

# A Guide To Working With The Public Guardian And Trustee

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PUBLIC GUARDIAN  
AND TRUSTEE OF  
BRITISH COLUMBIA

Your Child's Trust Fund

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## A Message to Children and Youth 1

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# A Message To:

## All Parents And Guardians

This guide has been developed to help you better understand the roles and responsibilities of the Public Guardian and Trustee, and how we can work together to do the best job possible of managing your child's trust fund.

This information was developed in response to a need expressed by parents for information relating to all aspects of trust management. As well, our staff have long felt that this kind of information would be helpful for parents and guardians.

Often awards or settlements are made as the result of some type of loss to you, your child or your family. We understand how seriously loss can affect a family, and hope that this information will be of some help and support.

Please understand that this guide is intended to address a broad range of questions, and may not deal with the specific or unique issues of your child's trust.

If you would like any additional information, or would like to discuss some aspect of your child's trust in further detail, please feel free to contact your child's Trust Manager.

## Children and Youth

Although this guide is directed to parents and guardians of children with trust funds at the Public Guardian and Trustee, we hope it will also be of help or interest to you.

We know you may have questions about your trust and how the Public Guardian and Trustee manages your money, and this guide will answer the majority of your questions. We also welcome your questions and feedback, and will do our best to provide any information you request.

### We want you to know:

- The trust is *your* money.
- The whole concept of the Public Guardian and Trustee holding your money is based on protecting your interests and rights because you are considered by law – as a child or youth – to need this extra support and assistance. This is not a reflection on your abilities or those of your family. It is a law to protect *all* children in BC.
- You will receive your money at age 19 or when it is specified in the trust or will. The amount you receive will include any interest earned, less any portion you have received or spent and our fees.
- You can be involved in decisions about how your money is managed.
- We encourage you to talk to your parents or guardians about your trust and seek any information you need.
- If you have any questions, please ask us. We will do our best to help you.

Sincerely,



Jay Chalke

Public Guardian and Trustee of BC  
July 2000

# 1 Introduction to the Public Guardian and Trustee

The Public Guardian and Trustee of British Columbia operates under provincial law to:

- protect the legal rights and financial interests of children
- provide assistance to adults who need support for financial and personal decision making
- administer the estates of deceased and missing persons where there is no one else able to do so.

The Public Guardian and Trustee is an independent and an impartial public official, accountable to clients, the Supreme Court of British Columbia and the public at large.

## Child and Youth Services

A service division of the Public Guardian and Trustee, Child and Youth Services upholds and protects the rights of British Columbians under the age of 19 by reviewing all personal injury settlements, legal contracts, trusts and estates involving minors. It ensures that children are properly represented in civil proceedings (i.e. non-criminal legal matters) and administers funds held in trust for a child.

The responsibilities of Child and Youth Services include the following:

### Review of Children’s Legal Interests

The Public Guardian and Trustee is required by law to see that the child’s legal and financial interests are protected. For example, when a child is injured as a result of another person’s negligence, that person or the person’s insurer may agree to pay an amount of money to settle any legal claims the child may have arising from that injury. The Public Guardian and Trustee reviews the amount paid to settle the claim to ensure that the child is fairly compensated.

## Mission

**The mission of the Public Guardian and Trustee is to promote and uphold the legal rights and safeguard the financial and personal interests of children and adults and to administer the estates of deceased persons.**

### Pursuing Legal Rights

The Public Guardian and Trustee is litigation guardian for children in care of the province. This means the Public Guardian and Trustee is responsible for pursuing legal action on behalf of children in care. We also assume this role where the child’s legal interests conflict with those of the parent or guardian, or when there is no guardian to attend to a child’s legal interests. If no other adult will protect the child’s interests, the Public Guardian and Trustee may start or continue a legal action to ensure the child receives fair compensation for injuries, or the child’s property is protected.

### Trust Management

The Public Guardian and Trustee may be authorized to hold funds in trust for a child under a will, a trust agreement, a court order or by legislation. For example, a child may be entitled to money from an insurance policy, from a settlement awarded as compensation for injuries, or from certain types of employment, such as entertainment. This money is usually paid to the Public Guardian and Trustee in trust for the child, where it is invested and administered on the child’s behalf until the child reaches the age of 19.

## Pursuing Financial Entitlements

If a child is orphaned and no adult is appointed guardian, or when a child is placed in the permanent care of the Province (a Continuing Custody Order is made for that child), the Public Guardian and Trustee becomes guardian of the child's estate.

As Guardian of the Estate, the Public Guardian and Trustee is responsible for safeguarding the child's financial and legal interests. This includes determining and securing financial benefits to which the child is entitled, such as:

- life insurance
- CPP orphan's benefits
- WCB Criminal Injury awards, or
- any inheritance from an estate.

As a parent would typically do, where the Public Guardian and Trustee is guardian of the estate of the child, the Public Guardian and Trustee applies for the benefits and ensures the child receives all benefits to which he or she is entitled.

## Acts Governing Child and Youth Services

The Child and Youth Services division of the Public Guardian and Trustee is directed by numerous acts, including the following:

- Child, Family and Community Services Act
- Employment Standards Act
- Estate Administration Act
- Family Relations Act
- Infants Act
- Insurance Act
- Insurance (Motor Vehicle) Act
- Public Guardian and Trustee Act
- Trustee Act
- Wills Variation Act
- Trust and Settlement Variation Act

For more information about the Public Guardian and Trustee, visit our web site at: [www.trustee.bc.ca](http://www.trustee.bc.ca).

# Child and Youth Services

## Vision

Our vision is to create possibilities to meet the present and future needs of children as we protect their financial interests and legal rights.

## Values and Philosophy

**OUR WORK IS BASED ON THE FOLLOWING VALUES AND PHILOSOPHY:**

### IN OUR SERVICE ...

- We respect our clients and their families; recognizing their rights and responsibilities.
- We invite family and client involvement in decision making; believing we make better decisions together.
- We value the relationships we have with clients and families; and provide service that is responsive, respectful and caring.
- We recognize each client and his or her family have unique needs requiring our flexibility, resourcefulness and creativity.
- We work in partnership with other agencies and services connecting clients and their families to additional supports.
- We recognize the effect of our authority on people's lives.

# 2 Why Funds Come To The Public Guardian And Trustee

## What is a Trust?

A trust is a legal device by which ownership of property is divided: the trustee holds the legal title to the property, but the right to the use and enjoyment of the property belongs to the beneficiary.

There are many different types of trusts and although the terms of each trust may vary, the essence of each trust is the legal obligation of the trustee to hold the trust assets for the sole benefit of the beneficiary.

The purpose of a trust is to protect the trust assets and to ensure that the assets are used for the purpose for which they are intended. A trustee is required by law to administer the trust properly, wisely and prudently, not take undue risks and to diligently fulfill the terms of the trust. Needless to say, a trustee cannot use the assets held in trust for his or her own personal benefit.



PUBLIC GUARDIAN  
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## Your Child's Funds In Trust

British Columbia has several pieces of legislation that protect a child's financial interest by requiring that certain money given, awarded or provided to a person under the age of 19 be held in trust until the child becomes an adult.

In many cases, the statutes of BC or the Courts determine that it is the Public Guardian and Trustee that has authority to receive and administer funds on behalf of minor children.

The following information is summarized from the many different acts and regulations to give you an overview of how funds come to the Public Guardian and Trustee.

**1. Settlement Funds for Personal Injury** are paid to a child as compensation for pain and suffering, for medical costs and costs of care, as wage compensation for loss of employment, or for loss of future income or the opportunity to earn income (as a result of an accident). The majority of compensation awards for personal injury arise from motor vehicle accidents and are directed by the insurer (usually ICBC) to the Public Guardian and Trustee.

**2. Criminal Injury Awards** are made under the authority of the *Criminal Injury Compensation Act* which is administered by the Criminal Injury Section of the Workers Compensation Board (WCB).

These awards are made to compensate a child for injuries such as physical or sexual assault. Awards may also be made to a child for wrongful death of a parent, to compensate the child for loss of love, guidance and affection of the parent, for loss of financial support, and for loss of services.

At the discretion of the WCB, these awards may be paid to any person who, in the Board's opinion, is best qualified to administer the payment on behalf of the victim. The WCB often directs payments be held in trust by the Public Guardian and Trustee.

### **3. Canada Pension Plan**

**Orphan's Benefits** are for children whose parent(s) die. When there is no other guardian, the benefits are held in trust by the Public Guardian and Trustee.

**4. Pension Funds** are paid to the beneficiary designated by the deceased in the pension plan. If the beneficiary is a child and no trustee is named by the deceased, the Public Guardian and Trustee may hold the pension benefits in trust.

**5. No-Fault Death Benefits** are paid to a child according to the regulations in the *Insurance (Motor Vehicle) Act* on behalf of the child when the deceased person was a member of the child's family with a responsibility to provide for the child's support. Legislation directs that the Public Guardian and Trustee hold these benefits in trust.

**6. Life Insurance Funds** are paid to the beneficiary designated by the deceased person. If the beneficiary is a child and the deceased did not designate a private trustee, the money is held in trust by the Public Guardian and Trustee.

**7. Inheritance under a Will** is paid according to the terms of the will. If the will names the child as a beneficiary, the deceased dies while the child is less than 19 years of age and the will does not name a private trustee of the child's funds, the Public Guardian and Trustee hold the funds in trust.

The purpose of a trust is to protect the trust assets and to ensure that the assets are used for the purpose for which they are intended.

**8. Inheritance when there is no Will** and a child is the beneficiary is held in trust by the Public Guardian and Trustee.

**9. Family Compensation Act Settlements or Court Awards** may be held in trust by the Public Guardian and Trustee. These funds are awarded for the loss of a parent to

compensate for loss of love, guidance and affection of the parent, loss of past and future financial support, loss of past and future parental services, and loss of inheritance.

**10. Entertainment earnings** by the child are held in part by the Public Guardian and Trustee once a threshold of \$5,000 lifetime total earnings has been reached. After this, 25% of the child's gross earnings are held in trust by the Public Guardian and Trustee and the balance is held by the parents in trust for the child.

**11. Lottery Funds.** The BC Lottery Commission pays a child's winnings of \$5,000 or greater to the Public Guardian and Trustee to be held in trust for the child. Amounts under \$5,000 are paid in trust to the parent or child's guardian.

A trustee is required by law to administer the trust properly, wisely and prudently, not take undue risks and to diligently fulfill the terms of the trust.

# 3 Administering Your Child's Trust

## Your Child's Trust Account

The Public Guardian and Trustee sets up an individual trust account for each child's funds. When funds are received, the account is opened, the child's information is confirmed, and a letter is sent to the parent or guardian along with an information package.

The Public Guardian and Trustee invests money held in trust according to BC law.

As funds are received, the Public Guardian and Trustee invests children's funds in the Public Guardian and Trustee Trust Fund, managed by the BC Investment Management Corporation. In some circumstances the funds may be individually invested using the services of an external professional investment manager.

All income earned through investment is credited to the child's trust account.

For more detailed information on how your child's money is invested, please see "Investing Your Child's Funds."

## Confidentiality

The Public Guardian and Trustee is committed to maintaining the confidentiality of your child's records and information. This is an important part of protecting the rights and interests of our clients.

All files kept by the Public Guardian and Trustee are secure. Our office is locked at all times and only the staff members working on the files have access to the information in them. Our computer records are also safeguarded so that information is not leaked electronically and individuals not working on a file directly cannot read what is in a file.

Maintaining confidentiality is one of the reasons that we ask for written requests for withdrawing a child's funds or for inquiries about the amount of money in the child's account.

Account balances or account numbers are not provided over the phone unless we are certain you are the child's legal guardian and we have an ongoing relationship with you. This is one of the reasons that we believe it is important for our staff to establish a working relationship with the child's guardians.

## Information You Can Expect To Receive

### Account Statements

The Public Guardian and Trustee believes in the importance of providing a full accounting of funds held in trust, and can produce account statements with a detailed record of the transactions (interest, deposits, fees, withdrawals) in your child's trust account. These statements can be requested from your Trust Manager.

### Tax Information

If more than \$50 interest income is earned on your child's funds in a year, a T-5 information form is prepared and sent to your child in care of you. (Please see "Tax Information on Children's Funds").

# 4 Accessing Funds

## How to Access Funds

The Public Guardian and Trustee has the discretion and the authority to release all or part of a child's money – prior to age 19 – for the maintenance, education and benefit of the child. At the same time, the Public Guardian and Trustee must ensure that any funds released are used for the purpose or purposes for which they were intended.

When evaluating requests for money from the trust, the Public Guardian and Trustee considers many factors, including whether the request is for what might be described as “maintenance” or a “special opportunity”.

**Maintenance** means funds are released to provide food, shelter, clothing and other necessities for the child.

**Special Opportunity** means funds are released to educate or benefit a child and provide opportunities the child would not have unless funds from the trust were made available.

The document that created your child's trust, or the law specifying trust duties, guides the Public Guardian and Trustee in understanding the purpose of the funds and how they may or may not be used.

## Releasing Funds for Maintenance

When considering releasing funds for maintenance, the Public Guardian and Trustee is guided by Section 88 of the *Family Relations Act*, which states that “each parent of a child is responsible and liable for the reasonable and necessary support and maintenance of the child.” That is, Public Guardian and Trustee policies on releasing funds for maintenance are based on the fundamental belief that parents are responsible for the cost of raising their children, and that the child is not normally expected to pay for his or her upbringing from their trust.

When you request funding for maintenance, your Trust Manager will want to know:

- the reason for the request
- any future plans for use of the funds (e.g., post secondary education)
- the amount requested and the intended use
- why this funding cannot be provided by the family.

In addition the Trust Manager will consider:

- the purpose for which the money was paid on behalf of or to the child
- the terms specified in the trust deed for the use of the funds (if they are different from maintenance, education and benefit of the child)
- the amount of money in the trust
- any alternate sources of funding available
- changes in the child's past and present standard of living (e.g., whether the child's financial circumstances changed due to death of a parent).

When making a request for funds to provide maintenance for your child from the trust, call your Trust Manager. If your child is aware the Public Guardian and Trustee is holding his or her money in trust, the Trust Manager may also consult with your child. Your Trust Manager will then ask you or your child to put your request in writing along with the reason(s) for your request. This is to ensure your request is given the careful consideration it deserves.

## Releasing Funds for Special Opportunities

When considering a request to release funds for special opportunities, the Public Guardian and Trustee begins with the premise that the child's trust fund should not be considered the first or only source of funds for the special opportunity. We want to make sure – before spending your child's money – that reasonable alternatives are explored, including whether your family can contribute to funding the special opportunity.

When you are making a request for funding for a special opportunity, your Trust Manager will want to know:

- what the special opportunity is and the benefit to the child
- the initial cost and any ongoing costs of the special opportunity
- whether the special opportunity would be available to the child if the trust did not exist
- whether there are there any alternative sources of funds for the special opportunity
- whether there is the possibility of shared funding (for example, with the parent or guardian).

In addition the Trust Manager will consider:

- the purpose for which the money was paid to the child
- the amount of money in the trust
- the terms of the trust deed, if there is one, for the use of the funds
- the financial projections for the trust
- the present and future needs of the child
- the age of the child.

The steps for making a request for funding a special opportunity are the same as a request for funding for maintenance. If the amount requested for a specific item exceeds the typical cost, you may be asked to provide a quote from a third party such as a supplier or vendor.

## Summary

Your Trust Manager works with you to ensure your child's trust is used for the benefit of your child, and that your future plans for your child – and your child's future plans – are always considered.

At the same time that we try to help you meet your child's financial needs, the Public Guardian and Trustee also has a duty to act prudently, to consider the intended or appropriate use of the funds, and to respect any directions given by the Courts.

If you have any questions about decisions made in regards to expenditures from the trust, please discuss them with your Trust Manager.

# 5 Final Distributions

## Releasing Trust Funds

In most cases, when your child turns 19, he or she legally becomes an adult and will receive the funds that have been held in trust for him or her. However, if the funds are held as a result of a will or court document specifying that funds are to be released at an age other than 19, the Public Guardian and Trustee follows the instructions in the document.

In both situations, the Public Guardian and Trustee will release the assets in the trust unless there are indicators that the child may not have the legal capability to manage his or her financial affairs.

Approximately 30 days before your child turns 19, your child will receive a package of information from the Public Guardian and Trustee. This will include a statement of your child's account, and a request for distribution form for your child to sign once he or she turns 19.

## Telling Your Child About The Trust

In our experience we find that most parents inform their children about the trust before the child's 16<sup>th</sup> birthday. However, some parents have reasons for believing that it is better to withhold the information until they feel their child is better able to understand opportunities and consequences associated with receiving a large sum of money. We recognize that this is a personal decision and respect your choice.

If you have told your child about the trust, your Trust Manager will involve your child in planning for the time when the funds are released. If your decision is not to inform your child, your Trust Manager will not include your child in any

correspondence or discussions regarding the trust. However, we strongly recommend that you involve your child in decisions about the trust fund, particularly as they approach the age of nineteen.

Regardless of your child's age, if he or she contacts the Public Guardian and Trustee's office requesting information about the funds, we cannot withhold this information. The Trust Manager will encourage the child to discuss the matter with you.

Should you want to talk to someone about various perspectives on informing your child about the trust, contact your child's Trust Manager. The Trust Manager will be able to share the experience of other parents with you, while also maintaining confidentiality.

## Planning Before Your Child Turns 19

When your child turns 16, or three years prior to the age at which the trust directs funds to be paid, we begin working with you and your child to plan for the time the funds held in trust will be disbursed.

Near your child's 16<sup>th</sup> birthday you will receive an information package that includes a statement on the present value of the trust account. Depending on the value of the account you may receive:

- information on financial resources available in the community, such as banks and other institutions that have planning services available
- information about any financial support available from the trust to prepare your child to take over the management of his or her funds
- an offer of general consultation services to further discuss plans for when your child receives his or her trust fund.

Your child's Trust Manager can help you develop a plan to prepare your child to take over the management of his or her trust, and may suggest sources for professional financial, legal and tax advice.

## Questions About Your Child's Ability To Manage Money

We understand that some parents may be concerned about their child receiving a large sum of money upon his or her 19<sup>th</sup> birthday. However, the law provides that your child is entitled to the funds we hold in trust and we may not hold back the child's funds unless there are indicators that the child may not have the legal capability to manage his or her financial affairs. Because they are considered an adult at age 19, we cannot hold back your child's funds simply because they may not be responsible or mature.

If you and your child have concerns about this, please consult with a lawyer who can advise your child about options available to him or her as an adult at age 19.

## When You Have *Serious* Concerns About Your Child's Ability

There are some circumstances where children turning 19 may not have the *mental capability* to manage their finances. These children will likely require support and assistance as adults, and alternate plans must be made. Your Trust Manager has a great deal of experience with these situations, and will work with you and your child to plan for the future.

Discussions should begin as early as possible, and certainly by the time your child turns 16, the age at which your Trust Manager begins working with you and your child to plan for the ongoing management of the funds.

As you work together to develop a plan, your child's Trust Manager reviews your child's file and may suggest that further information be collected from professionals and others involved with your child.

You may require financial, legal and tax advice as the plan is being developed. Your Trust Manager can direct you to a variety of resources available in your community and let you know whether these professional services can be funded from the trust.

You may also want to explore support and assistance services available from the Ministry for Children and Families, Community Living Services and other organizations in the community. Your child's Trust Manager can refer you to the appropriate contact.

You may want to explore substitute decision-making options such as Committeeship<sup>1</sup> or a Representation Agreement. Your child's Trust Manager will refer you to a specialized staff member from our Services to Adults Division who will explain the various options available.

Please be assured that there are many options and services available. We will work with you to develop a plan that helps your child reach his or her goals and have a secure future.

<sup>1</sup>Committeeship is a legal authority obtained through the Supreme Court of British Columbia that gives a person the authority to manage personal, legal and financial affairs on behalf of another adult.

# 6 Investing Your Child's Funds

As the trustee of your child's assets, the Public Guardian and Trustee must observe prudent business practices, adhere to fiduciary principles and is ultimately accountable to clients and to the court. The fiduciary role requires that investment duties be performed with the care, skill and diligence of a prudent investor.

Money held in trust is invested according to law, and all investments are guided by the *Financial Administration Act*, the *Trustee Act* and the *Public Guardian and Trustee Act*, or by the Courts.

Client funds may be invested in the Public Guardian and Trustee Trust Fund or managed internally using an investment broker.

## The Public Guardian and Trustee Trust Fund

The Public Guardian and Trustee invests funds in the Public Guardian and Trustee Trust Fund, which is managed by BC Investment Management

Corporation. This fund is comprised of 65% money market securities and 35% short-term government bonds, and the rate of return is similar to that for a three-year government bond. Interest earned on the Trust Fund is credited to client accounts monthly. Your child's funds in the Trust Fund are completely liquid and may be withdrawn without penalty at any time.

## Public Guardian and Trustee Fees on Investments

Similar to other trustees, the Public Guardian and Trustee charges a capital and asset management fee based on the market value of investments, and an income or capital fee based on the income or capital earned by the investments. These fees are set out in the Regulations of the *Public Guardian and Trustee Act*. For more detailed information, see "Fees."

# 7 Public Guardian and Trustee Fees

Consistent with most other Public Guardian and Trustee Offices across Canada, and with the legislation of British Columbia that specifies fees allowed for public and private trustees, the Public Guardian and Trustee charges various fees for the administra-

tion of trusts held on behalf of children. These amounts are specified in the Fee Regulation of the *Public Guardian and Trustee Act*. A description of each fee routinely charged on a trust account and the services provided follows:

## Capital Commission

Capital Commission is a fee that compensates the Public Guardian and Trustee for the work performed on a child's behalf. This includes services related to determining the child's immediate and future financial needs, ongoing trust management including investment and expenditure decisions, and the assumption of risk for the decisions made.

Depending on the nature of the trust, a capital commission of 5% of the value of the asset is charged at the receipt of proceeds, during, or at the termination of the trusteeship. The capital commission is a one-time fee on each capital deposit.

## Income Commission

The income commission compensates the Public Guardian and Trustee for all activities related to collecting and recording income, processing and paying bills, establishing and monitoring the child's budget, record keeping and all other duties related to the ongoing administration of the child's financial affairs.

When a child's account earns income (such as investment earnings or interest earnings), the income is credited to the account and 5% is charged as income commission.

## Asset Management Fee

The asset management fee is associated with asset and liability management, and compensates the Public Guardian and Trustee for activities related to preserving the value and safe custody of client assets administered. It is also compensation for decisions made with respect to the investment of trust assets, whether on an individual or an overall basis, and for monitoring the performance of investment services provided by professionals.

The asset management fee is charged monthly and amounts to 0.4 of 1% per year on assets administered.

## Other Amounts Chargeable to the Trust Account

Although trustees cannot delegate their decision-making authority to others, they may hire experts to perform work that requires special skills or knowledge. The types of individuals engaged for these services could include lawyers, investment counselors, brokers, accountants, real estate appraisers, etc. The professional fees charged by these individuals are charged against the trust account.

## Goods and Services Tax

The Federal Government has determined that the Public Guardian and Trustee is required to charge GST on all fees and commissions.

## Tax Deductibility

Canada Customs and Revenue Agency (formerly Revenue Canada) has determined that fees charged by the Public Guardian and Trustee are not tax deductible. This is in contrast to investment management fees, which are generally tax deductible.

# 8 Tax Information on Children's Funds

The following tax information should be seen as a general overview only. We recommend that you seek specialized, professional advice if you have any questions about taxation of your child's funds.

## Social Insurance Number

The Public Guardian and Trustee is required to request a Social Insurance Number for your child. This is necessary if the child has to file an income tax return, or when the child seeks employment. To request a Social Insurance Number, contact Human Resources Development Canada.

## Income Tax Requirements

Canada Customs and Revenue Agency (formerly Revenue Canada) considers interest earned on your child's funds income as income for the child.

A T-1 tax return is required for a child when the child's income from all sources (including income earned on a trust fund) exceeds their basic exemptions. The basic exemption amount should be verified annually.

Whether your child is required to file a tax return depends on a number of factors, such as:

- amount of the child's income for the year
- number of dependents for the child
- eligibility of the child for refunds of tax or GST credits.

## Taxable Income

The *Income Tax Act* requires the following income types to be included in the calculation of a child's income:

- CPP orphan's benefits, even though these are paid to the guardian in trust

- income earned from employment, whether part-time or full-time
- income earned from investments (mutual funds, term deposits, dividends), bank accounts or other sources.

## Exceptions And Special Considerations

Canada Customs and Revenue Agency allows the income on personal injury settlements to be exempt from income tax until the year the recipient turns age 22. Because these tax rules are complex, you should seek professional tax advice or assistance if this applies to your child.

Lump sum amounts received by your child for settlements of accident/insurance claims are generally not taxable. However, if the lump sum amount includes interest earned while the sum was held in Court or by the lawyer, the interest received is eligible to be taxed. Usually the bank holding the funds during this time will prepare a T-5 information slip.

Allocations of income to your child from an estate or trust are indicated on a T-3 information slip, even though the income may not have been distributed to the child. Financial information on estates can be obtained from the estate's executor and for trusts from the trustee.

## Non-Taxable Amounts Received Into The Trust

Not all income amounts are taxable. For example, insurance proceeds and amounts received as "structured settlements" are not taxable. However, subsequent income earned on the capital amount is taxable.

The capital portion of an estate distribution is not taxable.

Income received by the child as the result of a gift from a parent or grandparent may not be taxable, as it may be attributed back to the donor until the child is 18.

## Taxes On Money Distributed To The Child At Age 19

There is no tax on the final distribution your child receives from the Public Guardian and Trustee at age 19, or at the age specified in the trust document.

## Filing A Tax Return

Under BC law, money held in trust belongs to the child even though the child does not receive it until age 19. Where the Public Guardian and Trustee holds money for a child, Canada Customs and Revenue Agency requires the Public Guardian and Trustee to report the interest income that has been credited to each account.

This income is reported annually on a T-5 tax information slip issued by the Public Guardian and Trustee. T-5 tax information slips are provided to the guardian, with a copy to Canada Customs and Revenue Agency.

Even though the income is the child's, Canada Customs and Revenue Agency looks **to the parents or the guardians to prepare and file a tax return.**

It is important to note that the child's income must be reported on a tax return filed in the child's name. This allows the child to claim the full amount of the personal exemption. Except for income on gifts, the child's income is not reported on the parents' or guardian's income tax return.

Late filed returns are subject to penalties and interest.

## Paying Your Child's Income Taxes

If your child owes income taxes on income earned, the child is responsible for paying Canada Customs and Revenue Agency. When your child's funds are held by the Public Guardian and Trustee, the taxes can be paid from the trust account. Once the tax return is prepared and amount of taxes determined, contact your Trust Manager to request payment of the tax amount. (See "Accessing Funds.")

The Public Guardian and Trustee only files a tax return for a child when we are also the guardian of the child's estate. Therefore, if *you* are guardian of the child's estate, you or your child must file a return if it is required.

## GST Rebate Or Credit

The GST rebate or credit is not paid to taxpayers until they have reached the age of 19.

## A Child's Entitlement To Claim Deductions

Canada Customs and Revenue Agency allows various deductions and tax credits, depending on the nature of the taxpayer's income. If there is doubt, professional tax advice should be obtained.

For example, if the child has a baby that is financially dependent on him or her, the child is eligible to claim the child tax benefits. The child may also be eligible to claim the baby as "equivalent to spouse" and receive the corresponding tax credit.

## Claiming My Child As A Dependent

If you are single, divorced, separated or widowed, you may be entitled to claim the "equivalent to spouse" amount if you provided financial support to a child who is living with you, the child is under 18 and is related by blood, marriage or adoption. The "equivalent to spouse" credit amount should be verified at the time a tax return is completed.

## Registered Retirement Savings Plans (RRSPs)

Your child may only contribute to an RRSP if he or she has reported “earned income” in the prior year(s). “Earned income” is usually generated from employment, business or net rental income.

Investment income such as interest, dividends or capital gains is **not considered** “earned income.” Therefore, Public Guardian and Trustee managed funds do not generate earned income eligible for an RRSP for your child

## Registered Education Savings Plans (RESPs)

The Public Guardian and Trustee is evaluating the availability of RESPs for children’s trusts. At this time, funds from a child’s trust account are not released for the purchase of RESPs.

## CPP Orphans Benefits

Even though CPP Orphans Benefits are paid to the guardian in trust, the income is counted as the child’s. Canada Pension will continue payments to a child up to age 18, OR

- up to age 25 if
  - the child is unmarried AND
  - is a qualified student (taking at least 3 courses per semester at a designated educational institution such as a university, college or technical school)
- over age 18 if
  - the child is unmarried AND has a disability as defined by the legislation.

# 9 Monitoring Trusts

## Private Trustees for A Child’s Trust

In those situations when a parent or another adult is appointed as a private trustee of a child’s funds, that trustee is required by law to adhere to the terms of the trust deed or the law governing the trust.

The first thing the parent or other adult *must* do is open an account in the parent’s name *in trust* for the child. They must maintain records of the trust funds and ensure that any investments are authorized by the *Trustee Act* or the terms of the trust deed.

There are also rules about what the trust funds may be used for, which depend on the source of the funds and the terms of the trust document.

For example, some funds are specifically for maintenance of the child and others are not. The various purposes of funds are described in “Why Funds Come to the Public Guardian and Trustee.”

## Monitoring And Assistance

Where the Court appoints a parent or other adult as a private trustee, the Court may also appoint the Public Guardian and Trustee to monitor the use of the trust fund, ensure the trust funds are invested according to the *Trustee Act* or the terms of the trust deed, and that all disbursements are documented and in keeping with the rules governing the purpose of the trust. When the Public Guardian and Trustee is in this special monitoring

role, the private trustee is required to provide an accounting of the trust funds on an annual basis, or as outlined in the Court Order.

Once the Public Guardian and Trustee is advised that a private trust for a child is to be monitored, a file is opened and a letter is sent to the private trustee requesting specific information on the trust.

When the private trustee has submitted the accounting, the documents are reviewed, the information is summarized and a reconciliation report is prepared. The private trustee is then sent a copy of the report and a certificate signed by the Director, Child and Youth Services.

Sometimes the Court designates that a portion of the settlement funds be held by the parent as private trustee and a portion by the Public Guardian and Trustee. In these cases, the private trustee may be subject to review as above.

The Public Guardian and Trustee staff is also available to give advice or guidance to parents about the funds they hold.

## Applying To Become A Private Trustee

There are circumstances in which the Supreme Court of British Columbia will consider appointing a parent or guardian as trustee of a child's funds that would normally be held by the Public Guardian and Trustee. If you choose to apply to the Court for this authority, we recommend you consult with a lawyer who will advise you on how to make an application.

When such an application is made, the Supreme Court of British Columbia usually requires the private trustee to post a bond as security for managing the trust funds, and places other restrictions on how the private trustee can deal with those funds.

For more information on monitoring trusts, please see: "Why Funds Come To The Public Guardian And Trustee" and "How The Public Guardian And Trustee Administers Or Manages Your Child's Trust"

# 10 Conclusion

Our goal is to work with you to ensure your child's trust fund is used for the benefit of your child and that your future plans for your child and your child's future plans for him or herself are always considered.

Your child's Trust Manager is your key resource person regarding the trust fund. They can assist you or your child with questions about the trust fund, preparing your child for financial independence and resources in the community.

On occasion, we may make decisions about the use of trust funds that you are not satisfied with. Please discuss your concerns with your child's Trust Manager. If you continue to have concerns, please ask to speak with the Manager in Child and Youth Services. If you are still not satisfied, you may request a formal review of the decision. Your input is welcome and we appreciate you taking the time to discuss it with us.



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