



# Factsheet

This factsheet has been prepared for general information purposes. It is not a legal document. Please refer to the *Employment Standards Act* and *Regulation* for purposes of interpretation and application of the law.

December 2003

## Public Guardian and Trustee Factsheet

### Trust funds for B.C. young people working in the entertainment industry

In British Columbia, minimum standards of wages and terms of employment for most employees are set under the *Employment Standards Act* and the *Employment Standards Regulation*.

Included in these regulations is a requirement that, once a young person under 15 years of age earns more than \$2,000 on a production, 25 percent of his/her gross earnings over \$2,000 must be remitted to the Public Guardian and Trustee to be held in trust for the young person.

#### Why are young actors' earnings held in trust?

The nature and history of the film and television industry has led almost all jurisdictions to put rules in place to look after the financial interests of young actors.

Unlike most other employment relationships, performers may be very young and have substantial earnings. It is also not uncommon for a young actor's earnings to be paid to someone other than the actor.

The law and the courts have recognized for many years that children's financial rights are independent of their parents and families. Because children cannot legally enter into contracts, someone else usually has to manage the child's income for them.

#### Why 25 percent?

The figure of 25 percent is based on Canadian and U.S. case law related to employment contracts for children. In some cases the courts have ordered a larger percentage be held in trust where it is in the best interests of the child.

#### Who is the Public Guardian and Trustee?

The Public Guardian and Trustee was established in 1963 by statute. The role of the Public Guardian and Trustee is unique. The Public Guardian and Trustee operates under provincial laws to:

- Protect the legal rights and financial interests of children under the age of 19.
- Protect the legal rights and financial interests of adults who are unable to manage their own affairs.
- Administer the estates of deceased persons where there is no one else willing or able.
- Administer the estates of missing persons.

The Public Guardian and Trustee is an independent and impartial public official who is accountable to clients, the court and the public at large.

#### What happens to money held in trust by the Public Guardian and Trustee?

The Public Guardian and Trustee invests money in accordance with the *Public Guardian and Trustee Act*. The circumstances of each child are taken into account when investment decisions are made.

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Generally speaking, money held in trust is placed in secure investments that produce reasonably good rates of return. The trust assets are protected from unacceptable levels of risk.

### **Can money held by the Public Guardian and Trustee be released prior to age 19?**

The intent of the legislation is to make sure that at least twenty-five percent of all a young actor's earnings over \$2,000 per production will be available to the child when they reach the age of majority. It is expected that legitimate costs associated with furthering the young person's career will be paid out of the remaining 75 percent of the earnings. For this reason, the funds paid to the Public Guardian and Trustee are not released prior to age 19 except in certain limited circumstances.

### **Does the Public Guardian and Trustee provide accounts?**

The Public Guardian and Trustee will provide a full accounting of a child's trust account to a child's legal guardian(s) or to a child upon request. Preferably, requests should be made in writing, addressed to:

Child and Youth Services  
Public Guardian and Trustee  
700-808 West Hastings Street  
Vancouver, British Columbia  
V6C 3L3  
Phone: 604 775-3480  
Fax: 604 775-3479

A full accounting can usually be provided within a few days of receiving a request.

### **What does the Public Guardian and Trustee charge for administering funds?**

Establishing and managing trust funds involves certain legal and administration costs.

The Public Guardian and Trustee's charges under the *Public Guardian and Trustee Act* regulations for trust management are comparable to charges made by other financial institutions performing similar tasks.

These charges include:

- Five percent on capital (one-time).
- Five percent on income earned (interest).
- 0.4 percent annual asset management fee.

Fees may be reduced or waived in the interest of fairness or to prevent undue hardship. Consideration of fee waivers is by application to the Child and Youth Services at the Public Guardian and Trustee.

### **How long is the money held in trust?**

When a child is 15, the Public Guardian and Trustee writes to the child's legal guardian(s) to make sure the Public Guardian and Trustee has a correct address for the child and, if the guardian(s) agrees, the Public Guardian and Trustee will send the child and the guardian(s) a copy of the child's trust accounting at age 18.

Shortly before the child's 19th birthday, the child will receive a final accounting, which they will be asked to approve. The funds will be released to the child on or after their 19th birthday along with all interest earned while the funds were invested with the Public Guardian and Trustee (minus the Public Guardian and Trustee's charges).

### **Why is money only paid into trust until age 15?**

Employment of a young person under 15 is subject to the written consent of the young person's parent or guardian as allowed by the *Employment Standards Act*. Once an individual turns 15 their employment is no longer subject to their parent or guardian's written consent.

### **What happens to the other 75 percent of a young actor's earnings?**

The other 75 percent of a young actor's earnings over \$2,000 on a production (same as the 100 percent of earnings under \$2,000), is not, at present, regulated to trust by legislation. If the money is paid to a child's guardians, the guardians are expected to invest and manage the money in the best interests of the child.

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Their obligations are similar to those of a trustee: to invest their child's money in accordance with the Trustee Act and use only the amount of money which is required for the child's career, education and benefit. Money remaining after the child's expenses are met should be held for the child until they turn 19

**Is there any monitoring of the 75 percent not held by the Public Guardian and Trustee?**

Under section 17 of the *Public Guardian and Trustee Act*, the Public Guardian and Trustee may investigate and audit the affairs, dealings and accounts of trust money held on behalf of a child if the Public Guardian and Trustee has reason to believe that the assets of the child may be at risk or that the decision maker has failed to comply with their duties.

It is important to note that it is not lawful to assign a child actor's earnings to another person or to a company.

**Remittance instructions regarding the 25 percent of a young actor's earnings which are payable to the Public Guardian and Trustee of B.C.**

Remittances must be made to Child and Youth Services, Public Guardian and Trustee. They should be made at the end of each pay period. Cheques should be made payable to the Public Guardian and Trustee of British Columbia in trust for [child actor's full name]. A letter or form accompanying the remittance should indicate:

- The child's name, address and Social Insurance Number.
- The reason(s) for the remittance.
- The name, address, telephone and fax number for the person responsible for the remittance.
- Dates covered in the pay period.

On receipt of the initial remittance, the Public Guardian and Trustee will provide written confirmation that a trust account has been established in the child's name as well as a contact phone number and account number.