

How to Create a Trust

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Publisher's Note

Welcome to the third edition of this incredibly popular resource guide. Much to our surprise, our resource guide has become a “best seller.” With our first two print runs, we have distributed 2000 copies and the demand continues to be strong, thus prompting a third print run. This edition contains updated information and a brand new section on Disability Tax Credits. It is our hope that our readers will find it helpful and informative. We have done our best to ensure the information in this resource guide is accurate and up-to-date at the time of printing. However, legislation and other things may change over time. We encourage readers to seek professional help when creating Trust Agreements.

About the Authors

Laurette Yelle, B.A.

Laurette Yelle is the lead writer and project co-ordinator for *How to Create a Trust* (2003, '04, '07) and *The CSIL Handbook* (2005), both published by the Voice of the Cerebral Palsied of Greater Vancouver (VCP). Graduating from Simon Fraser University with a Bachelor of Arts in Political Science, she eventually found herself employed by the VCP and worked her way up to the position of Assistant Executive Director. Realizing there were several topics of interest to the disabled community in British Columbia that were not being covered by traditional publishing houses, Laurette initiated writing projects that targeted the needs of a niche market. Both books have done extremely well, with the *Trust* book becoming a runaway bestseller.

Cathy Watters, B.J. (Hons.)

Cathy Watters is the assistant writer and copyeditor for the updated third edition of *How to Create a Trust* and the copyeditor of *The CSIL Handbook*. Originally from Nova Scotia, Cathy graduated with a Bachelor of Journalism (honours) from the University of King's College in Halifax. She worked as a newspaper reporter in Northern Manitoba and, as a freelance writer, has been published in over 40 magazines and newspapers. Specializing in business and lifestyle, Cathy is a regular contributor to *Business in Vancouver* and *Progressive Choices Magazine*.

Acknowledgements

Many people have helped in the updating of this guide, for which we are grateful.

The Voice of the Cerebral Palsied of Greater Vancouver (VCP) would like to acknowledge the Law Foundation of British Columbia for giving us the grant to update and republish the third edition of our resource guide.

We would like to thank all of the people who shared their knowledge, advice, expertise and time with us.

First and foremost, many thanks go to our lawyer, Halldor Bjarnason who read through our many progressive drafts. Halldor's expertise was invaluable because he specializes in Disability Trust Agreements. Robin Loxton, an advocate from Advocacy Access at the BC Coalition of People with Disabilities, reviewed the parts regarding Allowable Assets and What Trusts Can Pay For.

Mike Campagne, an extremely knowledgeable disability tax consultant and Certified Financial Planner, provided us with a concisely worded section on the complex area of Disability Tax Credits. Tim Louis, a lawyer who writes a number of trust agreements each year, was especially helpful on the section about Potential Problems.

The following members of the VCP, Karen Van Biesen, Researcher, and Yoshinori Tanabe, Executive Director, helped us to clarify our text.

Introduction

Ensuring financial security for people with disabilities is becoming more important than ever. Increasingly, people with disabilities are living independently and outliving their parents and other relatives. The cost of living continues to rise and there is a growing trend in the government towards cutting services.

Families want to contribute to the financial well-being of their children, but most cannot afford to comfortably support them for life. Medical coverage is extremely important for people who require costly aids, equipment, medication and medical treatment. Parents may worry that helping their children financially may adversely affect their children's disability benefits and extended medical coverage.

Creating a trust is one way that families can provide greater financial security for their relatives without affecting the disability benefits.

People with disabilities may also receive money from a will or a settlement from an accident. Wherever the money comes from, if they directly receive a lump sum payment they will lose their benefits. Having a trust is a way to protect against this loss and ensure that people with disabilities can receive both disability benefits and additional money.

There is a growing demand for information about trusts. It is a complicated issue and it is extremely important that a trust be created and administered properly. There are many rules governing trusts. If a trust is set up incorrectly or the government rules are not followed the person with the disability risks:

- Losing their disability benefits and extended medical coverage
- Paying unnecessary income tax
- Being unable to purchase a residence
- Being unable to change trustees

The laws concerning disability benefits and trusts have changed and much of the material previously published by advocacy organizations is out of date.

It is because of all of these issues that The Voice of the Cerebral Palsied of Greater Vancouver applied for a grant to the Law Foundation to write a resource guide on how to create trusts for people with disabilities.

Now in its third print run, this guide continues to be in high demand by families, people with disabilities, lawyers, advocacy groups and professional organizations.

We wanted to write a guide that would be useful for both people with disabilities and their families. We have tried to provide the information as clearly as possible. It is our hope that it will help families clarify their goals and prepare them to see a lawyer. Please use this book as a starting point and then seek professional advice.

We have endeavoured to provide accurate information at the time of publication. However, rules change and it is always a good idea to double check that all of the information is up to date.

To receive a copy of this resource guide from the VCP, you can:

- Phone us at: 604-874-1741
- E-mail us at: vcpgv@vcn.bc.ca
- Write us at: #103 - 577 East 8th Avenue,
Vancouver, B.C V5T 1S9

A small fee is charged for mailing. At the time of printing, the fee is \$4 per book and the mailing area is restricted to B.C. because the laws discussed in the guide are relevant to B.C. only.

You can also download an electronic copy of this guide from our website for FREE at: www.vcpgv.org

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The VCP is a non-profit, self help, advocacy society,
which is run by and for adults with Cerebral Palsy.

Part 1: Information about this Resource Guide

In this resource guide, words in one gender include all genders and words in the singular include the plural and vice versa.

1.1 Who Should Use This Resource Guide?

This resource guide provides information primarily for:

- people who are receiving **Persons with Disabilities (PWD)** benefits and will be receiving a lump sum payment.
- people who want to bequeath some **money or assets** to a person receiving such benefits, **but do not have enough money to totally financially support** the person with the disability.

Important Note: Having a trust will disqualify people from **receiving Persons with Persistent Multiple Barriers to Employment (PPMB)** benefits until the trust money is exhausted, at which point the person will have to reapply for benefits.

This resource guide provides information about trusts. Anyone who wishes to create a trust **is strongly encouraged** to consult a lawyer who understands both trust law and *the Employment and Assistance Act for Persons with Disabilities*.

1.2 How is the Information in This Resource Guide Organized?

Part 2:

- Explains:
 - The maximum amount of money and property a person receiving disability benefits is allowed to have
 - What not to do if the assets exceed the allowable limit
 - How a trust can enhance the financial security of a person receiving disability benefits

Part 3:

- Answers basic questions about trusts including:
 - Terminology
 - Differences between living trusts and trusts that are created in a will
 - Discretionary and non-discretionary trusts
 - Potential problems to be aware of
 - Appealing the decision if a Trust Agreement is rejected
 - Trust taxation and how to avoid being over taxed

Part 4:

- Describes:
 - What the trust money can pay for
 - Rules regarding trust payments

Part 5:

- Outlines options for a trust including:
 - How to choose a trustee
 - Pro's and Con's of choosing a non-profit organization or trust company as trustee
 - Trustee investment powers and limitations
 - How much a trustee can be paid
 - Important clauses to include in the trust

Part 6:

- Explains:
 - What Disability Tax Credits are
 - Why a person on PWD Benefits should apply for them
 - Eligibility

Part 7:

- Explains:
 - What happens to PWD Benefits and Trusts when a Beneficiary turns 65

Part 8:

- Provides a check list of:
 - What to bring with you when you visit a lawyer
 - Steps to complete after your lawyer has drawn up the trust
 - Documentation trustees must keep
 - Taxation deadlines
 - How to report the financial activity of the trust to the government
 - How to appeal decisions made by the Ministry of Employment and Income Assistance regarding spending

Part 9:

- Contains a questionnaire that you should bring with you to your lawyer, which will summarize what you want included in the trust agreement

Part 10:

- Contains an example of a trust agreement with explanatory comments written in plain English

Appendices:

- At the back of the resource guide there are appendices that will help you learn more about trusts, which include:
 - Non-profit advocacy groups that provide information about trusts
 - Lawyers that know about Trusts
 - Accountants that know about Trusts
 - Where to get more information on Disability Tax Credits
 - Disability Tax Credit eligibility form
 - Recommended supplementary reading list on investments and estate planning
 - Relevant web sites
 - Quick Reference phone numbers
 - Relevant Legislation
 - Definitions

Part 2: Allowable Assets for People Receiving Disability Benefits

Summary

A person receiving PWD benefits is allowed to have a certain amount of assets before he loses his benefits. This is called an “asset limit.”

Part 2 lists assets which a person is allowed to have without losing disability benefits. If the beneficiary has money or assets greater than the asset limit, he cannot sell or dispose of assets to meet the qualifying limit. He cannot refuse any of the following: to earn income, accept money or accept other means of support.

A trust is a way of having access to money above the asset limit while keeping disability benefits, as long as the money is spent on exempt items listed in Part 4.1, pg. 23.

A person on PWD has the right to receive a fair share of their parents' estate. Purposefully leaving a disabled child out of the will so they can keep their benefits does not work. The Public Guardian and Trustee, or other interested party, can apply to the court to change the will. That can affect PWD benefits. It is best to make a trust before the person receives an inheritance.

2.1 Asset Limit:

A beneficiary who is receiving PWD benefits is allowed to have a certain amount of assets before losing benefits. For example, a single person with no dependants can have up to \$3000. This is called an **asset limit**. Any money above this limit may be deducted from the monthly benefits. The government changes asset limits from time to time so check these limits regularly.

2.2 Asset Limit Exemptions:

The following list includes items which a beneficiary can own and not exceed the asset limit.

- \$3000 for a single person with no dependants

- A person who has a dependant is allowed a maximum of \$5000
- A \$500 earning exemption for a single person on PWD benefits per month and \$750 for a household of two adults on PWD benefits per month
- Clothing and necessary household equipment
- One motor vehicle
- Beneficiary's primary residence
- Money received from a mortgage or the sale of the residence as long as the money is used to buy a new home or to pay rent on a place of residence
- An uncashed life insurance policy with a cash surrender value of \$1500 or less
- Funds held in a registered education savings plan (RESP)
- Tax credits and GST refunds
- Government settlements for example: compensation for thalidomide victims, Hepatitis C victims, etc.
- Non-discretionary trusts up to \$100,000; the money in excess of \$100,000 is considered an asset and may be deducted from disability benefits

Canadian courts have determined that funds held in discretionary trusts are not assets for purposes of receiving disability benefits.

All the current asset exemptions are listed under Section 10 of the *Employment and Assistance for Persons with Disabilities Regulation*, which accompanies the *Employment and Assistance for Persons with Disabilities Act*.

An electronic copy of the regulation is available at:
www.qp.gov.bc.ca/statreg/

Click on the letter *E* at top of page, and scroll down until you find the *Employment and Assistance for Persons With Disabilities Act*. (This site was working at the time of printing. If it stops working, start out at the home page, **www.qp.gov.bc.ca** and search for 'statutes and regulations.')

2.3 Things NOT to do:

If money or other assets are greater than the asset limit, a beneficiary **CANNOT**:

- sell or dispose of assets in order to meet the asset limit
- sell assets for less than they are worth

and **CANNOT** refuse:

- to earn income if he is working (but MEIA cannot make a person on PWD benefits look for work)
- to accept other means of support
- money from settlements
- financial gifts

In any of the above cases, the Ministry of Employment and Income Assistance can either declare the beneficiary ineligible for disability benefits or reduce his benefits.

2.4 How Can a Trust Help?

- Trusts help families plan for the future.
- Trusts buy items that improve a person's quality of life without decreasing their Disability Benefits.
- Trusts give a person with a disability long term financial security.
- Trusts can help people who need assistance managing their finances.

One should set up a trust as soon as reasonably possible.

MEIA may stop the disability benefits for the month the lump sum payment is received because it is considered income rather than an asset, even if the money goes directly into the trust. It is preferable to set up a trust before the beneficiary receives a lump sum payment as this decreases the likelihood of MEIA stopping PWD benefits for the month.

2.5 Wills Variation Act:

According to the **Wills Variation Act**, if a will does not leave a disabled child a fair share of the estate, the **Public Guardian and Trustee** or other interested party can intervene on his behalf and apply to the court to change the will. Changes to the will may affect his eligibility for benefits.

Ideally, a trust should be established while the will is being drafted in order to ensure that a disabled child receives a fair share of the estate **without** affecting his disability benefits. If there is no provision in the will for a trust, competent beneficiaries can establish non-discretionary trusts to protect their benefits. However, beneficiaries who are unable to establish trusts may lose their benefits until the money is spent.

Part 3: Basic Trust Information

Summary

A trust is a legally binding agreement that allows a person receiving disability benefits to inherit or otherwise receive assets, which includes cash, without being penalized. A trust can come into effect either while the person giving the assets (settlor) is still alive (an *inter vivos* trust) or after she dies (a **testamentary trust**). There is no limit to the amount of money that can be put into a **Discretionary Trust** but the beneficiary has no control over the spending decisions. A maximum of \$100,000 (or higher with special permission from the Ministry) can be placed in a **Non-discretionary Trust** and the beneficiary can decide how to spend it.

A trust that comes into effect while the settlor is still alive is taxed differently than one that comes into effect after the settlor dies. Taxation of trusts can be complicated, so the trustees may want to seek professional advice.

The terms of the trust can allow other people to contribute to the trust, regardless of whether they are in the same province or not. However, the \$100,000 limit of a non-discretionary trust must not be exceeded without special permission from the Ministry.

The Legislation and Legal Services Branch (LLSB) in Victoria reviews all new trust agreements, but the local Ministry of Employment and Income Assistance (MEIA) office makes the decisions regarding whether to accept them or not. The MEIA may reject a trust agreement if it contains a collapsible or a revocable clause, or if the beneficiary is the sole trustee of the trust.

3.1 What is a Trust?

A **trust** is a legally binding agreement in which a **settlor** transfers legal control to a **trustee** to manage and administer assets for the benefit of a **beneficiary**. It is a way to set **assets** aside through a special agreement that has specific rules governing it.

Assets include money, property and other possessions.

The **Settlor** is the person who establishes a trust, and can also be the beneficiary. The settlor can be a minor as long as the trust agreement clearly states she can revoke it when she turns 19. An adult who has a committee (legal guardian) appointed by the court cannot be a settlor, but under certain circumstance, her committee can be.

The **Trustee** is the person or company that manages the trust according to the instructions in the trust agreement.

The **Beneficiary** is the person who the trust is set up for. The trust can be named anything, but the simplest thing to do is name it after the beneficiary, for example “the Joe Smith Trust.”

3.2 When Does a Trust Come into Effect?

A trust can come into effect either during the lifetime of the settlor or after the settlor dies.

An ***Inter vivos* Trust** is a trust that comes into effect during the lifetime of the person who established the trust. It is also known as a **Living Trust**. An example of an *inter vivos* trust is when the beneficiary is also the settlor.

A **Testamentary Trust** is a trust that takes effect after the death of the settlor. It is often set up in a will. Unless the will contains **an express direction to the contrary**, all the debts, funeral expenses, duties and taxes etc. can be taken from the trust.

There are two types of trusts this resource guide will discuss:

3.3 Discretionary Trust:

A **Discretionary Trust** is a trust where **the beneficiary does NOT have control** over the money in the trust. The trustees make all of the spending decisions. Therefore, it is extremely important to have trustees who know the beneficiary well and who understand and support her needs and lifestyle. There is **no limit** to the amount of money that can be placed in a discretionary trust, providing the settlor is not the beneficiary.

There is conflicting information as to the limit if the settlor is the beneficiary. According to section 13 of the *Employment and Assistance for Persons with Disabilities Act*, if the person applying for or receiving disability benefits disposes of property, (i.e. putting cash into a trust), she may no longer be eligible for benefits. However, section 12 of the regulation for this act states that she can create a trust **up to \$100,000** (or more with special approval from the ministry).

3.4 Non-Discretionary Trust:

A **Non-Discretionary Trust** is a trust where **the beneficiary HAS control** over the trust spending decisions. There is a **limit of \$100,000**, which can be put into a non-discretionary trust without affecting disability benefits. MEIA may permit more by special approval only. The trustees must ensure that the beneficiary spends the income generated by the trust so that the lifetime capital amount of \$100,000 is never exceeded. Any money over this limit will be considered an asset by the ministry and may result in either money being deducted from the beneficiary's disability benefits, or the beneficiary losing disability assistance altogether.

3.5 About the Two trusts:

The settlor of a non-discretionary or discretionary trust can be:

- the beneficiary
- someone other than the beneficiary

A beneficiary can have both a discretionary and a non-discretionary trust and continue to qualify for benefits.* However, these two trusts must be kept completely separate to avoid them being treated as one non-discretionary trust with a limit of \$100,000.

* In fact, the beneficiary can have several trusts, but when it comes to non-discretionary trusts, the limit of \$100,000 applies regardless of how many you have. For example, having two non-discretionary trusts does **not** give a total of \$200,000 limit.

3.6 The Approval Process

A copy of the trust agreement must be sent to MEIA for evaluation. The lawyer gives the trust agreement to the client, who then gives it to an employment and assistance worker (EAW) at the local MEIA office or Employment and Assistance Centre (EAC). The EAW sends the agreement to the Legislation and Legal Services Branch (LLSB) in Victoria for a legal opinion as to whether the trust complies with the ministry's policies. Based on this opinion, the local MEIA office decides whether or not to approve the trust. The client will be notified within eight weeks if the trust is **not** approved. MEIA usually does not notify the client if the trust is approved. The application must go through the local EAW because the LLSB does not accept applications directly from the client or the client's advocate/lawyer.

3.7 Potential Problems:

The ministry may reject trust agreements for a number of reasons.

- If the trust agreement has a revocable clause in it:
This clause allows the settlor to withdraw all of the assets from the trust at any time. On doing so, the trust no longer exists.
- If the trust agreement has a collapsible clause in it:
This means the beneficiary can dissolve the trust and take the cash if there is no one who will inherit the money after the beneficiary dies. Some reasons why a beneficiary might wish to collapse a trust: she moves to another country or she becomes employed and no longer requires disability benefits.
- If the beneficiary is the sole trustee of a non-discretionary trust:
Even though the ministry's policy prohibits the beneficiary from being the sole trustee, there is nothing in the law preventing it, if she is mentally competent. If the trust agreement is not approved, the settlor's lawyer can either challenge this decision or add a second trustee (co-trustee) to the agreement.
- If the settlor is the beneficiary in a discretionary trust over \$100,000: The law does not prevent this, but the ministry has been rejecting these types of trusts.

If the trust agreement is rejected for any of the above reasons, consult a lawyer and decide on a course of action. For example, these decisions can be appealed through a tribunal within MEIA or the lawyer can rewrite the trust agreement and resubmit it.

The BC Coalition of People with Disabilities has an Advocacy Access Program that assists people going through the appeal process. (See Appendix C1, pg. 78.)

3.8 How is a Trust Taxed?

A trust is treated as a separate taxpayer, and each year, the trustees must file a tax return on behalf of the trust. An ***Inter vivos* Trust** is taxed at the current top marginal rate of about 44% in B.C. (This tax rate changes from time to time.) If the beneficiary qualifies for the Federal **Disability Tax Credit (DTC)** (Form T2201), it is possible to transfer any income made by the trust directly to the beneficiary's personal income tax without actually paying it out of the trust. (For more information on the DTC, see Part 6, pg. 35, and Appendix B, pg. 74.) The beneficiary will pay income tax at a lower rate than the trust because the beneficiary's income is always lower. The ability to transfer trust income into personal income is called the **Preferred Beneficiary Election (PBE)**. It is wise to ensure that the trust agreement gives the trustees the power to use the preferred beneficiary election.

The trustees can decide on a yearly basis whether or not to use the PBE. When making this decision, the trustees need to consider the amount of tax paid versus the amount of disability benefit that will be deducted if the income exceeds the income exemption. (See section 2.2, "Asset Limit Exemptions," pg. 12.)

If the beneficiary is receiving PWD Benefits only, it is recommended that the beneficiary apply for the DTC every year, so that it can be used as needed. However, if the beneficiary is receiving Home Support through Continuing Care, be careful. Continuing Care treats income transferred from PBE as personal income. This means the beneficiary may end up paying, or paying more, for home support.

A **Testamentary Trust** is taxed on a graduated income tax rate, so the more income the trust makes, the higher the rate of tax. How much income the trust makes will determine if it is more beneficial for the trust or the beneficiary to pay the income tax.

Trust income can be generated from capital gains, dividend payments and/or interest. Trust assets which attract capital gains, such as real estate and company shares, are subject to a **deemed disposition date**, 21 years after the trust was created, and every 21 years after that. This means, on that date, all of the trust assets are deemed to be sold at fair market value and the trust has to pay income tax on any accrued capital gains. This date is for tax purposes only and the trust itself is not dissolved. The trustees should seek advice from a professional tax accountant who understands the tax implications of trusts.

The jurisdiction where the trust is taxed is based on where the majority of the trustees live, and where the assets and records of the trust are kept. For example, if a trustee resides in Alberta and keeps the trust's records there, then Alberta law governs the trust. This is why some people pick trustees in foreign jurisdictions like the Cayman Islands – to pay less income tax.

3.9 Can People Other than the Settlor Contribute to the Trust?

The terms of a trust can specify that people other than the settlor, such as family members, can contribute to the trust. However, in the case of a non-discretionary trust, people must be aware of the \$100,000 limit. The terms of the trust can also specify that the trustee cannot accept gifts that make the trust exceed this limit.

When considering contributing to a trust, people must be aware that *inter vivos* trusts are taxed at a much higher rate than testamentary trusts.

Having other people contribute to a testamentary trust is unwise and will likely have very negative income tax consequences.

3.10 Can I Set up a Trust for a Relative in Another Province?

You can set up or contribute to a trust for a relative in another province. However, the laws regarding trusts and disability benefits vary from province to province. You must find out what the laws are before creating or contributing to this trust.

Part 4: What Can a Trust Pay For?

Summary

Trust money can only be spent on certain items, which are listed below. There is an annual limit of \$5,484 that can be spent on **independent living**.

Money taken out of a trust is called a **disbursement**. It should be paid directly to the store, school, home support worker, etc. and NOT used to pay or reimburse the beneficiary. The Ministry of Employment and Income Assistance (MEIA) cannot make the beneficiary use her trust money to pay for items normally covered by MEIA. MEIA determines whether or not a trust complies with the ministry guidelines. Their decision can be appealed.

4.1 Items a Trust Can Pay For:

Money can be spent on the following items without a deduction to the beneficiary's monthly disability benefits. Money spent on items not listed below can be counted as income and deducted from the beneficiary's benefits.

- Medical aids or supplies
- Education or training
- Home renovations required to make the residence more accessible for the beneficiary
- Home maintenance and repairs
- Home support and caregiver services

There is no limit to the amount of money that can be spent on the above items.

- Independent living

There is an annual limit of **\$5,484** which can be spent on any goods or services that will help the beneficiary live more independently. One example of an item that **might** fall under this category is specially designed clothing that lets the beneficiary dress independently. MEIA makes the final decision as to what is allowable under each category.

If the trustees are unsure if an intended expenditure falls within the independent living category, they can check with MEIA before spending the trust money on it. However, the trustees, not MEIA, have the final say as to how the money in the trust is disbursed even if it means the money may be deducted from the beneficiary's disability benefits.

It is always preferable to try and fit a beneficiary's request into one of the categories where there is no spending limit. Any money spent over the \$5,484 limit will be deducted dollar for dollar from the beneficiary's benefits.

4.2 Payments From the Trust:

Any money taken out of the trust is called a **disbursement**. All disbursements for the items listed above must be made **directly from the trust**. The trustee should write a cheque to the store, etc. This creates a paper trail to prove where the money has gone. If the beneficiary spends her own money and then asks to be reimbursed from the trust, the money will be counted as income for the beneficiary and might be deducted from his benefits.

4.3 PWD Eligibility for Programs and Benefits:

MEIA cannot require the beneficiary to pay for items from his trust that are normally covered by MEIA. The trust is meant to pay for things that are not covered by the Ministry.

A person receiving PWD benefits can qualify for such items as:

- Dental coverage up to \$1000 every 2 years
- Glasses every 3 years
- Medical equipment and devices

- Prescription drugs
- Annual Bus Pass (\$45 per year)
- BC Ferry pass
- Leisure Access Card
- Guide Animal supplement
- Nutritional supplements

For a complete list see the PWD web site:

<http://www.eia.gov.bc.ca/PUBLICAT/VOL1/Part3/3-5.htm>

This link will take you to the Employment and Assistance for Person With Disabilities Act regulation which lists all the supplements.

<http://www.gov.bc.ca/eia/>

Ministry of Employment and Income Assistance main page

Part 5: Issues to Consider Before Setting up a Trust

Summary:

Trustees administer the trust and are chosen by the settlor or the beneficiary (if competent). They can be individuals, non-profit societies or trust companies. The advantages and disadvantages of each are listed below. Ensure the trust states the settlor or beneficiary has the power to remove or replace trustees. The settlor of a discretionary trust should write a letter to the trustees explaining his wishes so it can guide the trustees' decisions when he's no longer able to do it in person.

The trustees are empowered to make investment decisions, but are liable if they use their position for personal gain. Trustees can appoint a fund manager to make investment decisions on their behalf.

5.1 The *Trustee Act*:

The *Trustee Act* covers all the responsibilities, liabilities and investment powers of the trustees not directly specified in the trust agreement. Whether or not a trust can be changed once it is created depends on how the trust agreement is worded. It is extremely important that the settlor clearly states how he wants the trust to be administered. Otherwise, the trustees will be limited in their activities based on the *Trustee Act*.

A trust should be set up to be flexible so that trustees can make changes in how money is spent whenever laws and regulations change. For example, the rules about who can receive disability benefits, how much they receive and asset exemptions are set by the province and can be changed at any time.

5.2 Duties of a Trustee:

The duties of a trustee include:

- Exercising discretion in the release of funds when necessary

- Providing investment management of assets
- Coordinating any maintenance/repairs of real estate
- Preparing trust tax returns
- Maintaining records of the trust (See section 8.2 “Trust Record” pg. 43)
- Ensuring the beneficiary receives benefits as specified by the settlor’s wishes

5.3 Trustee Fees:

Trustees are paid a fee from the trust. The beneficiary or the court must approve the fee. The *Trustee Act* currently states that the maximum fees are:

- A flat, **one-time fee** of up to 5% of the value of the trust
- An **income fee** of up to 5% of the income collected per year
- A **trust management fee** of 0.4% of the capital of the trust per year

The fees that the trustees charge are determined by the amount of time, effort and skill that has been required of them while acting as trustees. (See Part 10 “Sample Trust Agreement” clause 5, pg. 63.)

5.4 Choosing a Person to be a Trustee:

- Decide whether to have two or more trustees working together (**Co-trustees**) or one trustee (**Sole trustee**) with a substitute (**Alternate trustee**) who can step in if the first becomes unable to continue their duties. It helps to have more than one trustee, especially if one of them lives far away from the beneficiary or becomes unable to continue carrying out the duties of a trustee. If a trustee dies, the remaining trustee is empowered to continue the duties.

(See 5.9 “Appointing New Trustees” pg. 32 and Part 10 “Sample Basic Trust Agreement” clauses 18 and 19, pg. 68) If there are two co-trustees and an alternate trustee, and one of the co-trustees dies or quits, usually the alternate steps in as a replacement and becomes a co-trustee.

- Do not choose a person to be a trustee who has a conflict of interest with the beneficiary. For example, be cautious about choosing a sibling of the beneficiary who will inherit the trust after the beneficiary dies.
- It is extremely important that the trustees are very well acquainted with the needs and the lifestyle of the beneficiary. It helps if the trustees have financial knowledge. However, under the *Trustee Act*, a trustee can also appoint agents to help in the financial administration of the trust.
- It is best if the trustees familiarize themselves with the *Employment and Assistance for Persons with Disabilities Act*.
- If possible, the beneficiary should have some say as to who is chosen as trustees.
- Choose people as trustees who are committed to fulfilling that role for a long period of time. They must understand that being a trustee will require a lot of time and effort.
- If there is more than one trustee, the trustees should get along with each other.
- It is advisable to have trustees who are likely to live longer than the beneficiary or the length of time the trust is needed.
- At least one of the trustees should live near the beneficiary so that he has easy access to the trustees.
- Do not choose a paid caregiver or home support worker as a trustee. Their job is to look after the beneficiary, it is not to administer or control his finances.

- In the case of a non-discretionary trust, the beneficiary can decide if he wants to be both the beneficiary and a trustee. However, there is a higher likelihood of MEIA rejecting the trust agreement if he is the sole trustee.

5.5 Choosing a Non-Profit Society to be a Trustee:

The Coast Foundation Society (see pg. 79) offers services as trustee or co-trustee for beneficiaries who have mental illnesses. The authors are not aware of any other non-profit that offers these services. The advantages and disadvantages are:

a) Advantages:

- They are specialists in Disability Benefit law.
- They are experts in advocating for the rights of people with disabilities.
- They are knowledgeable about alternate sources of funding.
- They provide a support network for people who do not have immediate family close by.
- They can pool the trusts into a common trust fund with people in similar situations and similar financial needs.

b) Disadvantages:

- Employees change. This situation may create problems due to lack of continuity and consistency in the relationship between the beneficiary and the trustee.
- They are more likely to limit payments that affect disability benefits.

A **common trust fund** is the pooling together of a number of smaller trusts to increase the rates of return and decrease the fees charged. A trustee, including a non-profit organization, may invest in a common trust fund managed by a trust company whether or not the trust

company is a co-trustee. The settlor can specify in the trust agreement whether or not he wants the trust to be pooled.

5.6 Choosing a Trust Company to be a Trustee:

The settlor may decide to have a trust company either as a co-trustee or as a sole trustee. The settlor should talk to several trust companies and find out information about their services, philosophy and fees and whether they would be willing to handle the trust. The advantages and disadvantages are:

a) Advantages:

- They are experts at managing money and keeping financial records. They can make financial decisions more quickly than someone who is not highly trained in financial investments.
- Trust companies are impartial and will not get involved in family arguments.

b) Disadvantages:

- Trust companies charge a variety of fees for the administration of a trust.
- Most trust companies will not handle small trusts (under \$200,000) because they will not make enough money on them. However, some will pool small trusts together into a common trust.
- Company employees change. This situation may create problems due to lack of continuity and consistency in the relationship between the beneficiary and the trustee.
- The Trust company may have little contact with the beneficiary and therefore be less attuned his specific needs.
- Trust companies are very careful about paying out money. Therefore, the beneficiary may have greater trouble having his needs looked after.

- It can be very difficult to remove a trust company as a trustee

If the settlor chooses to have a trust company as a trustee, it is a good idea to have another person (one who knows the beneficiary) as co-trustee. The trust company has expertise in investment whereas the other trustee can offer more personal attention to the beneficiary because the trustee knows his needs and lifestyle.

According to the law, a trust company that is co-trustee cannot use the money in the trust to invest in its own securities due to conflict of interest.

Many trust companies now prefer that a trust hire them as fund managers instead of as co-trustees.

5.7 Professional Fund Manager:

The *Trustee Act* allows the trustee to delegate financial management decisions to an agent such as a professional fund manager. The advantage of hiring a fund manager is that the trustees can access professional financial advice without having a trust company act as a co-trustee. The trustee is not held personally liable for decisions made by the agent so long as the trustee acted prudently in:

- Selecting the agent
- Establishing the terms and limits of the authority delegated
- Acquainting the agent with the investment objectives, and
- Monitoring the performance of the agent to ensure compliance with the terms of the delegation

5.8 Letter to Trustee in a Discretionary Trust

It is recommended that the settlor of a **discretionary trust** write a **letter** to the trustees accompanying the trust agreement about his values and priorities in administering the trust and how the money should be spent (see Appendix A, pg. 73).

- This letter explains the settlor's wishes when he is no longer able to do it in person.
- The trustees can look at the letter for guidance if there is any argument over a difficult decision.
- This letter can be used as evidence if there is any question about whether or not the trustees acted according to the trust's purposes.

This letter is just a guideline for the trustees. It is not legally binding. If there is a dispute or a discrepancy between the directions in the letter and the trust agreement, the trustees must follow the trust agreement.

5.9 Appointing New Trustees:

If the trust agreement does not specify how to remove or replace trustees, the *Trustee Act* comes into affect. It permits the surviving trustees or their representatives to appoint new trustees.

The settlor can place a clause within the trust agreement giving the settlor or the beneficiary (if he is competent) the power to remove or replace trustees.

5.10 What Types of Investments Can Trustees Make?

It is extremely important that the settlor decide what types of investments he wants for the trust, what investment powers the trustee will have, and to ensure that the trustee has a prudent investment strategy.

When creating a trust, the settlor must consider:

- The age, health and life expectancy of the beneficiary
- The types of investments that will best meet the beneficiary's short term and long term needs.

There are many ways to invest money. It is important to assess the risk, expected return, and the ease that the investments can be turned into cash.

- Some investments are better suited for long term growth but also have a greater level of risk, such as a combination of mutual funds and stocks
- Others are more easily cashable such as government bonds.
- Some are more secure, but have a fixed length of time, like a GIC, and there are penalties for cashing them in before they mature.

Usually a combination of all of the above is best and the settlor has to decide what combination is best suited for the needs of the beneficiary (see Part 10 "Sample Trust Agreement" clauses 24 and 25, pg. 69).

A clause must be written into the trust agreement that allows the trustees to purchase "**real property**." Without this clause, the trustees are able to sell property, but are unable to purchase a new principal residence for the beneficiary.

5.11 Immediate Beneficiary:

The **Immediate Beneficiary** is the person the trust was created for. The settlor should include a clause in the trust agreement stating that the priorities of the trustees are to look after the needs of the immediate beneficiary. Otherwise, the current trust law states that trustees must protect the money in the trust for the **Ultimate Beneficiary** (the person who will inherit the trust once the immediate beneficiary dies). It is the settlor's choice who the ultimate beneficiary will be (see Part 10, clause 11, pg. 65).

5.12 Liability of a Trustee:

A **Breach of trust** is a breach by a trustee of the terms of the trust agreement or the law of trusts. An example of a breach of trust is when a trustee redirects trust property for his own personal use.

The *Trustee Act* requires that the trustee act prudently while making investment decisions. The trustee's performance is judged on an overall portfolio strategy and not on an asset-to-asset basis. For example, if one stock significantly decreases in value, the trustee is not held personally liable as long as they have a prudent investment strategy in place. The court can decide, based on the evidence, whether or not the trustee acted in good faith by comprising a reasonable assessment of risk and return that a prudent business investor would adopt in comparable circumstances.

If the settlor or the beneficiary has strong moral or ethical beliefs about how and where to make financial investments, a clause must be included in the trust agreement stating that trustees are permitted to make moral or ethical investments decisions. Otherwise, without this clause, they will be in breach of trust if they obtain a lower level of return than if they only used economic considerations.

Part 6: Disability Tax Credits

Summary

This section focuses on how to use the **Disability Tax Credit (DTC)** to generate on-going funding for trusts. Many people receiving PWD benefits may be able to have extra money put into their trust every year through a DTC.

The DTC also enables the beneficiary to access the **Preferred Beneficiary Election (PBE)**. For information on the PBE, which lowers the amount of income tax that is due from a trust, refer to section 3.8, “How is a Trust taxed?” pg. 20.

If the person on PWD qualifies for the DTC, they can transfer the credit to a **supporting relative** if certain criteria are met. A supporting relative is someone who provides support or assistance to the person with a disability. When this relative receives the tax refund, she can then deposit it directly into the trust account. This does not take money away from the supporting relative because without the DTC, that relative would never receive this special tax refund in the first place.

If the beneficiary has not taken advantage of this technique from when they started paying income tax, benefit recoveries may go back as far as 10 years, as set out by the Canada Revenue Agency. This means that when the person with a disability qualifies for the DTC, they will receive annual payments beginning with that tax year, and may receive a single lump sum payment for past years.

People on PWD benefits do not make enough money to be able to use the DTC themselves. However, by transferring the DTC to a supporting relative with a higher income, they may benefit, financially, with the cooperation of that relative.

The person applying for the DTC should choose a supporting relative who (a) has a high enough income and (b) can be trusted to deposit the money into the trust on the beneficiary’s behalf. It is important to find a relative that can be trusted because the law says that once the DTC is transferred, the supporting relative is allowed to keep the money.

Tax law is complex. Because each situation is unique, the services of an accountant or tax consultant are needed to help the person with a disability:

- assess eligibility
- apply for the DTC, and
- transfer the credits to a supporting relative.

Every effort has been made to be as accurate as possible at the time of this writing. However, it is recommended to consult the Canada Revenue Agency website and its toll-free information line at 1-800-959-8281 (press the * key to go directly to a representative) for confirmation of rules and regulations, as these can change at any time.

6.1 Purpose of the DTC:

In general, the purpose of the DTC, according to the **Technical Advisory Committee on Tax Measures for Persons with Disabilities (TAC)** for 2003/2004 is as follows:

“The disability tax credit provides tax relief to individuals with severe impairments in function that restrict them in activities of daily living. It is also available to some who require extensive therapy to sustain a vital function. The credit is based on the assumption that these individuals likely incur a range of disability-related costs that they are not able to claim under the medical expense tax credit, such as expenses associated with transportation and housing.”

THIS MEANS: If a disability significantly limits a person’s daily living activities, or causes them to require life sustaining therapy (for example, dialysis) they **may** qualify for DTC.

“Individuals who do not benefit from the disability tax credit because of insufficient federal tax liability (due primarily to low income), but who are eligible on the basis of disability, may transfer all or part of the credit to a supporting person. This supporting person includes a spouse or common-law partner, or a parent, grandparent, child, grandchild, brother, sister, aunt, uncle, nephew or niece of the individual. If the supporting person

also has low income, that person may not benefit from such a transfer.”

THIS MEANS: If someone qualifies for the DTC but has no taxable income (and thus won't get the tax benefit from using it), she can transfer the DTC tax credits to a supporting relative who has taxable income (and therefore will get a refund by using the DTC).

6.2 Benefits of Applying for the DTC

There are two main trust-related benefits that come from applying for DTC. If a person qualifies for the DTC:

1. she can get money back from the government through her supporting relative, which can be put into her trust.
2. she can use the Preferred Beneficiary Election (See section 3.8, “How is a Trust Taxed?” pg. 20 for more info on the PBE).

6.3 DTC Eligibility:

Those people who want to apply for the DTC must fill out a brief questionnaire to determine their potential eligibility. A sample questionnaire is included in Appendix B, page 74. This questionnaire may change from time to time, so contact the Canada Revenue Agency for the most up-to-date information.

6.4 Why Few People apply for DTC Certification:

Many tax professionals estimate over a million Canadians that would meet eligibility requirements for the DTC are not certified. You could be one of them.

There are many reasons why so few people with disabilities have DTC Certification on file. The test for DTC certification is extremely specific and rigorous. The process to qualify is made harder by administrative issues, complicated rules and lengthy and complex application forms, costs associated with applying, and lack of awareness of the value of the benefits and their potential transferability.

Also, doctors and other healthcare professionals often have little or no training in completing the necessary forms, and therefore are not aware of how to communicate effectively the key factors for the CRA assessors. The costs of completing the DTC certificate are not covered by the Medical Services Plan (MSP), and because people who are receiving PWD benefits have low incomes, the \$100 to \$300 fee charged by doctors can be too high. However, some doctors will fill out the form for free.

It is important to meet with a tax consultant, accountant, or disability/tax lawyer to find out whether or not you qualify and to get help filling out the forms for DTC Certification.

6.5 DTC transferred to a Supporting Relative:

The applicant can transfer her DTC to a supporting relative. The supporting relative does not need to be living with the applicant. In order to qualify as the supporting relative, this person must meet criteria as outlined by the CRA's website or the General Income Tax Guide. **Bulletin IT513-R** describes the criteria, and some of the key excerpts from the form are below, in bold text:

25. For the purposes of the dependant tax credit, under subsection 118(6), a person qualifies as a "dependant" of an individual for a taxation year if the person is dependent on the individual for support at any time in the year and is:

- **the child (see Appendix A of the Tax Guide) or grandchild of the individual or the individual's spouse; or**
- **resident in Canada at any time in the year and is the parent, grandparent, brother, sister, uncle, aunt, niece or nephew of the individual or of the individual's spouse.**

In general terms, **support** involves the provision of the basic necessities of life such as food, shelter, and clothing. Shelter is not currently defined within the *Income Tax Act*. Therefore, it may include such things as providing transportation (so you can buy necessities or access medical or other services), assistance with home repairs, and things like this that would not be accessible physically or affordably by the person with the disability. The person with the disability must directly benefit from the support being given by the supporting relative.

Special rules apply for married couples and where there are support payments related to a separation or divorce. As in all cases, consulting a professional about these special rules is wise.

When the disability tax credits can be transferred, they are received by the supporting relative.

Benefit recoveries may go back several years for those that qualify, with a maximum set by the CRA at 10 years.

Detailed references for these benefits and their value are noted in the **publication RC4064** and other CRA resources listed in Appendix B.7 at the end of this book.

Part 7: When a Beneficiary turns 65

When the beneficiary turns 65 he will stop receiving PWD Benefits. He will begin receiving Old Age Security (OAS) and, if he has worked in the past, Canada Pension Plan (CPP). Additional income will not be deducted from OAS or CPP. This means that a Disability Trust is no longer needed for the purposes of receiving PWD Benefits. If both the immediate and the ultimate beneficiaries agree, the trust can be **collapsed**. This means the trust agreement ends, the trustees are released, and the money can be spent as the beneficiary sees fit.

If the beneficiary is unable to make his own spending decisions, the trustees have no ability to collapse the trust. However, they no longer have to submit financial reports to MIEA. All beneficiaries must have full mental capacity and be over the age of 19 in order to collapse the trust.

Part 8: Steps to Creating and Administering a Trust

Summary

There are a series of steps that the settlor must follow to create a trust agreement. Trustees must keep a detailed record and submit a regular financial report to the Ministry of Employment and Income Assistance (MEIA) outlining all the financial activities of the trust. A sample of how to record the financial activities is on page 47. If MEIA rules that disbursements from the trust have been spent on non-exempt items, their decision can be appealed.

8.1 List of Steps:

1. Complete the Pre-Trust Questionnaire (see Part 9, pg. 49).
2. The settlor should create a list of things she wishes to discuss with her lawyer, and in the case of a discretionary trust, bring a copy of the letter she wrote for the trustees about the purposes of the trust (see Appendix A, pg. 73). The settlor must be clear about the intended purposes of the trust so that her lawyer can ensure that the trust will serve those purposes. Whether or not a trust can be changed once it has been created depends on how the trust agreement is worded.
3. The settlor should then arrange to have the trust document prepared by her lawyer. The trust must be in writing so that you can prove to the Ministry a trust exists, and that the money or other assets are in the trust.
4. Be sure that the people named as trustees want to be trustees.
5. The settlor should meet with the trustees and at least one other person who will be the witness. In a **non-discretionary trust** where the settlor is the beneficiary, a nominal fee, such as \$5.00, is required to initially create the trust. Once the trust is created, all future assets can be transferred directly into the trust. It is extremely important that the beneficiary never

directly receives the assets (see Part 10 “Sample Trust Agreement” clause A, pg 62). Make sure that the definition of **settled property** in the Trust Agreement says \$5.00. In a **discretionary trust**, the settlor simply settles the trust with her assets for the beneficiary. The definition of settled property in this case would be the total amount the settlor is initially depositing into the trust.

At the meeting the settlor must follow these steps:

- a) The settlor gives the \$5.00 bill to the trustees (to “settle” the trust)
 - b) Everybody signs two original trust documents:
 - i. The settlor must sign both documents as “Settlor”
 - ii. The trustees each sign both documents
 - iii. The witness signs each document three times as witnesses to the settlor’s signature and the signatures of the two trustees
 - iv. Everybody initials all of the pages of both documents (except the last page that the settlor has already signed)
 - c) The trustees staple the \$5.00 bill to one of the original trust documents which the trustees keep
 - d) The settlor keeps the other copy of the trust document (the one without the \$5.00 bill)
6. Make four photocopies of the trust document:
- a) Copy to open bank account
 - b) Copy for accountant doing income tax returns
 - c) Copy for the Employment and Assistance Worker
 - d) Extra copy-just in case
7. The trustees open a bank account at any bank, trust company, or credit union. The bank account should be opened with the trust’s name (e.g. “The Joe Smith Trust”). The

signing authorities for the trust should be the trustees and not the beneficiary (unless the beneficiary is also a trustee)

8. If the settlor is putting money into the trust, she gives a cheque to the trustees for the money that she wants added to the trust. If the money for the trust is coming from somewhere else like an estate, ICBC, or another person, the settlor must tell that person to give the cheque directly to the trustee. The cheque should be payable to the name of the trust (i.e. "the Joe Smith Trust") and not to the beneficiary.
9. The trustees deposit that cheque into the account and then decide whether any of the money should be invested somewhere else: for example, in a term deposit or GIC. All securities must be registered under the trustees' names and not under the beneficiary or the settlor's name.
10. The trustees should have a ring binder or file so they can keep a diary and record all activities of the trust. The trustees should write down:
 - a) All the decisions the trustees make
 - b) Any instructions
 - c) Any money that comes into the trust or is paid out of the trust.

It is very important to keep a copy of each resolution that is made by the trustees. The trustees must write down each decision they make and file them in the ring binder (see Section 8.2 "Trust Record" pg. 43).

11. Make a reminder note about the need to file income tax returns for the trust each year (see "Checklist of Deadlines" pg. 44).
12. The trustee must decide each year if income earned by the trust will be attributed to the beneficiary and included in her personal income tax return or the trust's income tax return (see Section 3.8 "How is a Trust Taxed?" pg. 20).

13. The trustees must regularly review the regulations under the Employment and Assistance for Persons with Disabilities Act before making any payments to the beneficiary.
14. The beneficiary must advise her Employment and Assistance Worker (EAW) of the creation of the trust. The worker must send a copy to Legislation and Legal Services Branch in Victoria to make sure the trust complies with MEIA's policies.

8.2 Trust Record:

The trustees must keep a record of all activity related to the trust. Not only will it keep the trustees organized, it will also provide evidence that the trust is well managed in case the administration of the trust is called into question.

The trustees should keep a ring binder or file to hold:

- A copy of this checklist
- Original signed trust document (the one with the \$5.00 stapled to it)
- Copies of any cheques or descriptions of any property given to the trust
- Copies of receipts for expenditures, deposit receipts and proof of all disbursements
- List of trustees' names and addresses
- Minutes of trustees' meetings and copies of resolutions including:
 - a) Any resolutions regarding paying income or capital to the beneficiary
 - b) Any resolutions regarding any unused income in any year; for example, if it is going to be reinvested or paid to the beneficiary

- c) Any resolutions regarding the payment of bills relating to the trust such as legal fees or accounting fees
- Copies of T3 trust asset forms and income tax returns
- Copy of the regulation for the Employment and Assistance for Persons with Disabilities Act
- **Checklist of Deadlines:**
 - a) **Fiscal Year End:** For an *inter vivos* trust; it is December 31. For a testamentary trust, the trustees can decide on any fiscal year end.
 - b) **Annual Report to the Ministry of Employment and Income Assistance:** At least once a year, the trustees must submit a report to MEIA about all financial activities of the trust. MEIA will review the report to ensure that all regulations are being followed regarding exempt income. The fiscal year end is a good time for this. MEIA may request more frequent reports (see section 8.3, pg. 45-46).
 - c) **Preferred Beneficiary Income Tax Filing:** For an *inter vivos* trust, it is March 31 (March 30 in a leap year). For a testamentary trust, it is 90 days after the fiscal year end.
 - d) **Trust Income Tax Filing:** For an *inter vivos* trust, it is March 31 (March 30 in a leap year). For a testamentary trust, it is 90 days after the fiscal year end.
 - e) **Information Slip Filings:** such as NR4, T4 etc. are due February 28 (February 29 in a leap year).
 - f) **The 18th Anniversary** of the trust is a good time to review the ongoing administration of the trust with respect to the upcoming 21 year deemed disposition. If there are investments making a high rate of return, it is a good idea to start possibly cashing in shares to reduce the accrued capital gains, which will be taxed on the 21st year of the trust.

- g) **21 year Deemed Disposition Date:** For most trusts, trust assets are subject to deemed disposition 21 years after the trust was created, and every 21 years after that (see Section 3.8 “How is a Trust Taxed?” pg. 20).

8.3 How to Report the Financial Activity of the Trust to the Ministry of Employment and Income Assistance

MEIA can ask for a financial activity report at any time. The ministry must be informed about how the trust money is spent so they can decide if the disbursements should be considered exempt income (see Part 4 “What can a Trust Pay For?” pg. 23). Send the financial report to the beneficiary’s local MEIA office.

To find the local office, do one of the following:

- look in the phone book under ‘Employment and Income Assistance,’ in the provincial government section of the Blue Pages
- phone “Enquiry BC” at 604-660-2421 (within the Greater Vancouver Regional District) or 1-800-663-7867 (toll-free) and state what area the beneficiary resides in
- email: EnquiryBC@gems3.gov.bc.ca

Periodically, the ministry needs the following information about the trust:

- how much money was disbursed from the trust
- what this money was used for
- any new capital contributions

The ministry is looking for proof that:

- disbursements are not given directly to the beneficiary
- the money is being spent on income exempt items

- all the ministry guidelines are being followed
- the beneficiary still qualifies for benefits

A good way to report the financial activity within the trust is to use the following table (facing page). This table shows when disbursements were made, what they were spent on, and what deposits were made.

Column A	Column B	Column C	Column D	Column E	Column F
Date	Capital	Disburse- ment	Expend- iture	Explanation Of Expenditure or Deposit	Trust Balance
Capital of the Trust on the date it was created (settled property)					\$35,000
Aug 17, 2007		(\$500)	\$500	Attendant services	\$34,500
Aug 22, 2007		(\$500)	\$500	Education/ Tuition Fees	\$34,000
Oct 15, 2007		(\$300)	\$300	Home Repair	\$33,700
Dec 1, 2007	\$500			Inheritance from Aunt Rose Smith	\$34,200
Total Disbursements		(\$1,300)			
Total Expenditures			\$1,300		
Total Deposits	\$500				

Column A: date: the date of the disbursement or deposit

Column B: capital: the amount of money deposited into the trust

Column C: disbursement: the amount of money taken out of the trust

Column D: expenditure: the amount that was spent on a disability related cost

Column E: explanation: a description of how money was spent or where money for the deposit came from

Column F: balance: the amount of money left in the trust after each deposit or disbursement

When the trustees give this table to the ministry they must include proof for all disbursements, receipts for expenditures, deposit receipts and proof of the balance in the trust account from the bank. Any money that is spent on items other than the MEIA list of allowable trust expenses could be deducted dollar for dollar from the beneficiary's disability benefits cheque.

Please Note: the amount of "Disbursements" (Column C) and "Expenditures" (Column D) must be the same for the disbursements to be exempt. All money taken out of the trust (Column C) must be spent on disability related costs (Column D). Any amount not spent on these costs might be deducted from the beneficiary's disability cheque.

8.4 Can Decisions Made by the Ministry of Employment and Income Assistance be Appealed?

MEIA may decide that some of the disbursements were not spent on exempt disability-related items. Such decisions made by MEIA which adversely affects the beneficiary's eligibility for benefits can be appealed. A well maintained Trust Record containing all trust receipts will provide important evidence in the appeal process. The BC Coalition of People with Disabilities has an Advocacy Access Program that assists people going through the appeal process (see Appendix C1, pg. 78).

Please note: the ink on most receipts will fade over a short time and become illegible. **Photocopy the receipts** and staple the originals to the photocopies. Write the following information **in pen** on the original receipt: date of receipt, item or service purchased, total amount spent.

Part 9: Pre-Trust Questionnaire

This questionnaire is intended for a settlor who wants to create a trust. The settlor can be creating a trust for himself or someone else. It will help you (the settlor) and your lawyer to be clear about what you want included in the trust agreement.

When a settlor meets with a lawyer there are many things that must be discussed, such as who will be trustees, the type of trust that he wishes to create, what powers the trustees will have, etc. When the beneficiary is also the settlor, the lawyer must be aware of all of the beneficiary's financial information in order to protect her money and disability benefits. These discussions can be time consuming and lawyers often charge fees for consultations. It will save you time and money if you fill out this questionnaire before you see a lawyer.

Please make note of any additional information concerning you, your family, and/or assets and liabilities that might be helpful for your lawyer to know about.

Questionnaire

Date: _____

1. Full name

2. Home Address

3. Birth Date

4. I have a will: Yes ☐ No ☐

5. I need a will: Yes ☐ No ☐

6. I want to create a **discretionary** trust for:

a. _____ who is my _____ ☐
(Name) (Daughter, son, spouse, friend, etc.)

b. myself ☐

and / or

I want to create a **non-discretionary** trust for:

c. _____ who is my _____ ☐
(Name) (Daughter, son, spouse, friend, etc.)

d. myself ☐

If you are creating a trust for someone else please skip ahead to “Terms of My Trust” on page 57.

7. I am working: Full-time ☐

Part-time ☐

As a volunteer ☐

8. My job is: _____

9. I get paid \$_____

10. I am receiving money from the government: Yes ☐ No ☐

11. I started getting money from the government at age: _____

12. Every month I get \$_____ in benefits

13. My government money comes from:

a. B.C Disability benefits (PWD) ☐ \$ _____

b. CPP Disability pension ☐ \$ _____

c. ICBC settlement payments ☐ \$ _____

d. Other: _____ ☐ \$ _____

14. My disability is: _____

15. My doctor is:

(Name)	(Phone #)
--------	-----------

(Address)

16. I have a completed list of assets: Yes ☐ No ☐

17. My total assets are worth \$_____

18. My closest relatives are:

Family Member No. 1:

(Name)

(Address)

Relationship: _____

Age: _____

Family Member No. 2:

(Name)

(Address)

Relationship: _____

Age: _____

Reasons for the Trust:

19. I want to set up a trust now because I am receiving money:

a) \$_____ from an inheritance from my _____

and:

☐ he/she is still alive, or

☐ he/she died on _____

(Date)

and the executor is:

(Name)

(Address)

b) \$ _____ from an accident settlement from:

- i. ICBC ☐
- ii. Another insurance company ☐
- iii. Someone else ☐ _____
- iv. I think the money will be paid to me on: _____
(Date)

c) \$ _____ from a court settlement for:

(Reason)

The money is:

- i. Still in court ☐
- ii. Somewhere else ☐
- iii. Already in my account ☐
- iv. Other ☐ _____

d) \$ _____ from another source _____
(Details)

20. I expect my trust fund will have a total of \$ _____

21. I want to set up a trust now because:

- a) I want to keep my government benefits: ☐
- b) I want to get government benefits again: ☐

c) I want to start getting government benefits: ☐

My Assets:

Bank Accounts:

22. I have \$_____ in account(s) at:

(Name of first bank, trust company or credit union)

I have \$_____ in account(s) at:

(Name of second bank, trust company or credit union)

Investments:

23. I have \$_____ other money or investments at:

(Name of financial institution)

24. I have an RRSP worth \$_____ at:

(Name of financial institution)

Real Estate:

25. I own my own home: Yes ☐ No ☐

If **yes**:

I bought or inherited my home on _____
(Date)

My home is worth: \$_____

My mortgage balance is: \$ _____

I live in my home with:

(Name)

(Relationship)

(Name)

(Relationship)

26. My name is on other real estate, e.g.: parents' home.

Yes ☐ No ☐

Details: _____

Life Insurance:

27. I have life insurance with:

(Name of insurance company)

\$ _____
(Amount)

Personal Effects and Other Assets:

28. Besides the “usual” furniture, clothes and household items I also own:

(List all the things of value to you that you own, i.e. car, computer, expensive tools, etc.)

_____	_____
(Item)	(Value)
_____	_____
(Item)	(Value)
_____	_____
(Item)	(Value)

Outside British Columbia:

29. I own property and/or assets outside of British Columbia:

Yes ☐ No ☐

This is worth: \$ _____

Total:

30. My total assets are worth \$ _____
(Add items #22 through #29)

Debts:

31. I owe \$ _____ to _____
(Amount) (Name of creditor)

32. I owe \$ _____ to _____
(Amount) (Name of creditor)

Terms of My Trust:

33. I would like to have these people as the trustees of my trust:

Trustee #1: Sole Trustee: ☐ Co-trustee: ☐ Alternate: ☐

(Name)

(Address)

(Occupation)

(Relationship)

Trustee #2: Sole Trustee: ☐ Co-trustee: ☐ Alternate: ☐

(Name)

(Address)

(Occupation)

(Relationship)

Trustee #3: Sole Trustee: ☐ Co-trustee: ☐ Alternate: ☐

(Name)

(Address)

(Occupation)

(Relationship)

Beneficiaries:

34. The immediate beneficiary will be: _____
(Name from item # 6, pg. 50)

35. I would like the immediate beneficiary to be the only person
who can benefit from the money in the trust during his lifetime:

Yes ☐ No ☐

36. When the beneficiary dies, the remaining trust assets will go to
the ultimate beneficiary named below:

a) ☐ Wife/husband and children: _____
(Names)

b) ☐ Grandchildren: _____
(Names)

c) ☐ Mother/Father: _____
(Names)

d) ☐ Brothers and Sisters: _____
(Names)

e) ☐ Other relatives _____
(Names)

f) ☐ Charity _____
(Name)

g) ☐ Other _____
(Name or Organization)

Other Terms of the Trust:

37. When my trustees invest in my trust, I want them to be restricted to investments like bank accounts, term deposits, G.I.C.'s and Canada Savings Bonds:

Yes ☐ No ☐

or:

38. I want my trustees to have unrestricted powers so they can invest in whatever they think is a good investment:

Yes ☐ No ☐

39. I want my trustees to be able to buy real estate:

Yes ☐ No ☐

40. I want to be able to use the trust as collateral to buy a house:

Yes ☐ No ☐

41. I want my trustee to be able to make complicated business deals like investing in private companies or carrying on a business.

Yes ☐ No ☐

42. I want my trustees to make investments using particular ethical criteria:

Yes ☐ No ☐

If **yes**, the ethical criteria are:

43. I want my trustees to be able to pool trust assets into a common trust fund:

Yes ☐ No ☐

44. In the future, I want to be able to change the trustees of my trust:

Yes ☐ No ☐

45. I want to give my trustees the power to use the Preferred Beneficiary Election:

Yes ☐ No ☐

Part 10: Sample Trust Agreement

The following trust agreement is meant simply to familiarize the reader with the type of language commonly used when making trust agreements. There are differences between discretionary and non-discretionary trust clauses. Included in this agreement are the most common clauses for each type. Trust agreements are customized to best meet the needs of the beneficiary. Therefore, trust agreements will vary. Notes and extra information for the reader, which would not appear in the agreement, are included in bold text within parenthesis.

This Trust Agreement dated this (date) day of (month) of (year)
BETWEEN:

Name, address
(called the "Settlor")

OF THE FIRST PART

AND:

Name, address and Name, address
(called the "Trustees")

**OF THE SECOND
PART**

Interpretation and Definitions:

In the Trust Agreement:

- a) **"Agreement"** means the Trust agreement
- b) **"Beneficiary"** means the person who the trust is set up for
- c) **"Discretion"** means being able to make prudent decisions within the boundaries of the law
- d) **"Settled Property"** means the amount of money deposited by the Settlor to create the trust
- e) **"Trust"** means the trust created by this Trust Agreement

f) **“Trustee” or “Trustees”** means the people who are in charge of administering this Trust Agreement and includes the Original Trustees and any trustee or trustees who replace the Original Trustees

g) **“Trust Fund”** means:

- i. the Settled Property and any property that may be substituted for it at any time
- ii. all property which may be paid or given or appointed to the Trustees, together with all income the Trust Fund earns and additions to the capital but does not include any amounts which have been paid or distributed under this Trust Agreement

Words in one gender include all genders and words in the singular include the plural and vice versa, as context requires.

WHEREAS:

- A. The Settlor wishes to establish a Trust for the benefit of the Beneficiary, known as “(Name of Beneficiary) Trust,” composed of \$***** settled property and such other assets as may be assigned in the Trust in the future,

(See Section 8.1 “List of Steps” pg. 40 regarding settled property)

- B. The Trustees are willing to act as the Trustees of that Trust for the benefit of the Beneficiary,
- C. The Beneficiary is disabled and the disability will continue for the rest of his life,
- D. British Columbia provincial legislation provides for special consideration of some certain persons who are disabled where money is held in trust for them, and the Beneficiary is a person so entitled.

This agreement is governed by and interpreted according to British Columbia law and applicable Canadian law and will be treated in all respects as a B.C. Trust Agreement.

THIS AGREEMENT WITNESSES that in consideration of the agreements set out below, the parties agree as follows:

1. The Settlor gives to the Trustees, for the exclusive benefit of the Beneficiary, the sum of \$*****
2. ***** and ***** each agrees to act as one of the Trustees.
3. The Trustees each agree to help administer the Trust and all investments and reinvestments of the Trust assets and agree to help maintain the Trust for the benefit of the Beneficiary.
4. Any person, corporation or trust may add any real or personal property to the Trust by delivery, conveyance, bequest or by causing the proceeds to be payable to the Trustees.

(In a non-discretionary trust agreement, the settlor may not want the trust fund to accept additional gifts because these gifts may cause the trust to exceed the \$100,000 limit and thus disqualify the beneficiary from disability benefits.)

5. The Trustees (or any successor) shall be entitled to reasonable compensation in accordance with fee schedules from time to time agreed between the Trustees (or successor) and the Beneficiary, which is to include all out-of-pocket expenses plus reasonable compensation for Trustees' services as Trustees.
6. The Trustees agree to exercise their powers in the best interests of the Beneficiary. The Trustees are not required to consider more remote interests in exercising such powers.

(Clauses 1 and 6 together mean that the trustees are to only focus on the needs and interests of the beneficiary, during his lifetime.)

TRUST PAYMENTS

7. The Trustees shall pay to or expend for the benefit of the Beneficiary such part of the income and principal of this Trust as may be required or desirable to meet the following needs, being the cost of providing the Beneficiary with the following:
 - a. Devices, or medical aids, related to the Beneficiary's health or well being;
 - b. Caregiver services or other services related to the Beneficiary's disability;
 - c. Education or training;
 - d. Necessary maintenance for the Beneficiary's principal residence;
 - e. Renovations to the Beneficiary's principal residence to accommodate the person's disability;
 - f. Expenses up to the current year's legislative limit of \$5,484 or other amount established by the regulations, that promote the Beneficiary's independence;
 - g. Any other item for which the expenditure is not considered "income" under the Employment and Assistance for Persons with Disabilities Act, or any other applicable statute or regulation under which the Beneficiary is receiving benefits.

(Clause 7f states that expenses for independent living have a maximum limit per year of whatever the law allows for this category. The current limit is \$5,484. It is important that the agreement be flexible because this limit can change from time to time.)

8. No payments may be made from the Trust until the Beneficiary has first utilized, until exhausted, all other income and resources available to the Beneficiary from all sources other than this Trust known to the Trustees, except exempt assets, but including, without limitation, benefits, payments, programs, services and funds provided, administered, sponsored, or paid for by or on behalf of any governmental (federal, provincial or municipal) agency.

(Clause 8 ensures that the Ministry of Employment and Income Assistance cannot force a trustee to pay for something that would otherwise be covered by PWD benefits. This clause is especially important if the trust fund is small. However, it limits the trustees' ability to make payments. It is up to the settlor to weigh the pros and cons of this clause. See section 4.3 "PWD Eligibility for Programs and Benefits" pg. 24.)

9. A payment may be delayed or not made at all if making that payment would result in the loss of government benefits.

(Clauses 7g and 9 limit payments for disability related costs only so that the beneficiary can continue to qualify for disability benefits. However, there may be circumstances when the beneficiary requests payments for items that are not disability related. Therefore, in a non-discretionary trust, you may choose to replace these clauses with one that states "anything else the beneficiary directs," even if this means the beneficiary loses disability benefits for a month.)

ADDITIONAL PAYMENTS (Discretionary Trust Only)

10. In addition to the payments made as described above, the Trustee shall pay to or expend for the benefit of the Beneficiary such part, all or none of the net income and principal of this Trust as the Trustee, in its absolute discretion, determines to be in the Beneficiary's best interests.
11. The power to make the Optional payments shall be exercised for the Beneficiary without regard to more remote interests.

(The term "remote interests" refers to anyone who will eventually have a claim over the trust assets after the immediate beneficiary dies. Clause 11 means that the trustees must look after the needs of the immediate beneficiary and not worry about protecting the money for the ultimate beneficiary. See section 5.11 "Immediate Beneficiary" pg. 33.)

12. The power to make Optional payments of income or principal shall be exercised by the Trustee after considering the following suggested guidelines, so that the trust money may be used to provide for the Beneficiary's:
 - a. Health (including without limitation, medical, dental, nursing, rehabilitation, psychiatric and psychological care),
 - b. Support,
 - c. Education (including special, vocational, or habilitating education),
 - d. Welfare and comfort,
 - e. To attend a wedding or funeral or other similar event or vacation,
 - f. To strengthen, enrich and gladden the Beneficiary's life, including: trips away from the Beneficiary's residence, persons to accompany the Beneficiary on such trips, clothing, recreation, entertainment, hobbies and "treats,"
 - g. And generally to promote the Beneficiary's independence, but only after first utilizing, until exhausted, all income and other resources available to the beneficiary for such purposes from all sources other than this trust.

EXERCISE OF TRUSTEES' POWERS - PUBLIC RESOURCES

13. As it is intended to assure initial and continued availability to the Beneficiary of all governmental payments, funds, programs, services, and facilities ("public resources") available to the Beneficiary, the Trustee is directed to exercise his powers to distribute the Trust money to supplement, exceed and extend, but not supplant, "public resources" by providing only such health, support, education, welfare and comfort as is unavailable from "public resources."
14. It is the overriding intent of this agreement to give the Trustee the discretion and obligation to make such payment of income and principal as will be in excess of, or in addition to, those

provided by “public resources” but in no respect shall such expenditures replace or duplicate “public resources.”

(Clauses 12g, 13, and 14 encourage the trustee to maximize the benefits from other sources available to the beneficiary even though doing this means limiting payments from the trust to the beneficiary.)

15. The Trustee shall have no power to pay, or apply Trust assets to pay, or reimburse any governmental agency or provider of “public resources.”

16. In the event, and to the extent:

- a. Any governmental agency, payor, sponsor, or provider determines administratively, or a court shall determine, that provisions of this trust are ineffective or are to be disregarded for purposes of determining the Beneficiary’s eligibility for statutorily provided “public resources” or
- b. A court or administrative tribunal shall determine, notwithstanding provisions set out above, that this Trust is or may be subject to garnishment, attachment, levy, execution, or bankruptcy proceedings instituted by any creditor against the Beneficiary, then,
- c. The Trustee may appeal that administrative or judicial determination.

(Clause 16 states that the trustee can appeal any ruling that either overrides the provisions of the trust protecting the beneficiary’s eligibility for public resources or overrides the provisions protecting the trust from payment of any debts.)

GENERAL AND ADMINISTRATION

17. Payments of Trust money may be made in person to the Beneficiary or deposited in any bank account in the Beneficiary's name or be paid directly to a third party for the benefit of the Beneficiary.

(It is not recommended that the beneficiary receive payments directly from the trust because it could adversely affect his benefits. However, clause 17 is in the agreement to allow for greater flexibility in exceptional cases where the beneficiary may require money.)

18. Should **** become unable to act as Trustee **** shall be the sole Trustee of this Trust.
19. Should ***** wish to resign, refuse or become unable to act, ***** may, with the approval and consent of the Beneficiary, appoint a successor Trustee to act in his place, and failing agreement a successor Trustee shall be appointed by the Supreme Court of British Columbia.

(In a non-discretionary trust, the settlor may want to give the beneficiary the power to call on any trustee to resign. See Section 5.9 "Appointing New Trustees" pg. 32.)

20. Should the Beneficiary die, after paying the Beneficiary's funeral and testamentary expenses, the remaining assets of the Trust shall form a part of the Beneficiary's estate.
21. No interest of the Beneficiary shall be subject to assignment, alienation, pledge, encumbrance, sale, gift, transfer or other disposition in anticipation of payment prior to actual distribution, either by the voluntary or involuntary act of the Beneficiary or by operation of law, nor shall any such interest be liable for or subject to any debt, contract, obligation, claim or liability, in contract or tort, legal or equitable, of the Beneficiary by reason of bankruptcy, insolvency, or otherwise subject to the Beneficiary's debts or in any way be subject to attachment, garnishment, levy, execution, seizure under claim of creditor or other legal process.

(Clause 21 states that the beneficiary cannot use the trust as collateral or give it away as a gift. The trust is also not liable for any debts or financial obligations incurred by the beneficiary.)

22. The Trustee may combine the separate trust accounts administered under this and other similar trust agreements with each other for the purposes of commingled investment and administration of the combined trust accounts, and the Trustee shall allocate all trust receipts and disbursements among the combined trust accounts proportionately.

(Clause 22 is an example of a Common Trust Fund clause. See Section 5.5 “Choosing a Non-Profit Society to be a Trustee” pg. 29.)

23. The Trustee shall allocate receipts and expenses of the trust first to income and then to principal. If the net income from the trust is not spent in any year, the amount not spent is to be added to the principal.

(In the case of a non-discretionary trust it is strongly recommended to spend ALL of the income so as not to exceed the \$100,000 lifetime capital amount)

24. The Trustees are expected to invest trust property as would a prudent investor in a manner best suited to the requirements of the trust for income and capital growth at no more than a reasonable level of risk. The Trustees' performance should be assessed on a portfolio-wide basis, with the test being whether the overall investment strategy was prudent.
25. The Trustees are permitted to access professional fund management as other prudent investors do.
26. The Trustees are permitted to delegate authority to the professional fund managers where this reflects only common business sense and ordinary prudence. The Trustees who delegate authority must exercise prudence in selecting the agent, define clearly the scope of the authority to be delegated, and supervise the agent in a reasonable manner. The Trustees will have final responsibility for properly supervising the agent's exercise of limited discretionary power.

(Clause 25 and 26 give the trustee the power to seek professional investment advice and to delegate decision making to an agent. However, the trustees are still responsible for ensuring that the funds are properly invested. See Section 5.7 “Professional Fund Manager” pg. 31.)

27. The Trustees have the power to use modern technology to enhance their investment capabilities, including e-mail, facsimile transmissions and investing online.

(Clause 27 allows the trustees to invest electronically rather than manually.)

28. A statement showing all receipts and disbursements and the property comprising each trust shall be given at least annually to the Beneficiary.
29. Unless otherwise provided in the instrument:
- a. The legal title to all property of this Trust shall remain vested in the Trustee from time to time without any act of conveyance or transfer to, by or from any succeeding or retiring Trustee;
 - b. All of the rights, powers and authorities, discretionary or otherwise, granted to the original Trustee shall descend to any successor Trustee;
 - c. No Trustee shall be required to give any bond or security or to render any periodic court accounting;
 - d. Provided the Trustee acts in good faith, the Settlor and the Settlor's Estate agree to indemnify and save harmless the Trustee from and against any and all claims, demands, liabilities and causes of action howsoever arising claimed against the Trustee by reason of the Trustee administering the Trust fund. Included in this indemnification shall be any claims for loss arising from the investment decisions of the Trustees. The Settlor and the Settlor's Estate further agree to pay the costs, including legal costs, incurred by the Trustee in defending itself against such claims, demands or causes of action. The Trustee shall be entitled to use the assets of the Trust Fund in settlement of any such claim or to cover the Trustee's costs in defending the claim;

- e. All words denoting number and gender shall be construed to denote the proper number and gender applicable to the Trustee with respect to the power or duty involved;
- f. No person dealing with the Trustee shall be obliged to inquire into the Trustee's powers or to see to application of any money or property delivered to the Trustees; and
- g. A successor Trustee may accept the account rendered and the trust property delivered by the predecessor Trustee without review or liability.
- h. This Agreement shall be construed, regulated and determined by the laws of British Columbia.

SIGNED, SEALED & DELIVERED

By **(name)** as settlor on <date> in the presence of:

(Signature of Witness)

(Print name of Witness)

(Settlor's signature)

(Address of Witness)

(Occupation of Witness)

SIGNED AND DELIVERED by
(Trustee #1 name) as an
Original Trustee on <date>
In the presence of:

(Signature of Witness)

(Print name of Witness)

(Trustee #1 signature)

(Address of Witness)

(Occupation of Witness)

SIGNED AND DELIVERED by
(**Trustee #2 name**) as an
Original Trustee on <date>
In the presence of:

(Signature of Witness)

(Print name of Witness)

(**Trustee #2 signature**)

(Address of Witness)

(Occupation of Witness)

TO EVIDENCE THEIR TRUST AGREEMENT the Settlor and the
Original Trustees have signed this Trust Agreement on the date
appearing above.

*(The original trustees, by signing this trust agreement,
acknowledge receiving the settled property from the settlor, and
accept their appointments as original trustees. The settlor cannot
revoke the trust.)*

**Please note: If the settlor is also a trustee, he must sign both in
the section marked "Settlor" AND the section marked "Trustee."**

Appendix A: Sample Letter to Trustees in a Discretionary Trust

Date

To The Trustees:

I am setting up this trust for these reasons:

1. To protect my daughter's assets.
2. To ensure she continues to receive government benefits.
3. To maintain the quality of life she now enjoys.

The trust is for her benefit during her lifetime. You are not to concern yourself with the benefit to any ultimate beneficiaries (those who will inherit the trust after her death) but consider the needs of my daughter as paramount.

I want you to consult my daughter and try to meet her requests. If she makes a request that may cause her to lose her benefits, you should consider whether it contributes to her quality of life. If so, do it. However, try to avoid major losses, if possible.

Always ask yourself what I would have done. Do not ONLY consider finances.

I cannot foresee the future, but I do know that things will change. My daughter may want to move. Her residence may have to be sold and another home found. She may marry and want to have children. I trust you to do your best to see she is protected and she enjoys a good quality life.

Settlor's Name.

Appendix B: DTC Eligibility:

The following are **excerpts from the T2201 Form** used to assess a person's individual circumstances as related to the DTC certificate:

Are you eligible?

You are eligible for the disability amount only if a **qualified practitioner** certifies, on this form, that you have a **prolonged impairment** and certifies its effects, and the Canada Revenue Agency (CRA) approves the form. To find out if you may be eligible for the disability amount, use the self-assessment questionnaire.

If you receive Canada Pension Plan or Quebec Pension Plan disability benefits, workers' compensation benefits, or other types of disability or insurance benefits, it does not necessarily mean you are eligible for the disability amount. These programs have other purposes and different criteria, such as an individual's inability to work.

The CRA must validate this certificate for you to be eligible for either the disability amount or the Child Disability Benefit.

Self-assessment questionnaire

This questionnaire does not replace the form itself. It is provided to help you assess whether you may be eligible for the disability amount. Do not attach this questionnaire to the Form T2201 you send the CRA.

Note: If your answers indicate you are not eligible for the disability amount, and you still feel that you should be able to claim it, see page 1 of the form itself for instructions on how to apply.

1. Has your impairment in physical functions lasted, or is it expected to last, for a continuous period of at least 12 months?

Yes ☐ No ☐

If you answered "yes," answer Questions 2 to 5 below. If you answered "no," you are not eligible for the disability amount. To claim the disability amount, the impairment has to be prolonged (see definition below).

2. Are you blind?

Yes ☐ No ☐

3. Do you receive **life-sustaining therapy**? (see the definition below)

Yes ☐ No ☐

4. Do the effects of your impairment cause you to be **markedly restricted** (see the definition below) in one of the following basic activities of daily living?

Yes ☐ No ☐

☐ speaking ☐ feeding ☐ hearing ☐ dressing ☐ walking

☐ mental functions necessary for everyday life

☐ eliminating (bowel or bladder functions)

5. Do you meet all the following conditions? Yes ☐ No ☐

☐ because of your impairment, you are **significantly restricted** (see the definition) in two or more basic activities of daily living mentioned in question 4, **or** you are significantly restricted in vision and at least one of the basic activities of daily living mentioned in question 4, even with appropriate therapy, medication, and devices;

☐ these significant restrictions exist together all, or substantially all, the time; and

☐ the cumulative effect of these significant restrictions is equivalent to being **markedly restricted** (see definition) in a single basic activity of daily living.

Are you eligible for the disability amount?

If you answered "yes" to Question 1 and any one of Questions 2 through 5, you may be eligible for the disability amount. To apply for the disability amount, complete page 1 of the form. Then, take the form to a qualified practitioner who can certify the conditions of the impairment for you. If the qualified practitioner certifies the form, send it to the CRA for approval. They will send you a letter to tell you if you are eligible.

If you answered "no" to all of Questions 2 through 5, you are not eligible for the disability amount.

Definitions

Life-sustaining therapy (for year 2000 and later) must meet the following conditions:

- You receive the therapy to support life, even if it alleviates the symptoms. Examples of this therapy are chest physiotherapy to facilitate breathing and kidney dialysis to filter blood. However, implanted devices such as a pacemaker, or special programs of diet, exercise, or hygiene do not qualify.
- You have to dedicate time for this therapy: at least three times a week, for an average of at least 14 hours a week (do not include time needed to recuperate after therapy, for travel, medical appointments, or shopping for medication). Time dedicated to therapy means that you must be required to take time away from normal, everyday activities in order to receive the therapy. The time it takes for a portable or implanted device to deliver therapy is not considered to be time dedicated to therapy.

For 2005 and later years, where the life-sustaining therapy requires a regular dosage of medication that needs to be adjusted on a daily basis:

- the activities directly related to determining the dosage are considered part of the therapy, except for those activities related to exercise or following a dietary regime, such as carbohydrate calculation; and

- the time spent by primary caregivers performing and supervising the activities related to the therapy of a child, because of his or her age, is considered to be time dedicated to this therapy.

T2201 E (06) Definitions

Markedly restricted: means that all, or most, of the time you are unable to perform one or more of the basic activities of daily living, or it takes you an inordinate amount of time to do so, even with therapy (other than life-sustaining therapy) and the use of appropriate devices or medication. (See Question 4 above for list of daily activities.)

Prolonged: means an impairment has lasted, or is expected to last, for a continuous period of at least 12 months.

Qualified practitioners: are medical doctors, optometrists, audiologists, occupational therapists, physiotherapists, psychologists, and speech-language pathologists. The table on page 1 of the form lists which sections of the form each can certify.

Significantly restricted: means that although you do not quite meet the criteria for “markedly restricted,” your ability to perform a basic activity of daily living is still substantially restricted.

Appendix C: Resources

The names of organizations and people below are provided for information purposes only. More sources can be located in the Yellow Pages Directory of your city and through the internet. The Voice of the Cerebral Palsied of Greater Vancouver and the authors of this book cannot be held responsible for any information, advice, or services provided by any source.

C.1 Non-Profit Organizations:

The Voice of the Cerebral Palsied of Greater Vancouver

Laurette Yelle, Assistant Executive Director

#103 – 577 East 8th Avenue

Vancouver B.C. V5T 1S9

Tel: 604-874-1741

Fax: 604-874-1746

www.vcpgv.org

vcpgv@vcn.bc.ca

The VCP is a non-profit, self help, advocacy society, which is run by and for adults with Cerebral Palsy.

Planned Lifetime Advocacy Network

Boundary Plaza

Suite 260 – 3665 Kingsway

Vancouver B.C. V5R 5W2

Tel: 604-439-9566

Fax: 604-439-7001

www.plan.ca

PLAN is a non-profit advocacy group, which specializes in working with people who are mentally handicapped and their families. PLAN has extensive knowledge about creating trusts and support networks.

B.C. Coalition of People with Disabilities

#204 – 456 West Broadway

Vancouver B.C. V5Y 1R3

Tel: 604-875-0188

Fax: 604-875-9227

Advocacy Access Tel: 604-872-1278

www.bccpd.bc.ca

advocacy@bccpd.bc.ca

The B.C Coalition is a provincial non-profit group, which advocates on behalf of people with all types of disabilities. The advocates at

Advocacy Access assist people appealing decisions made by the Ministry of Employment and Income Assistance.

The Coast Foundation Society

Blandyna Skowronska, Trust Co-ordinator
293 East 11th Avenue
Vancouver B.C. V5T 2C4
Tel: 604-675-2342 Ext. 2343 Fax: 604-879-2363
www.coastfoundation.com blandynas@coastmentalhealth.com

The Coast Foundation Society is a non-profit advocacy group that specializes in helping people who have mental illnesses. It operates a program to help manage trust funds for people with mental health issues. The Coast Foundation also acts as co-trustees.

C.2 Lawyers who know about Trusts:

Halldor K. Bjarnason

Access Law Group
Suite 1700, 1185 West Georgia Street
Vancouver B.C, V6E 4E6
Tel: 604-697-0231 Fax: 604-689-8835
www.trustlawyers.ca halldor@trustlawyers.ca

Tim Louis

Tim Louis and Company
#208 – 175 East Broadway
Vancouver B.C, V5T 1W2
Tel: 604-732-7678 Fax: 604-732-7579
www.timlouislaw.com timlouis@timlouislaw.com

C.3 Accountants who know about Trusts:

Cinnamon Jang Willoughby

Chartered Accountants

#900 – 4720 Kingsway, Burnaby B.C V5H 4N2

Tel: 604-435-4317

Fax: 604-435-4319

www.cjw.com

Ken Lagasse, Chartered Accountants

Doug Lagasse, Client Contact

#395 – 3665 Kingsway Avenue

Vancouver, BC V5R 5W2

Phone: 604-629-1919

Fax: 604-629-0545

Toll-Free: 1-866-829-4446

www.taxwise.ca/taxaid

dlagasse@taxwise.ca

Has a special division for Disability Tax Credits.

C.4 Other:

Disability Tax Services Ltd. (DTS)

Mike Campagne, Certified Financial Planner

#109 – 655 North Road

Coquitlam, BC V3J 1P5

Tel: 604-936-6039

Fax: 604-936-6094

plan4u@shaw.ca

Specializes in Disability Tax Credits.

Tax Detective

Eileen Rappenhaggen, CGA

www.taxdetective.ca

Specializes in providing information to groups about Disability Tax Credits, medical expenses and trust record keeping.

C.5 Local MEIA Offices:

Enquiry BC

Tel: 604-660-2421 Toll-free: 1-800-663-7867 TTY: 604-775-0303

EnquiryBC@gems3.gov.bc.ca

Provides information and phone numbers for BC-based government departments, including local offices for the Ministry of Employment and Income Assistance (MEIA).

C.6 Books on Estate Planning:

You Can't Take it With You: A Common Sense Guide to Estate Planning for Canadians by Sandra E. Foster

Published by John Wiley and Sons 2002 ISBN: 0470783156

This is a book about estate planning, protecting your money, minimizing estate taxes and maximizing the money left for beneficiaries. Although not specifically a disability-related book, it is still very helpful and includes a chapter on trusts.

Safe and Secure: Six Steps to Creating a Good Life for People with Disabilities by Al Etmanski with Jack Collins and Vicky

Cammack, Published by PLAN in 2002

This book is about ensuring the well-being of mentally disabled family members. It includes steps to creating a will, creating a trust and developing a life-long support network for people with mental disabilities. It can be purchased from PLAN.

C.7 Relevant Web Sites About:

PWD Benefits

Information for Persons with Disabilities from the Ministry of Employment and Income Assistance

www.eia.gov.bc.ca/pwd

This site includes how to apply for benefits, a copy of the *Employment and Assistance for Persons with Disabilities Act* and Regulation and

more detailed information about income exemptions than we included in this resource guide.

Federal Tax Forms and Disability Tax Credits

Canada Customs and Revenue Agency

www.cra-arc.gc.ca/tax/individuals/menu-e.html

Site has an alphabetical search for all federal tax-related topics. A search under “D” will bring up all the disability related tax information including how to apply for T2201 Disability Tax Credit and how to use it to apply for other tax credits, including a credit for attendant care.

Technical Advisory Committee on Tax Measures for Persons with Disabilities (Disability Tax Credits)

www.disabilitytax.ca/chpt2.html

RC4064 Medical and Disability-Related Information

www.cra-arc.gc.ca

Click *Persons With Disabilities* on menu at left side of main page.

IT513R Personal Tax Credits

www.cra-arc.gc.ca

Type IT513R in search window at top of main page.

Disability Tax Credit Certificate T2201

www.cra-arc.gc.ca

Type T2201 in search window at top of main page.

Investing and Securities, Trust Companies and Professional Fund Managers

The majority of the investment information that is available online is produced by banks, trust companies and credit unions. The following is a list of sites that are for independent regulatory agencies. These sites are designed to answer investment questions, assess claims of individual companies and provide non-partisan information and advice.

The British Columbia Securities Commission

www.bcsc.bc.ca

It is an independent government agency that regulates the trading in securities in B.C. This site provides information about basic investing, creating an investment strategy, mutual funds, choosing financial advisors, and how to protect against fraud. It is written in plain language and is easy to navigate.

Financial Consumer Agency of Canada

www.fcac-acfc.gc.ca

It is a new, federal, independent body designed to educate and protect consumers of financial services. The site includes a resource centre with information about almost every financial topic including bank accounts, fees trust companies can charge, questions to ask before investing, mutual funds and more. The information in this site applies to all federally incorporated banks, credit unions and trust companies.

Financial Institutions Commission

www.fic.gov.bc.ca

It is a B.C government regulatory agency created to protect people who hire trust companies, credit unions and insurance companies. This site includes a list of authorized B.C trust companies, credit unions and insurance companies as well as investor information and consumer alerts.

C.8 Quick Reference Phone Numbers:

Access Law Group, Barristers & Solicitors

Tel: 604-697-0231

Fax: 604-689-8835

B.C. Coalition of People with Disabilities

Tel: 604-875-0188

Advocacy Access: 604-872-1278

Bjarnason, Halldor K. (Lawyer, Access Law Group)

Tel: 604-697-0231

Fax: 604-689-8835

Campagne, Mike (Certified Financial Planner, DTS)

Tel: 604-936-6039

Fax: 604-936-6094

Canada Revenue Agency (CRA)
Toll-free: 1-800-959-8281

Cinnamon Jang Willoughby, Chartered Accountants
Tel: 604-435-4317 Fax: 604-435-4319

Coast Foundation Society (Coast)
Tel: 604-872-3502 Ext. 290 Fax: 604-879-2363

Enquiry BC
Tel: 604-660-2421 Toll-free: 1-800-663-7867 TTY: 604-775-0303

Ken Lagasse, Chartered Accountants
Tel: 604-629-1919 Toll-Free: 1-866-829-4446 Fax 604-629-0545

Lagasse, Doug (Client Contact, Ken Lagasse, Chartered Accountants)
Tel: 604-629-1919 Toll-Free: 1-866-829-4446 Fax 604-629-0545

Louis, Tim (Lawyer, Tim Louis and Co.)
Tel: 604-732-7678 Fax: 604-732-7579

Planned Lifetime Advocacy Network (PLAN)
Tel: 604-439-9566 Fax: 604-439-7001

Rappenhaggen, Eileen CGA (Tax Detective)
www.taxdetective.ca

Skowronska, Blandyna (Trust Co-ordinator, Coast)
Tel: 604-675-2342 Ext. 2343 Fax: 604-879-2363

Tax Detective
www.taxdetective.ca

Tim Louis and Company, Barristers & Solicitors
Tel: 604-732-7678 Fax: 604-732-7579

Voice of the Cerebral Palsied of Greater Vancouver (VCP)
Tel: 604-874-1741 Fax: 604-874-1746

Yelle, Laurette (Asst. Exec. Dir., VCP)
Tel: 604-874-1741 Fax: 604-874-1746

Appendix D: Glossary of Relevant B.C. Legislation

A complete alphabetical listing and electronic copy of all British Columbia Statutes with associated Regulations can be found at:

www.qp.gov.bc.ca/statreg

Once on the website, click on the appropriate letter (located at top of screen) to go to a listing of statutes and regulations.

Employment and Assistance for Persons with Disabilities Act – Establishes the rules for disability benefits.

Infants Act – Protects the rights of minors. Indicates that a child can be the settlor of a trust but has the right to revoke it on turning 19.

Public Guardian and Trustee Act – Defines the role of the Public Guardian and Trustee in protecting the rights of minors and dependant adults.

Securities Act – Establishes guidelines for all financial activities including stock exchange, mutual funds, insurance companies and trust companies.

Trust and Settlement Variation Act – Covers amending or modifying trusts for minors and people with mental disabilities.

Trustee Act – Covers the responsibilities, liabilities and investment powers of the trustees not otherwise specified in the trust agreement.

Wills Variation Act – Allows spouses and children who believe they have not been fairly treated to contest the will in question. **If the will does not leave a disabled child a fair share of the estate, the Public Guardian and Trustee, or other interested party, can intervene on their behalf and ask the court to change the will.**

Other Acts that might be useful to our readers include: *The Adult Guardianship Act*, *The Power of Attorney Act* and *The Probate Fee Act*.

Appendix E: Definitions

Alternate Trustee: A trustee who *only* becomes responsible for administering the trust *if* the original trustee quits, dies, or otherwise becomes unable to continue in the duties of a trustee. As long as the original trustee is capable and willing to administer the trust, the alternate trustee has no responsibility and no say in how the trust is administered. pg. 27

Assets: the financial resources a person or trust has, including cash, bonds, securities, property and/or items of value (i.e. a car). pg. 12

Asset Limit: the maximum amount of assets a person receiving PWD benefits can have. pg. 12

Beneficiary: the person who benefits from the assets in the trust. The trust is often named after the beneficiary, for example “the Joe Smith Trust.” pg. 16

Breach of Trust: when a trustee breaks the terms of the trust agreement or the law. An example of a breach of trust is when a trustee redirects trust property for his own personal use. pg. 34

Capital Gain: profit from the sale of assets, such as bonds, real estate, etc.

Common Trust Fund: a number of small trusts are pooled together to increase the rates of return and save management fees. pg. 29, 69

Co-trustees: two or more trustees who work together in administering the trust. Co-trustees share equal responsibility and have an equal say in how the trust is administered. If you have three or more trustees, you may want to consider specifying that a decision can be made by majority vote. Otherwise, all trustees may have to agree on every trust decision made. pg. 27

Deemed Disposition Date: on the 21st anniversary of the trust and every 21 years thereafter, all of the trust assets are deemed to be sold at fair market value and the trust has to pay income tax on any accrued capital gains. This date is for tax purposes only and the trust itself is not dissolved. pg. 21, 45

Disbursements: payments from the trust. pg. 24, 40, 45

Discretionary Trust: a trust where the beneficiary does not have control over the money in the trust. The trustees make all of the spending decisions. There is no limit to the amount of money that can be held in a discretionary trust. pg. 17, 32, 73

Diversify: to invest in different types of securities, investments etc. so that a failure or economic slump in one will not cause economic disaster.

Dividend: a sum of money paid to shareholders out of corporate earnings. pg. 21

Immediate Beneficiary: the person for whom the trust is created. pg. 33

Immediate Beneficiary Clause: a clause added to the trust agreement to ensure that the needs of the immediate beneficiary take priority over all future claims. pg. 65

Inter vivos Trust: a trust fund that comes into effect during the lifetime of the person who established the trust. It is also known as a **Living Trust**. pg. 17, 20

Non-Discretionary Trust: a trust where the beneficiary has control over trust spending decisions. There is a limit of \$100,000 which can be put in a non-discretionary trust without affecting disability benefits. pg. 18

Preferred Beneficiary Election: a way of transferring taxable income from the trust to the beneficiary's personal income tax. pg. 20, 35, 37

Professional Fund Manager: a professional money manager a trustee can hire to either offer financial advice or to handle the financial administration of the trust; can also be called a portfolio manager, mutual fund manager or a securities advisor. pg. 31, 82

Protector: a person appointed under the trust agreement to monitor the trustees and ensure they are acting in the beneficiary's best interests.

Public Guardian and Trustee: a provincially appointed person responsible for protecting the interests of children who are under 19 or dependent adults. The Public Guardian and Trustee intervenes in

cases where there is a question of abuse of 'power of attorney' or when a will does not provide for children under 19 or adults with a disability. pg. 12, 15, 85

Real Property: the legal term for real estate. A clause must be included in the trust agreement allowing trustees to purchase real property as a residence for the beneficiary. pg. 33

Remote Interests: anyone who will eventually have a claim over the trust assets after the immediate beneficiary dies. pg. 65

Settlor: the person who establishes a trust. The settlor can be the beneficiary. A child can be a settlor, but an adult who has a legal guardian appointed by the court cannot be a settlor. pg. 16

Settled Property: the initial amount of money that is used to create the trust. pg. 41, 61

Sole Trustee: a person (or company) who is the only trustee. They alone are responsible for administering the trust. In this case, there can be an alternate trustee, but no co-trustee. pg. 27

Supporting Relative: someone who provides support or assistance to the person with a disability. pg. 35, 36, 38

Testamentary Trust: a trust that is set up, often within a will, which takes effect upon the death of the settlor. pg. 16, 17, 21, 44

Trust: a legally binding agreement in which a settlor transfers legal ownership of assets to a trustee to manage and administer for the benefit of a beneficiary. pg. 16

Trustee: the person or company that manages the trust according to written instructions contained in the trust agreement. pg. 16

Ultimate Beneficiary: the person who will inherit the trust after the person it was created for dies. pg. 33, 65

Appendix F: Bibliography and References

In Trust: How to set up your own trust and still be eligible for B.C. disability benefits by Peter Bogardus and Mary Hamilton, published by The Planned Lifetime Advocacy Network (PLAN) in 1999

Safe and Secure: Six Steps to Creating a Good Life for People with Disabilities by Al Etmanski with Jack Collins and Vicky Cammack, published by PLAN in 2002

Planning a Trust: for a relative or friend who receives disability benefits from the B.C. government, published by the Coast Foundation in 1997

B.C. Benefits: Disability Benefits and Trusts, by the BC Coalition of People with Disabilities, published by the Ministry of Employment and Income Assistance 1999

A Sample Discretionary Trust by the Coast Foundation

Trusts for Persons with Disabilities (PWD) help sheet series #8 prepared by Advocacy Access, a program of the BC Coalition of People with Disabilities, updated April 23, 2003

The Trustee Act (RSBC 1996) Chapter 464

The Employment and Assistance for Persons with Disabilities Act and Regulation

Consultation Paper on Trustee Investment Powers by the British Columbia Law Institute

Tax Planning using Alter-Ego/Joint Partner Trusts help sheet by AIM Trimark

Notes

