



# Support Trusts



# What is a Trust

- A trust is a **legal commitment** placed on one person (**trustee**), to look after the assets of the trust for the benefit of another person or a number of people, called a beneficiary or **beneficiaries**.
- It includes the **arrangements** you make for the care of your loved one
- It can look difficult but is **really quite simple**.



# What do Trustees do?

the trustee has the right within the rules set up in the trust to control and manage the money (and other assets), but only for the benefit of your beneficiary (loved one)

# What do Beneficiaries do?

the beneficiary (your loved one) has the right to benefit from the assets, but not the power to control the trust Money (and other assets).



# Example

Jeannine sets up a trust for her assets. Her nephew Sam will control it as trustee for the benefit of her son Ben, who has disability. It will be Sam's decision whether and when to use the trust money. Ben can ask Sam for money, or other people (such as other family members or care workers) can ask on Ben's behalf.

Sam can spend trust money for Ben's benefit even if Ben doesn't ask for help. It will be Sam's decision how to invest money: whether to invest mainly for the long term or to keep some or all of the money available for Ben's needs, depending on what Sam thinks Ben's needs are likely to be.



# Two Types of Trusts

## Discretionary trusts

If you are the **beneficiary** of this type of trust, it means you have **no control over the money held in the trust or how it is spent.**

The trustee, who knows you and your needs, has complete authority to decide whether to give you funds, or to spend funds on your behalf.

## Non-discretionary trusts

A non-discretionary trust is a trust in which the **trustee does not have total authority over how money is paid out.**

The **beneficiary** (you or your loved one) **may have some control,** or

The **trustee** may have to **make certain payments.**

# The Discretionary Trust

Except in cases where the beneficiary has a legal right to end the trust and take the capital held in it, a discretionary trust is usually **not considered an asset** under Newfoundland legislation.

Here-there is no limit to the amount of money that can be held for you in a discretionary trust.

However, depending on the purpose of the trust, your supports could be at risk if you had control over the funds before they were placed in the trust, if the amount contributed is more than \$100,000

# Nondiscretionary Trusts

- A non-discretionary trust **is considered an asset**. It will be considered an exempt asset so long as the value of all the capital contributed to the trust does not exceed \$100,000. Non-discretionary trusts that have more than \$100,000 in capital contributions are considered an asset.
- **In BC**, the amount exceeding \$100,000 could be exempt by special approval from the minister. If he is satisfied that your lifetime disability related costs will exceed \$100,000.
- We need more information to find out if a Minister could make that exception here.



# Two Types of Trusts

## Living Trusts

A "living trust" (also called an *inter vivos* trust) is simply a trust you create while you're alive, rather than one that is created at your death under the terms of your will.

## Non-Living Trusts

# What are the Support Trust exemptions?

- The maximum exemption limit for a Support Trust is \$100,000 in liquid assets (including capital and interest) at any given time. This maximum amount can be obtained through one or multiple contributions.
- The exemption is reduced to \$25,000 when the beneficiary moves from living independently to a personal care or community care home.
- The exemption will not apply if he or she moves into a nursing home facility.



# How do I ensure the Support Trust does not affect eligibility for Income Support or Home Support Services?

- In order to have a trust fund considered a Support Trust, the beneficiary must be a person requiring supportive services. The Trust, including income generated from it, is to be used to help offset the extra costs experienced by a person living with a disability which are not covered through programs provided by HRLE or HCS (clothing, communication devices, recreational pursuits, renovations, vehicle modifications, etc.).



- The exemption is reduced to \$25,000 when the beneficiary moves from living independently to a personal care or community care home



# The Newfoundland Rules

HRLE says that

- A Support Trust is a trust fund that may be set up on behalf of a person over the age of 18, living with a disability and who requires supportive services.

- These funds will not affect eligibility for financial support from this department or the Department of Health and Community Services.

# Will A Trust Affect Eligibility for Financial Support

- The Department of Human Resources Labour and employment's (HRLE) website says:

“These funds will not affect eligibility for financial support from this department or the Department of Health and Community Services”



# THE HENSON TRUST

## Key Points

- The **language is crucial**
- **Some lawyers** can do it well-some not so well

## The Story of Leonard and Audrey Henson

- A Henson Trust **is a strategy** more than a type of trust. It actually is a **discretionary trust**

If you have decided to use a trust to provide for a family member with disability, the main decisions that you will need to make are:

Who will be the trustees?

What accommodation and care options should I provide for?

How will I divide up my assets to deal fairly with the person with disability and other members of the family?

How much discretion and direction do I give the trustee?

# The appointment of a trustee

- is probably the most important decision you will make when setting up a trust for a person with disability.
- Legal structures do not ensure people will do the right thing. Therefore, choosing people who will do the right thing is extremely important.



# CHOOSING A TRUSTEE

Ensure that your trustee understands and shares your views about how your family member can best be looked after by the trust.

i.e., if you believe that the available funds should be distributed in a generous way, don't choose someone overly frugal

i.e. if you believe that your loved one should live as independently as possible, don't choose someone who believes that the individual should live in a more restrictive environment

# Other Good Characteristics of Trustees

**Compatibility:** if there is more than one trustee, the trustees need to get along. Serious disputes among trustees can end up in court.

**Is willing to keep up to date** with changing ideas and knowledge about how best to support the person with disability.

**Has an interest in the person with disability:**

- knows the person with disability,
- is in regular contact with him or her, and
- is well aware of his or her changing needs and interests rather than relying on second hand information.

# Good Characteristics of Trustees cont.

**Business and legal Knowledge and sense:**

**Youthfulness:** to increase the likelihood that they live as long as the individual you are supporting

**Independence:** ideally, the trustee will have no conflict of interest which might cause the trustee to look after his or her own interests, or those of the people close to him or her, rather than the interests of your family member

Who	Pros	Cons
Family	<ul style="list-style-type: none"> <li>the brothers or sisters of the person with disability are of the <b>same generation</b> and usually have a close interest in the welfare of their sibling. They are therefore a natural choice as trustees.</li> <li>Family members are <b>less likely to charge</b> fees</li> </ul>	<ul style="list-style-type: none"> <li><b>may have a conflict of interest</b> because they often stand to benefit from whatever funds are left over after the death of the person with disability.</li> <li>Many parents say they trust their children <b>but don't know whom they might marry.</b></li> </ul>
Aunts or uncles or cousins	<ul style="list-style-type: none"> <li>may be <b>more independent</b> because they are less likely to have a future financial interest.</li> <li><b>less likely to charge fees</b> for their services than other potential trustees.</li> </ul>	<ul style="list-style-type: none"> <li>Depends on their age and relationship</li> </ul>
Friends	<ul style="list-style-type: none"> <li><b>often have a close interest</b> in the life of the person with disability without having any conflict of interest.</li> <li>May be good trustees, or one of a number of trustees, providing a useful balance.</li> </ul>	<ul style="list-style-type: none"> <li><b>May need to pay them</b> to ensure they feel valued for the work and don't build resentment</li> </ul>



Who	Pros	Cons
Public Trustee	<ul style="list-style-type: none"> <li>• Are very <b>experienced</b> at doing so.</li> <li>• They can be expected to have an <b>objective view</b> about what will be beneficial in any circumstances and substantial financial ability</li> </ul>	<ul style="list-style-type: none"> <li>• will <b>charge fees</b> for their services</li> <li>• <b>do not have any close personal relationship</b> with the person with disability</li> <li>• will <b>rely on other people</b> providing information as a basis for deciding where to use the available trust funds.</li> </ul>
Professional advise (i.e.your lawyer or accountant)	<ul style="list-style-type: none"> <li>• Objective</li> <li>• May have experience</li> </ul>	<ul style="list-style-type: none"> <li>• likely to charge for their services</li> <li>• may not have any direct involvement in the life of the person with disability or knowledge of disability issues.</li> <li>• May quit and thus have turnover</li> </ul>
Corporate trustees:	<p>Here you set up a company to be the trustee. Then, the considerations about who should be a trustee will apply to the people who will be directors of that company.</p> <ul style="list-style-type: none"> <li>• They may be objective and be experienced at managing money</li> </ul>	<ul style="list-style-type: none"> <li>• You will lose control about who is involved</li> <li>• Impersonal</li> <li>• There may be turnover</li> </ul>

# Your Wish List Might Help Guide the Trustee

- If you have developed a 'wish list' for the person with high support needs, this can assist the trustee to continue to make decisions in the best interests of the person.
- You may also wish to have more than one trustee.



# How many trustees can I appoint?

- You can appoint more than one trustee to **get a spread of skills and abilities**.
- For example, you could appoint as trustee a family member who has regular contact with the person with disability and also a trustee company with the financial capacity to look after the trust assets and will be around for the life of the person with disability.
- Or you could appoint **three individuals** who provide the different qualities that you need and also may keep each other honest about advancing the interests of the person with disability.

