

Leaving an Environmental Legacy

“What will be your Legacy?” asks Ontario Nature in a recent thought-provoking advertisement. The ad encourages the reader to create a “legacy for nature” and to “aid in protecting and restoring Ontario’s rapidly vanishing green spaces . . . for future generations to enjoy.”

A Charitable Legacy

Charitable giving has long been a part of the fabric of our society. Its value is underscored in law by providing charitable tax credits to donors. Research indicates, however, that while more than 62% of Canadians contribute to charitable organizations throughout their lifetimes, only 7% continue this support through a gift in their estate plan or will.

This is surprising, considering that charitable gifts set out in a will generate greater tax benefits for an estate, than the same gifts donated during one’s lifetime. For example, a donor can claim a tax credit of up to 75% of net income for a charitable gift made during his or her lifetime. But this limit does not apply in the year of death. Moreover, unused credits not applied in the year of death can be used in the prior year without any limit based on income.

With a well-structured estate plan, gifts to charity need not necessarily diminish the amount of an inheritance left to one’s immediate family or loved ones.

An Environmental Legacy

Thanks to a number of innovative changes in Canadian income tax laws in recent years, Canadians can now receive federal and provincial tax assistance for charitable gifts that work to protect ecologically sensitive lands.

Recently enhanced tax treatment can make such gifts even more attractive than ordinary charitable gifts. For example, only 25% of the related deemed capital gain is taxable, as opposed to 50% of the deemed gain on most other kinds of capital

property. Also, qualified ecological gift tax credits can be used to offset up to 100% of net annual income.

“Ecogifts”

To qualify as an ecological gift or “Ecogift” the federal Minister of the Environment must certify:

- that the property is ecologically sensitive;
- that the recipient is qualified to receive the Ecogift; and
- the fair market value of the donation.

A qualified recipient can be a land trust, a nature conservation group, or even a municipality.

The qualified recipient works with the landowner to design the best long-term conservation plan. Examples of qualified recipients in our area include the Escarpment Biosphere Conservancy and the Hamilton Naturalists’ Club. You can also find other land trusts at www.ontariolandtrustalliance.org/. A complete list of qualified recipients and helpful information is available at www.cwsscf.ec.gc.ca/ecogifts/recip_e.cfm.

Conservation Agreements

An especially interesting type of Ecogift is the gift of certain specifically identified rights or interests in land which can be conveyed to a qualified recipient. Such a gift is referred to as a conservation easement and is established in a conservation agreement. It is a way for landowners to protect their land without giving up ownership. The conservation agreement helps control future use and development on the land and enlists a qualified recipient to monitor this – even after the property changes hands.

A conservation agreement expresses the intentions of the donating landowner regarding the use and protection of the land. Such an agreement allows a landowner to place limits on certain land uses to help conserve the property’s features and control its future development. A conservation agreement can be oriented, for

example, towards habitat enhancement, recreation, or good farming and harvesting practices. A family farm, for instance, can be protected from inappropriate development and allow farming to continue, or a woodlot can be preserved in its natural state for generations to come.

With this kind of agreement, you can continue to live on the land, use it, farm it, restrict access to it, and you can still sell or gift it during your lifetime or pass it on in your will.

Monetary Legacies

Even if you have no land to donate or make subject to a conservation agreement, you can, nevertheless, leave a monetary legacy to a qualified conservation group. Your gift can be used to help purchase and manage ecologically sensitive lands or to help enforce conservation agreements.

With some forethought and planning, you can leave a lasting legacy for the environment and for future generations.

This article provides general information only and does not constitute legal or tax advice. It was prepared by Joanna J. Ringrose and Ian Attridge. Ian is a conservation lawyer based in Peterborough. He can be reached at (705) 876-7576. Joanna is a lawyer in Oakville who has been practicing in the areas of estate planning and estate administration for over 20 years. Joanna can be reached at (905) 844-5021.



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