

Trust Query Submission Guidelines for Staff

All trusts must be reported if they involve a person who is an applicant for or recipient of assistance. Clients must submit documentation to the ministry through their Employment and Assistance Offices. The submission must include any documents setting out the terms of the trust and who controls the funds in the trust. If there is no formal document outlining the terms of the trust, clients must provide a written account explaining the arrangement. Usually the current value of the trust, as well as the value of all contributions made to the trust while on assistance, or during the two years prior to receiving assistance will be required.

Before submitting trust queries to the Legislation and Litigation Branch, review these guidelines for completion:

- Submit Trust Query Cover form HSD2999 with all trust queries:
http://icw.hsd.gov.bc.ca/forms/PDF_forms/HR2999.pdf
 - Complete the form in full.
 - Note questions, special considerations or circumstances that merit a priority review in the comments section. If a person is not receiving assistance (e.g., they were discontinued assistance for assets in excess, including a negative result of their trust review; or they are a new applicant not receiving assistance yet), the request for trust review is “urgent.”
 - Print or type the worker's first and last name.

Note: Do not send original documentation.

- Until you have received a trust opinion, please do **NOT** make a new eligibility decision regarding the trust, and under no circumstances should the ministry provide the client with advice or recommendations regarding how they should arrange their affairs. If clients have questions, advise them to seek legal advice.
- Do not provide the client with any feedback regarding the validity of the trust until legal advice is received.

There are three broad categories of trust queries outlined below. However, exceptions do apply so, it is necessary to send the documentation for review. The following is a list of trusts by category and the documentation that may support the trust that can be included in the submission. The list is not exhaustive.

1. Typical trust query:

- Trust documentation:
 - The formal legal document outlining the trust is variously called a trust indenture, trust deed, trust agreement.
 - Must include all pages of the agreement including any referenced schedules.
 - Must be signed and witnessed.
Note: Is not the same as the trust account agreements provided by financial institutions when opening trust bank accounts – though such agreements may work as evidence that the funds in the account are held in trust.

There may not be a formal legal document: A trust can exist in law without a formal trust document. If a trust is claimed, but a client advises that there is no trust document, gather what financial documentation is available and obtain the client and/or trustee's detailed account describing their understanding of the arrangement.

- Financial documentation to support the value of the trust:
 - Must show funds held by trustee(s) in trust for the beneficiary.
 - Must be dated more recently than the trust.
 - Typically shows institution name, account name, account holder(s), account number, date and account balance.
 - Exceptions **do apply**. Send what documentation is available for review with a note indicating any rationale for the exception.
Note: If a trust is set up with a nominal amount, and there is an assignment to the trustee and acknowledgement of receipt by the trustee of that nominal amount, the trust can be reviewed. The "real" amount in question will need to be transferred to the trustee before it can be considered in the trust, and before the client can get the trust exemption; however, the ministry can determine the trust arrangement created by the nominal amount given to the trustee.

2. Trust query involving a will:

- Must include a complete copy of the will.
- Must include either a copy of the death certificate or a copy of the probate documents.

3. Trust query involving the *Patients Property Act*. Public Guardian and Trustee (PGT) or Private Committee:

- Must include court documentation or Certificate of Incapacity appointing the committee for the client.
- Must include financial documentation showing assets (their value and who owns them).
- Where the PGT is committee, confirmation from the PGT's office is adequate, as well as information about any other assets, if applicable.
- If there is an actual trust, documentation to support the review of those arrangements (the trust instrument and account information).