

SOME USES OF TRUSTS IN ESTATE PLANNING

While everyone should make a will and a continuing power of attorney, not everyone will want or need to set up a continuing trust. This being said, it remains true that trusts are useful for a wide variety of estate planning purposes. Non-tax purposes achieved through the use of trusts include:

- Holding assets for minor children until they reach the age of majority—or perhaps later.
- Managing assets for beneficiaries who lack the interest or ability to do so.
- Protecting assets from spendthrift beneficiaries (and their creditors).
- Protecting assets from the claims of disgruntled family members.
- Maintaining privacy.
- Centralizing management of assets and ensuring the continuity thereof upon the death or incapacity of the settler.
- Ensuring that children from a previous marriage are provided for.

Historically, testamentary trusts were above all used as vehicles for preserving family wealth for future generations, when there was concern that an outright distribution might lead to its erosion (e.g., due to the action of an incompetent or spendthrift heir). More recently, trusts have become popular where protection of the estate is not a concern at all. Trusts have come to be prized for the tax-planning advantages they can bring to an estate plan. These include the following:

- Income splitting through one or more testamentary trusts.
- Reducing exposure to probate tax.
- Inter-provincial tax planning.
- Sheltering investment income of immigrants to Canada during their first five years in Canada.
- Establishing an estate freeze.
- Deferral of capital gains (that would otherwise be incurred on the death of the settler).
- Multiplying (family) access to the qualified small business deduction.