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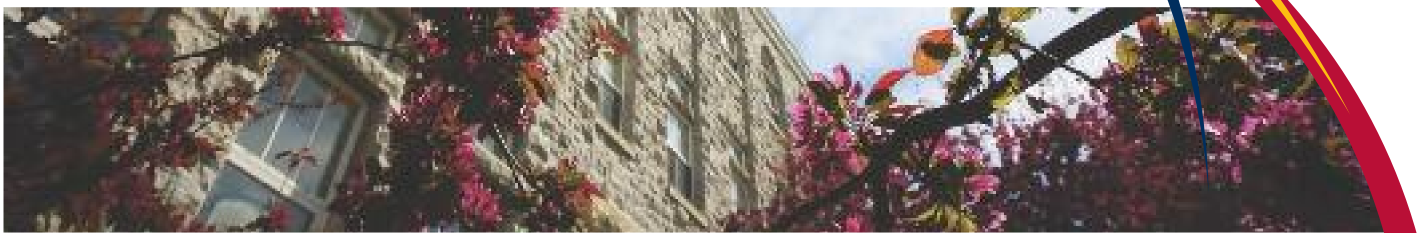

Hooked on Queen's

As gifts to Queen's go, it is certainly one of the more tangible – and one of the more visually and physically appealing.

Dr. Margaret Gibson's rendering of the Queen's crest sits high on the back wall in Grant Hall. The rich red, gold and blue of the hooked rug grab the eye. As you look at it more closely, you see that she has worked in symbols almost invisibly – a treble clef in the crest itself (for the school of music), a ringing school bell below it (for education), a set of scales (for law) and a bull and bear (for commerce). There are also question marks (perhaps representing the spirit of inquiry) scattered about randomly. The pile of the rug gives it a marvelous tactile quality.

Doing something tangible, making a difference, means a lot to Dr. Gibson. It was her motivation to study medicine. It inspired her to learn how to hook rugs like the one she presented to the university. And it has been the guiding force behind her decision to include in her will a bequest to fund the future annual J Henry Gibson & Muriel Stiver

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Dr. Margaret Gibson, MD'76, poses with her one-of-a-kind Queen's Crest hooked rug in Grant Hall.

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Lecture on Mental Health of our Children, an area of psychology that is badly neglected.

As a high school student, Gibson thought she might study to be a dietitian at the University of Toronto. An encounter with a surgeon changed all that. Becoming ill after having her appendix out, Gibson was seen by a surgeon who operated on the infection. "Within hours, I was feeling better. And I thought, isn't that wonderful how that doctor could come and help me like that. I think I'm going to work to be a doctor." When a favourite history teacher who had gone to Queen's suggested she should go there, the path of her university career was set.

To this day, more than 40 years later, Gibson has sharp memories of her professors. "There was Dr. Chadwick and Dr. Chadwick – they were husband and wife. There was Dr. John Fay. He was very good. The thing with Dr. Fay, for the residents on rotation, if they could get him talking about the navy they were going to be all right on those rounds. Dr. Beck in GI, Dr. DaCosta, they were all good teachers." She flirted with the idea of doing internal medicine before finally settling on pediatrics, ultimately setting up a practice in Kingston in 1983 as a pediatric allergist, also specializing in asthma and clinical immunology. In addition to seeing patients, she taught medical students and pediatric residents at Queen's.

"But I only practiced for thirteen years," she says. "I became ill and my doctor said I'd have to take time off. I said I couldn't because I had patients to look after, and she said I had to – my mental health needed it.

"I left the office on April 30, 1996. I thought I was going for two or three weeks. I've never been back and I never will be."

Learning to hook rugs was a form of therapy. "I went into medicine to help people, and I really looked after my patients." No longer being able to help them was "a huge loss."

"This was something I could do where I felt I was accomplishing something. It made me feel better and the loss of what I had been able to do was less troublesome." The inspiration for her version of the crest was a banner that had hung in Grant Hall during her student days. "I remember thinking that's getting to be old. I imagine it's going to disintegrate." Her version of the crest was done using strips of cloth on a linen backing – "because linen can last three hundred years."

That desire to give something tangible and to help others was the inspiration behind her decision to leave a charitable gift in her will to set up the J Henry Gibson & Muriel Stiver Lecture, named in memory of her parents.

"Mental health in children wasn't being addressed. It was taboo." During her own training as a pediatrician she says, "we never heard anything significant about it. It just wasn't there." And although it wasn't the central purpose of her practice, "I had experience with young people who had shown a need." "I also know myself because I have severe mental health problems, and I have seen first-hand that there is a huge deficit in the knowledge the medical profession has of these problems."

The fund will bring in qualified speakers to talk to Queen's clinicians as well as other interested people in the community such as nurses and high school teachers – the people most likely to first spot mental health problems in children.

It will be a legacy as beautiful in its own way – and hopefully as durable – as that rug hanging in Grant Hall.

Taxation Changes Ahead But Testamentary Trusts

Glen Brown, Artsci'93, Associate VP, Wealth Advisory Services, TD Bank and Member of the Queen's Gift Planning Advisory Committee.

One of the oldest forms of estate planning in use in Canada is the testamentary trust: a legal arrangement, established upon the death of an individual, under which one person (the trustee) holds property for the benefit of another person (the beneficiary). It is typically established through a will, although if funded by life insurance proceeds (often referred to as a testamentary insurance trust), it can also be drafted in a separate document.

Traditionally, taxable income earned in a testamentary trust was subject to the same graduated tax rates available to individuals. Recent changes to the tax legislation, however, have altered the preferential tax treatment of testamentary trusts. Effective January 1, 2016, the tax benefits that arise from graduated tax rates will be eliminated and all income retained in a testamentary trust will be taxed at the highest marginal tax rate. The new rules will apply to both existing and future testamentary trusts other than certain "graduated rate estates" and "Qualified Disability Trusts".

A graduated rate estate may continue to enjoy the benefits of graduated tax rates for up to 36 months. To qualify, the estate must, among other things, be a testamentary trust, and no more than 36 months can have passed from the date of death. In addition, testamentary trusts created for the benefit of disabled individuals who are eligible for the Federal Disability Tax Credit will continue to be eligible for graduated rate taxation.

Despite these changes, there are still many reasons why a testamentary trust may be a valuable estate planning tool. One benefit of a testamentary trust is that the trustee maintains control over both the timing and amount of distributions to the trust's beneficiaries. This is useful in the following circumstances:

- Providing income for life for a loved one while taking away the burden of managing the assets.
- Preventing a beneficiary from having control of property, in circumstances where there are minors, spendthrifts or incapacitated beneficiaries.
- Supporting a child with special needs.
- Providing ongoing support to charity.
- Holding a special asset such as a cottage or a family business.

Testamentary trusts can be useful for charitable giving. For example, an individual may wish to provide support to a primary beneficiary during their lifetime, for instance a spouse, child or parent, while leaving the capital of the trust to charity. When planning for their legacy, many find this to be an excellent option to ensure that those they love are looked after during their lives, while their charity of choice such as Queen's University is left a legacy. Since the new rules change how the liability for taxes is handled, when receipts are issued and credits claimed, it is important to review any current arrangements or future plans with your tax and legal advisors to make sure your gift has maximum impact and no unintended consequences.

In addition, many individuals who wish to support their favorite charities would like to do so with a longer-lasting legacy. Establishing a testamentary trust ensures that funding of a project or particular focus within the charity can be achieved over time. For example, if one wishes to fund an annual scholarship for students at Queen's University, this could be the primary focus of the testamentary trust, with payment made each year to the University. Like Queen's, your chosen charity may

	Old Rules	New Rules (Effective January 1, 2016)
Testamentary Trusts	Income taxed at graduated tax rates	Income taxed at highest marginal tax rate
Estates	Income taxed at graduated tax rates	Income taxed at graduated tax rates for the first 36 months after the date of death if estate is a "graduated rate estate"
Testamentary Trusts for Disabled Individuals	Income taxed at graduated tax rates	Income taxed at graduated tax rates for those eligible for Disability Tax Credit

May Still be an Option Worth Considering

have suggestions, sample designation language, or policies that you may need to be aware of to ensure your gift is most impactful, while allowing for administrative flexibility. If the performance of investment returns within the trust you have established is subpar in one year, allowing your trustee the flexibility to distribute capital to maintain your annual contribution may be a consideration. There are many options to ensure that the legacy lasts while leaving the charity some discretion.

Another common situation in which a testamentary trust may be appropriate is where there has been a second marriage and there are children from the first marriage. The trust can be drafted to allow for the second spouse to have income for their life, while ensuring children from the first marriage inherit the residue once the second spouse passes away. Since the tax changes in the 2014 budget may result in tax being payable by the second spouse's estate, careful drafting is required in your will to ensure that the arrangement properly balances the interests of spouse and children. Nevertheless, a testamentary trust can still be the best solution to a difficult situation.

A discretionary testamentary trust may be suitable where there is a disabled beneficiary receiving government benefits, as this may ensure that these benefits will not be impacted as they remain in a trust rather than directly in the beneficiary's name. In Ontario, this type of trust is commonly known as a Henson Trust. This arrangement may not be effective in your province of residence, so legal advice should be obtained prior to implementing this type of trust. It may also be impacted by the new tax rules, as many Henson Trusts are set up for family members who do not qualify under the stricter rules of the federal Disability Tax Credit, and those trusts will be subject to the new higher tax rates. Anyone with a Henson Trust or a disabled beneficiary should review their estate plans. Henson Trusts are still an essential tool, but may need re-drafting to accommodate the new rules.

"Since trust and tax laws are very complex, advice should be obtained from legal and tax professionals in all relevant jurisdictions prior to implementing any testamentary trust."

In cases where parents are concerned about preserving an inheritance either as a result of addiction issues or financial management problems, a testamentary trust is a very prudent solution to ensure that the beneficiary will not be able to spend the proceeds at their discretion. These trusts, too, can continue to be useful under the new rules. Even where the trust has been set up for responsible, capable children, there continue to be tax benefits for testamentary family trusts where the income can be sprinkled among several family members.

Choosing to fund a testamentary trust using an insurance policy may also have benefits. There can only be one trust with graduated rates, however, so the trustees will have to decide where it is most beneficial – the estate or the life insurance trust. Even where it is subject to higher tax rates, however, a trust of life insurance may be worth considering, for the same reasons as any other testamentary trust. In addition, if the trust is funded from life insurance:

- **Probate tax avoidance:** Whether the insurance proceeds are paid directly to a beneficiary or to a testamentary trust, they will generally not form part of the estate and will not be subject to probate tax.
- **Creditor Protection:** In many provinces, life insurance proceeds paid to a named beneficiary are not subject to claims of creditors of the insured person.
- **Liquidity:** If estate assets are illiquid or have tax liabilities, insurance proceeds can ensure that there are sufficient funds available so that beneficiaries receive their intended gift.

In planning for a testamentary trust, a major issue is ensuring you have the right person or persons to act as the trustee. Complexity of the trust, location of the beneficiaries, knowledge required of the trustee, and relationships between beneficiaries are all things to consider when appointing the trustee. One key element in trustee selection is the length of time the trust is expected to remain in place (e.g. if you are planning for several generations).

While the tax benefits associated with the use of testamentary trusts may have been eroded with the latest legislative changes, there are still a great number of advantages to using a testamentary trust as a part of estate planning.

Since trust and tax laws are very complex, advice should be obtained from legal and tax professionals in all relevant jurisdictions prior to implementing any testamentary trust. When considering a charity as a beneficiary of a trust, like Queen's, it is advisable to contact the charity prior to finalizing your trust arrangement.

Don't Leave a Legacy in Limbo

Tax considerations aside, one of the reasons why we make charitable bequests in our wills is to further those organizations and causes we felt were important in life. When it comes to Queen's, many of us may want to give back to the department or program that set us on our life's path or to encourage research in a field dear to us – mental health, for instance. Such specific gifts can have a positive effect, but anyone thinking of making such a gift needs to ensure the bequest language used correctly reflects their intent.

To leave a bequest to Queen's you generally have three options available:

- Your gift can be unrestricted and used for any purpose.
- You can express a suggestion as to how the gift can be used.
- You can stipulate the purposes for which the gift can be used.

A general, undesignated gift is straightforward. Queen's determines its best use. The usual wording for an outright gift is simply *"I leave Queen's University at Kingston, Ontario the sum of $50,000 to be used in whatever way they determine appropriate."*

Or, you may make a general, unrestricted gift but add a preference as to how it is to be applied. This is a non-binding expression of your interest. It gives Queen's maximum flexibility in administering the gift. An example of the wording for this is *"I leave Queen's University at Kingston, Ontario the sum of $50,000 with the hope, but not the requirement, that it is used for Mental Health Research".*

E. Susan Elliott, B.Com'75, LLB'79 is a Partner at Kingston, ON law firm Good Elliott Hawkins LLP.

Some donors attach conditions to their gift so that it *must* be used only for the purpose they specify. In such cases, Queen's receives the gift as a trustee and is legally obliged to use the funds *only* for the purposes set out in the donor's will. Such a bequest would have wording such as *"I leave Queen's University at Kingston, Ontario the sum of $50,000 on the condition that they use it only for Mental Health Research."*

Such a stipulation might seem attractive because it guarantees that the donor's wishes will be carried out explicitly. Unfortunately, a tightly restricted gift has built-in pitfalls. If the time comes when the University can no longer administer the gift for any reason – for example, the original purpose no longer exists or the amount remaining is too small to achieve the objective – then Queen's has very limited options. It can put the money in abeyance, or it can seek approval through the courts to use it for another purpose. Gaining court approval is time consuming and can be expensive, so this is often not a realistic option. In that case, the money may well languish, not because Queen's wants it to but because its hands have been tied. The bequest benefits no one.

To prevent this from happening to your gift, add a clause to your will allowing the purpose of the gift to be varied "if and when" necessary. The language is quite simple: *"In the event that circumstances make the specified use of this gift no longer practical or desirable, the Board of Trustees of the University are hereby authorized to make changes in its use in keeping as far as possible with the spirit and general intent of the gift."*

Queen's Gift Acceptance Policy stipulates that restricted gifts will be reviewed to ensure the university can comply with the restrictions and to clarify its duties in fulfilling them. The best course is to consult with the Gift Planning Office prior to adding restrictions to your gift to make sure it meets both your wishes and Queen's obligations. They can provide you with suggested bequest language that you can review with your lawyer.

Donating to Queen's is a wonderful way to express your support for the education of future generations. Adding a power to vary clause to your will means unforeseen events which might occur years from now won't ruin your objectives.

Queen's Gift Planning Advisory Committee Meets in Toronto

The Queen's Gift Planning Advisory Committee held its fifth official meeting in Toronto in January 2015. The committee was pleased to welcome Queen's Chancellor James Leech, as well as two new members: Glen Brown, Associate VP, Wealth Advisory Services, TD Bank and Margaret O'Sullivan, Principal, O'Sullivan Estate Lawyers. The Gift Planning Advisory Committee is an operational committee of the Office of Advancement created to provide guidance and support for the University's gift planning endeavours and to act as advocates for the program. Volunteer committee members are Queen's alumni and donors who are appointed based on their estate, trust, tax, insurance and financial planning expertise. They are recognized nationally as leaders in their respective fields of practice. Members generously share their time and expertise to help Queen's staff ensure that readers of the Financial Planner and other potential donors receive helpful information. To learn more about the committee and its members, visit *www.queensu.ca/giftplanning/contact/GPAC*

Pictured from L-R: Glen Brown, Doug Mair, Carmen Vanderlinde *(Snr. Dev. Officer),* Jim Parks, Rosemary Macklem, Margaret O'Sullivan, Joe Pal, Linda Pearson *(Exec. Dir. Gift Planning),* Chancellor James Leech

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