



Young Beneficiaries

A young beneficiary, such as a child under the age of 18, is not permitted to receive a substantial inheritance directly, whether in the form of money or other assets. A child who is under the age of 18 is legally referred to as a minor. Although this brochure is primarily intended to address issues relating to a minor beneficiary, much of the information also applies to a mentally-incapable adult. In this brochure, when we refer to a 'child', we mean a person who is under the age of 18 and who is therefore considered a minor under Ontario law.

Sources of Inheritances

A child may inherit as the result of someone's death in a number of ways such as:

- the child is named in the Will of someone who dies;
- the child inherits from a relative who died without a Will and the child is one of the legal beneficiaries under the intestacy laws of Ontario (dying without a Will is referred to as dying intestate)
- the child inherits as a named beneficiary of a life insurance policy, an RRSP, RRIF, or a death benefit.

Who Controls the Inheritance

Contrary to popular belief, the parent of a minor does not automatically have the right to control the child's inheritance. If the child inherits under a Will, the Will may appoint the parent as trustee of the child's inheritance. Otherwise, a parent can only control a child's inheritance (or any other property of the child) by applying to the Court to be appointed the child's Guardian of Property. Whether appointed by the Will or by the Court, the parent must manage the

inheritance for the child's benefit and according to the terms of the Will, the trust document, or the Court Order.

Jackpot at 18

Unless a Will states otherwise, when a child reaches the age of 18, he/she can demand that the executor or trustee hand over the inheritance to the child. Similarly, the 18-year-old can demand the same of an executor with no Will or of a Court-appointed guardian of property. Unless the Court has approved the accounts of the executor, trustee, or guardian and granted a release (a "passing of accounts"), the child can also demand a full accounting of all transactions affecting the inheritance and can review the actions taken (or not taken) by the executor, trustee, or guardian.

A child's inheritance may be governed by the terms of a trust if one was included in a deceased's Will or other document. A person who manages a child's inheritance under a trust is referred to as a 'trustee'. The executor and the trustee may be the same person or may be different people as determined by a Will or a Court Order. In this brochure, when we describe the duties and responsibilities of an executor, similar duties and responsibilities may apply to a trustee and may, depending upon the Court Order, also apply to a child's guardian of property.

Deferring Payments Beyond 18

Only by specifying conditions in a trust can the payment of the inheritance be deferred until the child is older than 18.

A trust can specify that payments of part of the inheritance be made at various ages with income (what the trust assets earn) being paid out regularly. For example, a child might receive a quarter of the inheritance at age 18 and the balance at age 25 with

payments of income being made to the child between the ages of 18 and 25.

Obligations of Executor or Trustee

An executor (with or without a Will) has an ongoing responsibility to manage and invest a child's inheritance until it is handed over to the child or paid into Court on behalf of the child. Investments must be made in accordance with the provisions of the Trustee Act and any other relevant legislation. If there is a Will, conditions in the Will must also be addressed. An executor is also required to keep detailed accounting records and to exercise discretion as to when and what payments are to be made, considering the age and circumstances of the child for whom the funds are held.

An executor or a trustee should not hand over a child's inheritance to the parent of the child unless the parent has first been appointed the child's Guardian of Property and the Court has released the executor or trustee from further responsibility for the inheritance. Gifts under \$10,000 may be paid over to the parent of the minor so long as the funds are used for a specific purpose but upon reaching the age of majority, the child may still sue the trustee if the child thinks it was inappropriate for the trustee to have done so.

Alternatively, executors have the option of paying the child's inheritance into Court, which operates as a discharge of the executor's responsibility (to the extent of the sum so paid into Court) and the executor will not need to monitor the Court's handling of the money, how it is invested, or keep any further records. It is not necessary for the minor to be a resident of Canada.

If Funds are Handed to Parent

Unless the Will provides otherwise, an executor or trustee who hands over a child's trust funds to the child's parent may continue to be liable. In general, unless the Will or the Court authorizes, the trustee should not deliver funds over \$10,000 to the parent or guardian of the child without the approval of the Children's Lawyer. Any funds delivered to the parent must be for a specific purpose allowed by the trust terms.

Parents' Obligations with Respect to the Child's Funds

A parent who receives payments from an executor or trustee on behalf of his or her child acts as a "bare trustee" of the money. The parent has no authority to do anything with the funds other than to hold the funds and invest in accordance with the Trustee Act. If it was intended that the parent or guardian should have broader powers than these, the trust document must set out such powers.

Role of the Office of the Children's Lawyer

When a minor child is left an inheritance, The Office of the Children's Lawyer (which we will refer to as "The Children's Lawyer") may become involved. The Children's Lawyer is an office within the Ministry of the Attorney General for Ontario. Its mandate is to represent personal and property rights of minors and unborn children. Property rights include estate and trust matters such as challenges to the validity of a will, applications to remove executors and trustees, and applications to vary the terms of a trust.

The Children's Lawyer does not have the authority to administer estates nor to act as guardian of property for a minor. Nor can The Children's Lawyer give a formal "release" of liability to an executor or trustee. Only a Court can provide such a release in respect of the executor's acts (including the taking of compensation) that is binding on behalf of a minor. This process is called a "passing of accounts".

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