As such, travel between Ottawa and Regina **was personal**, and the associated **lodging** and **travel** costs were **denied.**

The Court also reiterated that the appeal was considered without regard to the distance between the employee's home and the employer assigned office: the two locations could be in the same municipality or different provinces. In other words, commuting to work, no matter how far, is considered personal. However, note that there are some exceptions to this rule, such as where the individual travels to a temporary special work site, or a remote work location.

ACTION ITEM: If considering the acceptance of employment that requires significant commuting, consider that the commuting costs likely will not be deductible.

TRUSTS FOR DISABLED BENEFICIARIES: Good News!

One common planning technique for **disabled individuals** involves the use of a trust under which the **trustees** possess ultimate **discretion** over any distributions to be made. In other words, the **beneficiary** has **no** enforceable **right** to receive any **distributions** from the trust unless or until the trustees exercise their discretion in the beneficiary's favour. The **intent** of such a trust is that the **trust assets not** be considered **assets of the beneficiary**, such that they will **not influence** the beneficiary's **eligibility** for various **social benefits**. Such a trust is commonly referred to as a "**Henson trust**".
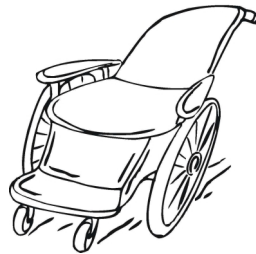
In a January 25, 2019 **Supreme Court of Canada** case, a **disabled individual** (SA) was **denied rent assistance** on the basis that the assets of a **trust** under her father's will were considered to be **assets** in which she had a **beneficial interest**. SA had **refused to provide information** on the **trust's assets** to the program administrator (MVHC) in conjunction with her annual application for rent assistance.

Consistent with a "Henson trust", the **trust** terms appointed SA and her sister as trustees, required **two trustees** at all times, and provided the trustees with **discretion** to **pay** as much of the income or capital as they "**decide** is **necessary or advisable**" for SA's maintenance or benefit. The terms also provided that any remaining assets at the time of SA's death be distributed in accordance with her will, or intestacy law if her will did not provide direction. Finally, in the event of her sister's inability or unwillingness to serve as trustee, SA could appoint a replacement trustee.

Individual wins
The Court held that the **term "assets"** as used in the **program documentation** did **not include** the discretionary **trust interest**, which was more akin to "a mere hope" of future distributions. It was reasonable for MVHC to require details of the **trust structure**, and SA had previously provided that legal documentation. As SA's interest in the trust was not an asset, MVHC **could not require** disclosure of details of the **trust assets** as a condition of her rental assistance. MVHC was **required** to exclude the trust assets from the total assets considered when determining available **rental assistance.** MVHC was also required to **compensate** her **for assistance denied** to date.

Limitations to the ruling
The Court noted that this **does not mean** that the interest of a disabled person in a "Henson trust" **could never be** treated as **an asset**. This would **depend** on the **rules and regulations** governing the relevant **program**.

ACTION ITEM: The judges' comments indicate that each program's terms must be examined to determine whether such a trust interest would properly be considered an asset of the individual. Consider whether a Henson trust would benefit a disabled relative.

Tax Tips & Traps