

Addictions ruin individuals and families. And addictions are prevalent in Canada. Consider the following statistics published by the Centre for Addiction and Mental Health:

- 1 out of every 10 Canadians aged 15 or over (about 2.6 million people) reported symptoms consistent with alcohol or illicit drug dependence
- 8 per cent of young people between the ages of 15 and 24 reported being affected by an alcohol or illicit drug dependency
- 3.8 per cent of the Ontario population (about 340,000 people) are classified as having moderate or severe gambling problems

From an estate planning perspective, the parent of a person who suffers from addiction often suffers a dilemma. On one hand, the parent wants the child to receive an inheritance, but at the same time, they don't want to see the child's entire inheritance spent recklessly on alcohol, gambling, or drugs soon after it's been received. Proper estate planning can address these types of concerns.

One means by which an inheritance can be preserved is through the inclusion of a discretionary trust in the will. Rather than gifting a portion of the estate to the addicted child outright, the parent directs in his or her will that the portion of the estate intended for the addicted child be held in trust by a person who is chosen by the parent. That person—the trustee—then exercises his or her discretion as to how much and how often money should be made available to the addicted child. If the child is in the throes of addiction, money is distributed parsimoniously, if at all. If the child is sober, money from the trust can be paid out in greater amounts and with greater frequency, depending on the circumstances.

The type of discretionary trust just described is fully discretionary. That is, the trustee has full discretion on whether and what amounts are to be paid. That need not be the case if the parent chooses. Payouts could take the form of a flat monthly amount specified by the parent. I tend to discourage the latter form of trust as it restricts the ability of the trustee to respond to genuine emergencies such as medical emergency or dire financial need.

Choosing the right trustee is important. Obviously, the person has to be someone the parent can trust to exercise judgment to make good decisions after the parent has passed away. Like an executor, they must be diligent. They must keep on top of things such as tax filings for the trust. They should be on communicative terms with the beneficiary, but they should not be so close to the beneficiary that they could be easily swayed. And because the role of trustee could potentially continue for many years, they should be someone who can reasonably be expected to act for a number of years.

There is always the possibility that the addicted child will die before their trust fund is exhausted. For this reason, provision should be made for contingent beneficiaries. Contingent beneficiaries are often the children of the primary recipient (if there are any) or his or her siblings.

If you think that you would like to include a discretionary trust in your estate plan, proper legal advice should be sought. Will kits typically don't contain the elements required to create proper discretionary trusts and some knowledge of legal drafting is needed in order to properly constitute the trust.