite you to register for the regional meeting webinar on January 16 from 1 p.m. to 3 p.m. EST: https://crm.calu.com/public/event/details/4b64b92776d66a-2c230a1369a380a2be6a1928fa/1

Using our 2018-2021 strategic plan as a beacon, we have accomplished a lot this year. We are proud to have received an Award of Distinction from the Canadian Society of Association Executives in the Optimizing Governance – Strategic Plan category. This is quite an accomplishment for an organization of our size and reflects not only the design, but most importantly, the implementation of the strategies. Here are some key highlights.

Pillar 1 – Addressing Disruption

We have continued working on a multi-year project to better communicate the value of advice with government, regulators, stakeholders and our clients. To that end, were are upgrading the quality of our research, data and messaging to more effectively articulate the value proposition of working with an advisor. The Value of Advice Task Force held two workshops last year with the consulting firm Maddock Douglas and the board has approved a research project with behavioural economics experts BE*works* for the next phase.

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See you at CALU's 29th Annual Meeting May 3 - 6, 2020 Westin Hotel Ottawa

GR Blog

Warren Blatt, CLU, CHS, Chair of the Government Relations Committee

Election Results

I join our Chair Roger Sinclair in thanking our election champions and members who met with their local candidates during the election campaign to get to know their candidates and discuss our public policy issues of importance to Canadians and family businesses.

We worked closely with our government relations consultants FleishmanHillard HighRoad (FHR) who provided the GR Committee and the election champions with timely information during the campaign. You may remember that we started early when we launched the CALU Election/ Advocacy Tool Kit at the 2019 AGM in May. We used our dedicated election webpage to keep you updated on parties' platforms, regularly published blogs and share other useful information to facilitate your grassroots advocacy and reaching out your local candidates.

The election saw all parties except the Bloc Québécois disappointed by their results. The Liberals won 157 seats, the Conservatives 121, the Bloc 32, the NDP 24, the Greens three and Independent Jody Wilson-Raybould was re-elected.

A minority Parliament presents challenges for the Government and requires adjustment to organizations' advocacy approach; indeed, we will have to engage more parties and the issues will be more political. It will require more engagement with the elected officials than in a majority Parliament where we could spend more time with the departmental officials.

The Cabinet was announced on November 20 with 36 ministers nominated to the 29th Canadian Ministry, including seven new ministers. The re-appointment of the Hon. Bill Morneau as Minister of Finance was not a surprise. The position of Minister of Middle Class Prosperity and Associate Minister of Finance is new. The Hon. Mona Fortier, M.P. for Ottawa–Vanier was appointed in this new role. You will recall that she was a panelist on Pancakes and Politics at the 2019 AGM.

In the throne speech, Prime Minister Trudeau unveiled what his government's priorities will be including major aspects of the Liberal 2019 election platform such as climate change, affordability, gun control and pharmacare. Since the minority government needs to the support of other parties to maintain the confidence of the House and be able to govern, these themes were likely chosen both due to their relevance in terms of public opinion, as well as the probability of getting the support required from one or more of the opposition parties.

The Hon. Andrew Scheer announced that he will be stepping down as Conservative Party leader after the party convention in April 2020. It will be interesting to see who runs for the leadership and gets elected to run in the next election; minority parliament usually lasts 18-24 months and, while some pundits predict this government may last the full four-year term, if history prevails, we may find ourselves in another election sooner than expected.

We have embarked on our post-election strategy and will be meeting with targeted M.P.s and Ministers in the weeks and months to come. "Speculation around potential leadership candidates is running rampant and includes names such as Rona Ambrose, Jean Charest, Pierre Poilievre and Peter MacKay. This is an important dynamic to consider for the governing liberals; minority parliaments usually last 18-24 months and, while some pundits predict this government may fulfill a full four-year term, if history prevails, we may find ourselves in another election sooner than expected. It is also important to mention that the mandate

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letters of Ministers include the CALU-promoted issue of family business succession – however limited to farmers; we will continue to advocate that it should be applicable to all businesses. In the meantime, I suggest you plan to attend your M.P. holiday event (usually held in December and January) to congratulate them on their election and offer your help on issues of mutual interest. It is easy to find their official website and look under the "events" tab.

2020 AGM

We are planning some changes to our government relations approach at the AGM, including meetings on the Hill and optional sessions at lunch on the Tuesday. While a minority Parliament will present challenges, we want to take advantage of being in Ottawa to reach out to more M.P.s and Senators while we are there. In addition, the Parliamentary reception will be held from 6pm to 8pm to facilitate attendance by M.P.s after the official end of the day in the House at 7pm – barring any votes that could extend the end of the daily session. I urge you to plan accordingly and stay until the end as M.P.s tend to come later. We will be in touch in the New Year to invite your M.P.

Donations of Life Insurance Policies in B.C.

The BC Financial Services Authority (BCFSA – formerly the Financial Institutions Commission, FICOM), the regulator of the *Insurance Act* in British Columbia, has recently taken enforcement action against a charity regarding the solicitation of gifts of life insurance. On December 19, BCFSA issued a notice (ICN 19-005):

> *Recently, a number of publications have advised of the potential for donations of life insurance policies to be considered trafficking in insurance,*

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Our President & CEO Guy Legault with the Minister of Finance the Hon. Bill Morneau at the Liberal Holiday Event in Ottawa

Our President & CEO Guy Legault with Minister of Middle-Class Prosperity and Associate Minister of Finance the Hon. Mona Fortier

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an activity prohibited by section 152 of the Insurance Act. In BC, a person may purchase a life insurance policy and designate a registered charity as their beneficiary; however, donations of life insurance policies should be considered with extra diligence as they may have the potential to run afoul of anti-trafficking provisions. In the course of their work, life agents working with potential donors or registered charities may be involved or requested to be involved in activities related to the procurement, sale, transfer, or assignment of a life insurance policy, or benefits underneath that policy. Life agents should be aware of the considerations surrounding these activities in order to comply with regulatory requirements.

The Requirement Section 152 of the Insurance Act ("Act") states:

> *Any person, other than an insurer or its authorized agent, who advertises, or holds himself or herself out, as a purchaser of life insurance policies or of benefits under them, or who traffics or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation of them to himself or herself or any person, commits an offence against this Act.*

In relation to Section 152, an "authorized agent" is a person who has an agency relationship with an insurer and is authorized by that insurer to represent it in a transaction to purchase an existing life insurance policy.

The interpretation related to the notice may be found here:
www.insurancecouncilofbc.com/getattachment/450cfd70-8560-479b-8738-bc122da3fdb5/ICN-19-005-Donations-of-Life-Insurance-Policies/

CALU has been working with Advocis and the Canadian Association of Gift Planners (CAGP) in trying to get further clarification from the BCFSA and will be joining a working group in January to work on this issue of critical importance for Canadian charities and donors.

Stock Options

Ottawa is postponing its plan to boost taxes on stock option gains for highly paid executives because it has been unable to say which companies will be subject to the law.

The new tax plan was to take effect January 1, 2020. The last remaining issue was how to draw the line between startup or emerging companies – who would be exempt – versus the "large, long-established, mature firms" subject to the tax.

In an announcement late December 19, the federal Finance Minister's office said it is still reviewing the feedback it received through mid-September. "As a result, the proposed changes to the tax treatment of employee stock options will not come into force on the previously proposed date," it said.

A new implementation date has not been announced. Instead, the government will unveil details on how it intends to move forward with the measure in its 2020 budget.

The new coming-into-force date "will provide individuals and businesses time to review and adjust to the new employee stock option tax rules," the Finance Minister's office said.

The delay marks a second victory for Canada's tech industry, which pushed back on a similar Liberal promise in 2015, arguing it would hurt their ability to attract and keep employees. Stock options are a near-ubiquitous tool at startups, where cash is scarce but the promise of the soaring value of company shares makes options an attractive substitute.

Under current federal rules, employees who receive options – the right to buy a company's stock at a set price during a defined future period,

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benefiting from its increasing value – are only taxed on 50 per cent of the gains. The new law says option recipients at "large, mature companies" will only get preferential tax treatment for the first $200,000 worth of shares underlying their options.

When the government reintroduced the concept in its 2019 budget in March, it said it would have clarity on the company definitions by summertime.

In the announcement, the government reiterated its views on the need for the tax law change, in the name of equity. "The tax benefits of the employee stock option deduction disproportionately accrue to a very small number of high-income individuals. The government does not believe that employee stock options should be used as a tax-preferred method of compensation for executives of large, mature companies."

2020 AGM, May 3-6, Ottawa

by Cindy David, CFP, CLU, FEA, TEP

As Chair of the 2020 AGM, I am delighted to inform you that your AGM Committee has been working diligently developing an exciting program for next May. The theme is Thriving in the Age of Disruption — inevitable challenge and unique opportunity.

Following the Sunday afternoon breakthrough practice management workshop on Mindfulness and Leadership, our Sunday night banquet speaker will be Ambassador Bruce Heyman. Ambassador to Canada from 2014 to 2017 under President Obama, Ambassador Heyman is renowned for his sharp analysis of Canadian and U.S. politics and, given what is going on south of the border, this promises to be a must attend event! I suggest you plan your travel accordingly.

Monday will offer jam-packed main platform sessions, including disruptive innovation speaker Jim Harris, BEWorks CEO Kelly Peters, who is working on the Value of Advice research project, and CALU member Mark Halpern CFP, TEP, MFA-P on charitable gifting. Our lunch speaker will be award-winning journalist André Picard, health reporter and columnist for the Globe and Mail, who will speak to us about current challenges in health care and more specifically pharmacare.

Tuesday's morning focus will be on political speakers and pundits, including a fireside chat with former Chief Justice Beverley McLachlin, potential meetings on Parliament Hill at lunch and the Parliamentary reception at the Château Laurier from 6 p.m. to 8 p.m.. Now that the new government is in place and cabinet members have been appointed, political speakers will be invited early in the new year.

Concurrent workshops on life insurance, living benefits, employee benefits and wealth creation & management will be offered throughout the day on Monday and Tuesday. More to come soon!

Wednesday will bring our special breakfasts sessions, the CRA/Finance Roundtable and analysis, followed by the Meet the Producers session.

Make sure to renew your membership soon and look for the preliminary program and the AGM registration in January. I look forward to seeing all of you in Ottawa in May.

Message from the Chair

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We have issued two Practice Notes in 2019 to review and comment on more complex insurance marketing strategies that deserve special consideration: one on Rebating and Policyholder Inducements and the recent one on Domestic Shared Ownership CI Programs with ROP Benefits.

Pillar 2 –
Public Policy and Advocacy

In order to be more effective in our communications, we identified three key public policy priorities: tax competitiveness, tax fairness and intergenerational equity – including pharmacare and long-term care. Throughout the year, we made four submissions to the federal government and a more recent joint one with Advocis to the British Columbia government on insurance rebating rules. During the election campaign, we put forward the issues that matter most to you and your clients.

We implemented a solid advocacy program during the election campaign, putting forward these issues and supporting members in their grassroots outreach. I want to personally thank the 20 members who agreed to serve as “Election Champions” in reaching out to members to encourage you to meet with your local candidates. From feedback we received from members during the campaign and at the regional meetings, more than 100 members reached out to their local candidates during the election campaign. On behalf of the board and your colleagues, I thank you for your engagement and commitment to our cause. We will continue promoting these issues with the new government and look forward to your continued support. You will find more on our government relations activities in the GR Blog in this issue.

We have been actively advocating for solutions that support individuals with serious long-term health issues and who are in financial need. BMO Insurance recently announced a new program that will support life insureds who have a limited life expectancy and are in financial need, based on the CALU compassionate benefits program. Once BMO Insurance made the decision to proceed, CALU provided technical support and member feedback as it developed the new Life Advance Program. We hope other insurers will follow.

Pillar 3 –
Branding and Communication

We conducted a brand perception audit that confirmed CALU is respected, trustworthy, influential and authoritative. The communications committee led the way and, as owner of the brand, the board was fully engaged in the process. We have a new brand strategy and we launched it during the regional meetings. Based on your feedback, we are making minor adjustments and the video will be available on the website in early 2020.

Strengthening the relationship with our partner organization, Advocis, is a personal priority of mine and it is fully supported by the board. Collaboration is key, as showed by our collective action and success against CLHIA Guideline G19 and on pushing back on taxation of insurance premiums in Saskatchewan last year. We had our first joint board meeting with Advocis in September and anticipate a successful future of collaboration on issues of importance to both our organizations.

Pillar 4 –
Member Experience

The 2019 AGM was a resounding success with record attendance and the introduction of a guest program for prospective members, resulting in new members joining. Preparation for the 2020 AGM is well under way with a roster of impressive speakers. I look forward to

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Message from the Chair

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seeing you in Ottawa May 3-6, 2020. More information on the event from 2020 AGM Chair Cindy David may be found in this issue.

Pillar 5 – Innovation and Efficiency

We conducted a technology audit earlier in the year and consolidated our operations in Ottawa. We are now using electronic payments to reimburse volunteers' expenses and paying our consultants and most other suppliers by electronic funds transfer (EFT). Renewals have been issued using the database instead of by email.

Conclusion

2019 has been a particularly challenging year, with continuing changes to our industry, a federal election, and now a new minority government. We have steadfastly forged ahead in accordance with our strategic plan and have made tremendous progress on our priorities. I thank you once again for your engagement and I am proud to have the opportunity to lead such a fine organization.

I wish you, your team and family my very best for the happiest of holidays and health, success and prosperity in the New Year.

Roger Sinclair, CFP, Chair, CALU

Recent CRA Announcements Regarding PHSPs and HCSAs

Kevin Wark, LLB, CLU, TEP, Tax Advisor, CALU

Introduction

The Canada Revenue Agency (CRA) recently provided their views on certain issues impacting the tax treatment of Private Health Services Plans (PHSPs) and Health Care Spending Accounts (HCSAs). This article will review the key issues and CRA's stated positions.

CRA Technical Interpretation on PHSPs including HCSAs

A PHSP is defined in the Income Tax Act (the "Act") as a contract of insurance in respect of hospital and medical expenses or a medical and hospital care insurance plan.[1] An employer can deduct premiums or other payments to fund benefits under a PHSP.[2] However, such premiums or payments are not included in the income of the employee.[3] While both incorporated and unincorporated businesses (including partnerships and sole proprietors) can establish PHSP they are subject to different rules and restrictions.

In 2015 the CRA modified a key condition for PHSPs, indicating that a plan could now qualify as a PHSP provided "all or substantially all" (interpreted to be 90% or more) of the premiums paid under the plan were in respect of expenses that qualify for the medical expense tax credit (METC).[4]

A recent CRA technical interpretation[5] provides additional guidance and clarification of the "all or substantially all" requirement. First, where the plan is an insured plan, the CRA noted that the it is important to distinguish between **premiums paid** under the plan and **benefits received** under

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Recent CRA Announcements Regarding PHSPs and HCSAs

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the plan for the year. For example, if 92% of the **premiums paid** in the year relate to coverage for expenses that are METC eligible the plan would qualify as a PHSP, even though less than 90% of **benefits received** by employees in the year were for expenses that are METC eligible.

However, where the plan provides benefits through a self-insured plan (the employer does not purchase a contract of insurance), the plan will satisfy the "all or substantially all" condition for a particular calendar year if 90% or more of the **benefits received** by all employees in the calendar year are for METC eligible expenses.

The CRA also indicated that where the plan provides benefits through a self-insured plan that consists of one or more HCSAs, the method for determining if the plan meets the "all or substantially all" test is the same as for self-insured plans. The CRA indicated that the ceiling amount under the various expense categories **are not relevant** in determining if the plan meets the "all or substantially all" condition. The CRA further noted that while the HCSAs are often part of one plan, there may be circumstances where each HCSA is considered a separate plan and the "all or substantially all" test will apply to each HCSA.

CRA Issues a Warning on HCSAs

The CRA recently issued a "warning" relating to HCSAs. The CRA noted that incorporated businesses can establish HCSAs for all employees including shareholder/employees. The CRA noted that a corporation with as few as one employee, including a shareholder/employee who earns T4 income, can be eligible for a HCSA.

It is unclear whether these comments represent a relaxation of its position on plans established solely for one shareholder/employees. In these circumstances, the CRA has indicated that a plan established for a sole shareholder-employee **would not likely qualify as a PHSP since** it does not contain the necessary elements of insurance.[6] CALU plans to follow up with the CRA for further clarification of its position.

In the "warning" the CRA went on to state that where a business operates as a sole proprietorship with no arm's length employees, a HCSA set up for the sole proprietor **will not** qualify as a PHSP and any costs relating to funding the HCSA **will not be** considered to be a deductible business expense.

Endnotes

[1]Subsection 248(1) of the Act.

[2]As an expense of doing business under subsection 9(1) of the Actl

[3]Subparagraph 6(1)(a)(i) of the Act.

[4]Previously the CRA took the view that all premiums paid must qualify must be in relation to expenses that qualify for the METC.

[5]2016-0651291E5 dated January 24, 2019.

[6]CRA Technical Interpretations 2014-0521301E5 dated June 25, 2014. The plan under consideration in this Interpretation was offered by a corporation to its sole shareholder who was also the sole employee. The Plan was administered by a third party (e.g., an insurance company or a trusteed plan). The employee-shareholder would submit health related expenses to the Plan Administrator who invoiced the corporation for the same amount plus an administration fee. The corporation would then reimburse the shareholder-employee for the submitted expenses.

Office Closure for the Holiday Period

Please note that the office will be closed until January 2, 2020.

Happy holidays to all and all the best for the New Year!

In-Trust Accounts: The good, the bad and the ugly

By Sandra Abley & Mollie Clark
Harper Grey LLP

Introduction

When your clients decide to invest for their children or grandchildren's futures, they are faced with a variety of investment options. One such option is an "in-trust account," also known as an ITF account or an "in-trust for" account. These accounts have gained popularity as an easy and inexpensive way to set up a trust for one's children or grandchildren while also enjoying tax benefits. These accounts may sound appealing, but are they worth it?

What is an in-trust account?

An in-trust account is an investment account or a bank account. In theory, these accounts should be set up with a contributor or settlor (typically the parent or grandparent who opens the account), a named trustee (usually the contributor or settlor) and a beneficiary who is the ultimate owner of everything invested (typically a minor child). While the account is open, the contributor makes contributions of cash or assets. The trustee makes investment decisions and can make withdrawals from the fund, while under a legal responsibility to do so prudently and in the best interests of the beneficiary. Once the beneficiary reaches the age of majority in his or her province, he or she becomes legally entitled to the same degree of control over the account as the trustee, generally with the intention that the trustee will eventually transfer all control over the account to the beneficiary entirely. The beneficiary is the sole person entitled to receive the proceeds of any withdrawal or transfer.

This type of arrangement is put in place because minors generally do not have legal capacity to enter into contracts. An in-trust account therefore allows a parent or grandparent to do those things on a minor's behalf and make investment decisions with those funds.

In-trust accounts are different from formal trusts

At this point, you might be thinking: "wait a second, this sounds familiar… isn't that how a trust works?" And you'd be right. An in-trust account is often referred to as an "informal" trust. The intention behind opening these accounts is to create a trust but without the typical t documentation required to create a formal trust. That means your client gets to skip paying a lawyer's fees to set it up, and instead simply note the trust relationship they intend to establish in the investment contract through an "in-trust account" designation. Sounds pretty good, doesn't it? What these accounts are lacking however, is certainty – and that can have serious consequences.

In order to create a legal trust, there must be three identifiable certainties; there must be certainty of the intention to create a trust; certainty as to what property makes up the trust; and certainty as to who the beneficiary or beneficiaries are. A formal trust is typically evidenced by a document called a Deed of Trust or a Deed of Settlement, so there is no question as to whether or not those certainties exist.

In-trust accounts are 'easy' to set up because they don't require formal documentation or other supporting documents. Instead, the bank's account opening documents are relied on to create the trust. Every bank will have different documentation and every account manager will have different levels of understanding regarding the three required certainties. Enter the risk of uncertainty inherent in opening these accounts.

These account opening forms may lack adequate documentation with respect to who the contributor is, who the trustee is and who the beneficiaries are.

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In-Trust Accounts: The good, the bad and the ugly

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They are also commonly set up with one individual acting as contributor and trustee. Without formal documentation of intention – as well as definition around key issues such as how the funds should be managed, how long the trust will continue and how assets can be distributed to the beneficiary – things can get messy.

One such "mess" is how the arrangement will be treated for tax purposes. When someone opens an in-trust account, in the eyes of the Canada Revenue Agency (CRA) a trust may or may not have been created. As noted, this will depend on whether those three certainties have been established. The account might be construed as having established more of an agency relationship between the contributor and the beneficiary for investment purposes. Depending on how the CRA views the arrangement, the account holder might need to go to Court to determine if a trust has been established. So much for skipping on those lawyer fees!

How are they taxed?

Speaking of the CRA, let's go over how these accounts are taxed assuming a trust is found to have been created. Contributions made to an in-trust account are not tax deductible. However, the contributor to the account can divide some of the taxable income with the beneficiary. Typically, by virtue of the Income Tax Act (Canada) (the Act), all interest and dividend income is taxable in the hands of the contributor, and all capital gains are taxable in the hands of a minor beneficiary.

However, there are some significant exceptions:

- First, if the contributor is also the trustee, or if the account has been otherwise set up so that the assets can only be disposed of by direction of the contributor, then all of the income may be taxable in the contributor's hands under section 75(2) the Act.
- Second, if the funds in the in-trust account are solely derived from Canada Child Tax Benefit payments – or an inheritance – the CRA has confirmed that all of the income is taxable in the hands of the child.
- Next, secondary income (income earned on the income already generated by the original investment) is again taxable entirely in the hands of the child.
- And lastly, once the child reaches the age of majority, all income is taxed in his or her hands.

It is important to note that the trustee is responsible for filing annual T3 trust returns to report income.

If upon a review, the CRA decides that the account in question is actually not a trust, it may attribute all income to the contributor from the inception of the account, including capital gains. This could require the payment of back taxes as well as interest and penalties.

Avoiding audit risk

To avoid the risk that the CRA will challenge the status of these accounts as a trust, it would be prudent to create some sort of written document that clearly sets out the intention to permanently transfer assets and funds to this account for the benefit of the named beneficiary.

It would also be prudent to keep meticulous records regarding where the funds of the account are coming from for tax purposes and that any distributions are being used for the benefit of the beneficiaries. The trustee should also consider keeping certain funds, such as secondary income from various income sources, in a separate account in order to maximize the tax benefits with absolute clarity.

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In-Trust Accounts: The good, the bad and the ugly

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How does an unexpected death factor in?

Since in-trust accounts are informal and lack legal documentation, the death of any of the contributor, trustee or beneficiary may result in unintended results and/or uncertainty. For example, if the contributor dies before the beneficiary reaches the age of majority then, going forward, all future income earned from the funds in the account will be taxed in the child's hands.

If the trustee dies before the beneficiary reaches the age of majority, then the trustee's Will should be consulted to determine if an alternate trustee is named. If not, the trustee's authority over the account will remain with the trustee's estate until the beneficiary reaches the age of majority at which time the beneficiary is granted authority over the account. Of course, the contributor may not know or be comfortable with the executor of the trustee's estate assuming control of the in-trust account. A risk therefore emerges that there may be differing views between the executor and the original contributor as to how to manage the funds.

If the beneficiary dies before reaching the age of majority, the funds will fall into the child's estate. In most provinces a minor child cannot legally execute a Will. The account will therefore be distributed according to the law of intestacy, which generally results in the funds will go to the child's parents in equal shares. In the situation where the contributor opened the account for a minor who is not his or her child, the contributor will lose total control over where the funds go if the child passes away.

What are some other pitfalls?

In addition to the risk that an in-trust account won't be recognized as a trust for tax or legal purposes, the following are some other pitfalls associated with opening these kinds of accounts:

1. There are no guidelines with respect to how these accounts should be managed. This places a heavy burden on the trustee to ensure they are managing the account prudently. If the beneficiary feels the funds are not being administered properly, the trustee faces the risk of the beneficiary bringing legal action against them.
2. If the in-trust account is construed as a legal and valid trust, any contribution is an irrevocable gift. Once the contributor transfer funds or an asset to the in-trust account, the beneficiary becomes the beneficial owner of that asset and the contributor cannot take it back for personal use, for the use of another child, or to contribute those funds to a Registered Education Savings Plan (RESP).
3. If the contributor chooses to close the account (despite the fact that it is an irrevocable gift) there may be serious consequences, including back taxes, interest and penalties as mentioned. In addition, the beneficiary may take the contributor to Court and make a claim for funds invested and income earned since the inception of the account.[1]
4. The contributor will lose complete control over the funds once the minor beneficiary reaches the age of majority, at which time the beneficiary should receive full access to and control over the funds. Contrast that with a formal trust, which may have longer age restrictions as to when the beneficiary may be granted access and control.

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In-Trust Accounts: The good, the bad and the ugly

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What are the benefits of opening an ITF?

So why, you may ask, would anyone open an in-trust account given the risks and pitfalls discussed? In addition to the ease and low cost of establishing such an account, below are some other benefits of opening an in-trust account:

1. There is no restriction on how much you may contribute to one of these accounts. Contrast this with an registered education savings plan (RESP), which has a lifetime maximum contribution limit of $50,000.
2. The funds can be used for any purpose that would benefit the child or grandchild. This would be a great advantage over an RESP if the beneficiary does not end up pursuing formal education once he or she reached the age of majority. However, others may view this as a pitfall because the contributor has no control over what the beneficiary spends the funds on.
3. Along the same lines, the funds will be easy for the beneficiary to access when he or she reaches the age of majority. Again, this could be a benefit or a pitfall depending on how much control the contributor wants to assert over the beneficiary's access and how the funds are used. Keep in mind, the beneficiary is entitled to take legal action if the trustee declines to give him or her access at the age of majority.
4. If the funds are derived solely from the Canada Child Tax Benefit payments or from an inheritance, all the income is taxed in the hands of the child.
5. These accounts might be appropriate for smaller amounts of money that the contributor is comfortable with the minor receiving at the age of majority.

What are some alternatives?

Before opening an in-trust account for a client, consider discussing these alternatives:

1. Open an RESP for the child or grandchild. This will give the contributor (known as a 'subscriber' in the context of an RESP account) increased control over how the funds are used once the minor reaches the age of majority, and the subscriber will receive the added benefits of the Canadian Educations Savings Grant.
   Tip: set up your RESP with joint subscribers to reduce administrative burdens that may arise upon the death of one subscriber. For example, a grandparent should open an RESP as a joint subscriber with one of the child's parents.
2. Help pay for your children and grandchildren's expenses while you are still alive. This could consist of helping with payments for ballet or soccer lessons, or even something as large and meaningful as helping with the purchase of their first home.
3. Set up a formal trust that benefits the children or grandchildren and lend money into the trust at a prescribed rate of interest. This arrangement allows for income splitting without the risks associated with an informal trust while creating greater certainty.
4. Take out a life insurance policy that benefits the children or grandchildren, with the proceeds to go into a formal life insurance trust or designate a trustee in the insurance forms. Note that designating a trustee on a simple form may result in similar issues associated with in-trust accounts, such as the beneficiary gaining full access and control to the funds at the age of majority, as well as a lack of control over the use of those funds.

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5. Make a gift to your children or grandchildren's Tax-Free Savings Accounts once they reach the age of majority.

Closing Comments

In summary, the decision to establish an in-trust account should not be taken lightly. The pros and cons of establishing this type of account along with other investment alternatives need to be carefully considered. Often the assistance of other professionals including a lawyer and tax advisor will provide helpful context in deciding the best way to proceed as well as assistance in managing various events and contingencies that might arise in the future which could derail your client's plans.

Endnotes

[1]Koons v Quibell, [1998] 164 Sask. R. 149 (SKQB).

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