

# Information for Persons with Disabilities Who are Beneficiaries of a Trust

## What is a Trust?

A *trust* is a legal relationship between three parties: the *settlor* sets up the trust, contributes assets to it, sets out instructions on who will benefit from the assets and how the assets are to be used or managed; the *trustee* is appointed to control and manage the assets in the trust; and the *beneficiaries* will benefit in different ways from the assets owned by the trust.

The trustee is required to manage the trust property according to the instructions in the trust document and must use that property solely for the benefit of the beneficiaries. A third party is not entitled to benefit from the trust unless specifically provided for in the trust document. The trust can be part of someone's will (a "testamentary trust") or a trust document made by a person that takes effect during their lifetime (an "*inter-vivos*" trust).

The trust document, whether a will or a deed, outlines the nature and scope of benefits which are available to the beneficiary. Where the trust document is not specific, the provisions of the *Trustee Act* will apply. General responsibilities and powers of a trustee are outlined in the *Trustee Act*, and for the Public Guardian and Trustee, in the *Public Guardian and Trustee Act*.

## How does the trustee decide when to provide a benefit?

Some trusts require the trustee to make certain payments to the beneficiaries. These trusts are referred to as "non-discretionary trusts".

Some trusts give the trustee a discretion as to whether or not funds should be paid to a beneficiary. These trusts are referred to as "discretionary trusts".

When a trustee has discretion, he must consider the following when deciding whether to provide a benefit to the beneficiary:

- terms of the trust
- beneficiary's current situation
- whether the beneficiary is receiving other benefits that may be affected
- financial ability of the trust to support the benefit
- possible income tax consequences to the trust and the beneficiary
- any potential impact on other beneficiaries

One of the most important guiding principles of trust administration is the "Even Hand Rule", which requires the trustee to weigh the rights and interests of all the beneficiaries to the trust impartially, unless the trust document provides otherwise.

## **Are disability benefits affected if someone is the beneficiary of a trust?**

### Employment and Assistance for Persons with Disabilities (EAPD) Benefits

The impact of payments from a trust or EAPD benefits administered by the Ministry of Employment and Income Assistance (MEIA), depends on MEIA policy and whether the trustee has discretion on how to expend the funds. If the trust is discretionary, benefits under BC's *Employment and Assistance for Persons with Disabilities Act* usually will not be affected, provided the MEIA guidelines are followed.

If the trustee does not have discretion, then EAPD benefits may be affected. Beneficiaries need to contact MEIA to find out how their benefits may be affected.

### Other Disability Benefits

For other types of disability benefits (CPP disability benefits, WCB benefits, private long-term disability benefits, etc.), there may be restrictions placed on what the beneficiary can receive from the trust. Beneficiaries need to contact the source of the disability benefit (eg. CPP) to find out how their benefits may be affected.

## **What are the confidentiality requirements for a trustee?**

In a private trust established for the benefit of family or friends of the settlor, the trustee has no obligation to disclose the existence of the trust or any information relating to the trust to any person other than to the settlor, the beneficiaries and their legal representatives, other than in compliance with the requirements of taxation authorities, the Court or the PGT.

It is important that all information concerning the beneficiary be available to the trustee so that the trustee may make informed decisions. This will help to ensure the beneficiaries receive the appropriate benefit from the trust.

*This publication was prepared in response to frequently asked questions from persons with disabilities and their caregivers. It provides general information and is not a substitute for legal advice from a lawyer. For assistance in obtaining legal advice, call the Canadian Bar Association's Lawyer Referral Service at (604) 687-3221 or 1-800-663-1919 (toll-free outside the Lower Mainland).*

For more information about the PGT, please visit our website at [www.trustee.bc.ca](http://www.trustee.bc.ca) or contact us at:

Public Guardian and Trustee  
700 – 808 West Hastings Street  
Vancouver, BC V6C 3L3  
Telephone: (604) 660-4444  
Fax: (604) 660-0374  
Email at [mail@trustee.bc.ca](mailto:mail@trustee.bc.ca)

