Kramer's Legal Briefs

This is the inaugural article of Kramer's Legal Briefs. As a long time member of the Vancouver Chapter and an individual with Muscular Dystrophy, I have developed many years of disability knowledge. My law practice is devoted to the areas of Wills, Estates, Trusts, Taxation and Human Rights Law. It is my hope to utilize this regular article as a means of sharing information with the readers of Turning Wheels as it relates to the discipline of Disability and the Law. I caution my readers that the information expressed in these articles should in no way be construed as legal advice. I also welcome your comments, questions and ideas for this and future editions of Kramer's Legal Briefs. My direct number is (604) 622-5550 and my email is kmklaw@telus.net

Trust's and the Disability Benefits Program Act

I'd like to begin this initial edition of Kramer's Legal Briefs with a discussion of the interrelationship between the estate planning tool of a "trust" and the Disability Benefits Program Act ("DBA"). For those disabled individuals having an entitlement to such benefits under the DBA, a trust may be the most effective legal tool available to enable such individuals' to continue receiving such benefits in circumstances where they may be about to receive a large financial gift, an inheritance or an accident settlement. Given that our provincial DBA program is income and asset tested, how you deal with such money and other assets may affect your ability to receive benefits under the DBA.

Initially, what is a trust? A trust is a legal relationship where someone (the "Trustee") holds money or other assets for someone else (the "Beneficiary"). A trust may be created in a will, when someone dies ("a testamentary trust"), or it may be created during someone's lifetime ("an inter vivos trust"). A trust created while someone is alive may be created by a disabled individual for his or her own benefit or it may be created by someone else.

For those individuals receiving Level 2 disability benefits, you may be familiar with the regulations of the DBA (the "Regulations") as it relates to income and assets entitlements. The Regulations preclude an individual without dependents from receiving disability benefits where that individual has assets totaling more than $3,000 unless such assets are exempt assets. Exempt assets include such items as your clothing, automobile and home. A trust that either you or someone else sets up for your benefit may also qualify as an exempt asset. The lifetime total for these and some other kinds of trusts totals $100,000 unless you can convince the Minister that your "disability costs" will be higher.

The Regulations also deal with income. Most money received by an individual receiving disability benefits will be deducted dollar for dollar from that individual's disability benefits cheque. Such income is called "unearned income". However, certain income is considered exempt, which will permit an individual to keep such income without losing their disability benefits. For example, the Ministry currently permits an individual without dependents to keep $200 per month earned as wages ("earned income"). Income from investments or trusts is always "unearned income" unless such money is paid from a trust and is used for "disability-related costs".

To be considered "exempt", it is vital that any payments for such "disability-related costs" be made directly from the trust and fall into one of the following six categories:

a. medical aids or supplies;
b. caregiver and home support services;
c. education and training;
d. renovations to your home to accommodate your disability;
e. necessary home repairs;
f. any other items or services necessary to promote your independence, to a maximum of $5,484 a year.

There is no set limit on what you can spend from the trust on the first five categories (items a to e). For the last category (item f), payments must not exceed $5,484 a year to remain exempt. Examples of item "f" may include memberships in sports or social clubs. Clearly, from a planning perspective, this category offers an individual with a disability the most flexibility in utilizing such trust funds.

Before deciding to set up a trust to protect your money (and your disability benefits), there are many important decisions you will have to make. For example, what type of assets are you going to put into the trust? Who is going to be the Trustee of the trust and who is going to get what is left in your trust after you die? Questions may also arise over the tax ramifications of setting up your trust? Finally, if you are receiving home support services, what effect, if any, will a trust have on your entitlement to such services?

These and other questions will need to be canvassed between you and your lawyer prior to setting up your trust. Setting up a trust is a highly technical process requiring expertise in estate planning and taxation. Thus, please ensure that you retain the necessary legal and tax advice prior to setting up your trust.

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I caution my readers that the information expressed in this article should in no way be construed as legal advice. If you would like further information on this or any other topic please contact me at the address below.

Kenneth M. Kramer
Barrister & Solicitor
Suite 807 – 1112 West Pender Street
Vancouver, British Columbia, Canada, V6E 2S1
Telephone: (604) 694-0999
Facsimile: (604) 683-3471
Email: info@kmklaw.net

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