

***THE ACCOUNTANT OF THE
SUPERIOR COURT OF
JUSTICE***

The Office of the Public Guardian and Trustee
The Accountant of the Superior Court of Justice
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The Office of the Public Guardian and Trustee

THE ACCOUNTANT OF THE SUPERIOR COURT OF JUSTICE

The Superior Court of Justice issues judgments and court orders providing for the payment of money and other assets, such as mortgages and securities, into court in some proceedings. Some provincial laws also require that certain payments be made into court. The Accountant of the Superior Court of Justice ("The Accountant") accepts payments into court, and manages the funds or holds other assets, until The Accountant is required to pay the money and other assets out of court under judgments and orders of the Superior Court of Justice or other provisions of law. Effective January 1, 2013, money is also being paid into court to The Accountant for Small Claims Court and Family Court proceedings.

Children

The Accountant holds money and other assets paid into court for children until they become eligible to receive them. Children become eligible for payment out of court upon turning 18 years of age, or upon meeting other terms as provided by a trust, or as set out in a court order. When children become eligible to receive their money or assets held by The Accountant, notice is sent to them by mail to their last known address. All the forms that must be completed for payment out of court, together with instructions, are sent with the notice.

If you or your child have assets in court, *please keep The Accountant informed of your current address.*

Litigants

The Accountant holds money and other assets paid into court pursuant to orders in court proceedings. Payments out of court are made pursuant to court orders and reports, or signed consent documents, following the Rules of Civil Procedure and Family Law Rules, or pursuant to court orders under the Small Claims Court Rules, and in accordance with the provisions of various statutes.

Litigation matters are complex and it is advisable to refer all questions to your lawyer. The Accountant of the Superior Court of Justice is the trustee for money paid into court and custodian for securities placed with the court and cannot give any legal advice.

If you are corresponding, please address your letter to:

The Accountant of the Superior Court of Justice
Office of the Public Guardian and Trustee
595 Bay Street, Suite 800
Toronto, ON M5G 2M6
or fax your letter to The Accountant at 416-314-6700.

Please note that original documents, such as affidavits or court orders for payment out of court, must be mailed, not faxed.

If you prefer to call, you can reach The Accountant at:

- Toll free, at 1-800-366-0335
- for local calls concerning children who have turned 18 years of age, at 416-314-2477
- for all other local calls, at 416-314-8692
- TTY: 416-314-2687
- at our website: www.attorneygeneral.jus.gov.on.ca/english/family/pgt

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Answers to Frequently Asked Questions about Assets Held in Court for Children

1. Why is children's money held in court?

Ontario law requires children's assets to be held in court, unless:

- a law or court order provides otherwise
- a document such as a Will or trust instrument provides otherwise
- a court has appointed a guardian of the child's property

A parent or other person may apply to the court to become the guardian of their child's property.

More information may be obtained from the Office of the Children's Lawyer at:

c/o MGS Mail Delivery Services
2B-88 MacDonald Block
77 Wellesley Street West
Toronto, ON M7A 1N3

Telephone: 416-314-8000
Fax: 416-314-8050

Additional information about the Office of the Children's Lawyer is available at:

www.attorneygeneral.jus.gov.on.ca/english/family/ocl/

2. How can I correct the birth date or spelling of my child's name?

You may request correction by writing to The Accountant. A photocopy of the child's birth certificate must be provided with your letter. A custodial parent or person with lawful custody must sign the letter if the child is less than 16 years of age; the signature of the child is required if the child is 16 years of age or older.

3. What do I do if my child's legal name has changed?

You may advise The Accountant in writing, attaching a photocopy of the adoption order or change of name certificate (whichever is applicable) to your letter. A custodial parent or person with lawful custody must sign the letter if the child is less than 16 years of age; the signature of the child is required if the child is 16 years of age or older.

4. How can I find out if there is money in court for my child?

You may request this information by writing to The Accountant, providing:

- information about why there might be money in court for the child
- copies of any documents that pertain to the matter
- the child's address at the time that money was paid into court
- the name(s) of other family members that might have been involved
- the name(s) of other parties in the court case, or the name of the estate

A copy of the child's birth certificate should be attached to your letter. A custodial parent or person with lawful custody must sign the letter if the child is less than 16 years of age; the signature of the child is required if the child is 16 years of age or over.

5. Will The Accountant invest my children's money?

A prudent investment framework has been developed for the management of children's trust funds. Money is automatically invested in the OPGT's Fixed Income Funds and interest is credited to the child's account each month at a prescribed interest rate that is based on the Funds' earnings. To enhance income, minimize taxes, and provide the required diversification for longer-term investment, some of the child's money may also be invested in other OPGT funds that include high quality equities, with earnings automatically re-invested in the fund.

6. What financial planning services are provided by The Accountant?

The Accountant is required to invest all funds prudently. To assist in this role, the Office of the Public Guardian and Trustee ("OPGT") employs qualified professions, including experienced financial planners, to make all investment decisions in the best interest of the individuals for whom The Accountant holds assets, based on information available. The services of a financial planner are included in the regular fees of The Accountant of the Superior Court of Justice.

7. How will the child's cash be invested?

Children's funds are invested prudently in one or more of the OPGT's three common trust Funds. Investment allocation decisions will be based on the information provided by the parent/guardian in accordance with established criteria such as the child's age, health and ongoing financial needs.

All children will participate in the OPGT's Fixed Income Funds, comprised of high quality fixed income securities (primarily staggered maturities of five year Federal and Provincial Government or high quality corporate bonds). Interest is paid monthly on the average daily balance, based on an interest rate determined by

the income generated by these Funds and approved by the OPGT's Investment Advisory Committee.

The OPGT also has a unitized Canadian Income and Dividend Fund for those who may require higher regular income, and can tolerate some capital risk over a medium to long-term investment time horizon. The fund consists of dividend-paying Canadian equities and Canadian fixed income securities. Income earned from this Canadian balanced fund is reinvested in additional units of the fund. In situations where the child requires regular monthly income, funds can be paid into the child's trust account each month.

The unitized OPGT Diversified Fund is available for those who have money that can be invested for a longer term. The Fund consists of a diversified portfolio of Canadian and foreign equities and Canadian fixed income securities. Income earned from this Fund is automatically reinvested in additional units in the fund.

8. Do parents, guardians or children have any input into how the child's investments are handled?

Prior to investment in the unitized funds, The Accountant's staff consult with the parent or guardian by the use of a questionnaire to assess the child's ongoing financial needs and health status. This input will be considered in the context of the requirement for The Accountant to invest prudently.

9. **What happens to a child's investments when the child becomes eligible to receive their funds?**

When children become eligible to receive their funds, their investment in the OPGT unitized funds must be redeemed at the current market value.

10. **Does The Accountant invest in Registered Education Savings Plans (RESPs)?**

The Accountant of the Superior Court of Justice cannot invest money of a child in RESPs. RESPs can only be purchased by either a parent or guardian of a child.

11. **Does The Accountant charge fees?**

Fees are charged monthly by The Accountant as set out in the OPGT Fee Schedule, as follows:

- 3.0% of receipts and disbursements (other than original payments into court)
- 3/5 of 1% per annum of the average annual value of the funds under management

If fees and applicable HST exceed income credited to the account, fees will be reduced for that month, so that the capital is never diminished due to fees, even on the final distribution of funds (invested capital will however increase or decrease with market changes).

12. What about income tax?

The Accountant issues tax slips to both Canadian residents and non-residents for investment income earned. To comply with the Canada Revenue Agency's tax reporting requirements, please provide your child's Social Insurance Number to the Accountant, if one is available. If you have not received your tax slips by mid-March, notify The Accountant.

Custodial parents should file required income tax returns for their child. Please note that income earned on certain payments into court (e.g. compensation for personal injury) is non-taxable until age 21. We recommend that you consult with your financial or tax advisor.

13. Will I get a statement of account?

Statements are not sent automatically, but are available upon written request. A copy of the child's birth certificate should be attached to your first letter requesting a statement. Subsequent requests do not require a copy of the birth certificate. A custodial parent or person with lawful custody must sign the letter if the child is less than 16 years of age; the signature of the child is required if the child is 16 years of age or over.

14. What do I do if my child needs money now but is not eligible for all of the trust funds?

In the event that the parent(s) or person with lawful custody of the child is unable to afford a necessary expense for the direct benefit of the child, the court may consider a request for payment from the child's trust funds. For information on the procedure to follow, contact the Office of the Children's Lawyer at:

Minors' Funds
c/o MGS Mail Delivery Services
2B-88 MacDonald Block
77 Wellesley Street West
Toronto, Ontario
M7A 1N3

Telephone: 416-314-8000
Fax: 416-314-8050

15. Can I prevent my child from knowing about or getting the money until they are older?

The law requires the child to be involved in and consent to any communications relating to their assets from the age of 16 years. A notification package will be sent to your child when they become eligible for payment out of court. The Accountant must pay the money when the child becomes entitled to it. You can assist your child by providing financial planning advice for him/her from a financial professional whom you trust.

16. What do I do if I do not get a notice after I become eligible to receive my money?

Contact The Accountant; when your eligibility is confirmed, the required forms will be sent to you immediately.

17. I received a notice from The Accountant, but where did this money come from?

Complete the Affidavit of Identification on the form provided by the Accountant and send it with a letter requesting this information. The Accountant will provide a copy of the documents relating to the payment into court, unless these documents contain the personal information of others. If The Accountant cannot provide copies of the documents, you will be advised as to how you can acquire the information that you are seeking.

18. How long does it take to get my money? Can I come in person and get it?

Money will be paid out within 2-3 business days of receipt of properly completed Affidavit of Identification, Statement of Relationship and Identification and Requisition for Release of Assets, which forms are provided by the Accountant. If a correctly completed Direct Deposit form is provided, money will be transferred to your bank account, generally 1-3 business days after the payment has been approved. Otherwise payment by cheque mailed to the address you provided should arrive 2-5 business days after approval of the payment. It is not possible for you to attend in person to submit the forms and receive payment on the same day.

Because of the increasing incidence of cheque fraud and potential delays in having access to the funds when received, we encourage clients to have the Direct Deposit form correctly completed so that electronic transfer of funds can be arranged.

19. Where do I find a Commissioner to sign the Affidavit of Identification?

You may go to your local court office, municipal/township office or your lawyer to have the Affidavit of Identification completed and commissioned. You should call first to ensure that a Commissioner of Oaths will be there and find out what fees

will be payable, if any. Please note that the person who signs the Affidavit must sign it in front of the Commissioner of Oaths. You must swear or affirm that the contents of the document are true.

20. I have assets other than just money in court; how do I get these?

After providing the Affidavit of Identification, Statement of Relationship and Identification and Requisition for Release of Assets, which forms are provided by the Accountant, you should contact The Accountant to arrange for delivery of these assets to you.

21. My child received notice but is not capable of looking after the money - what should I do?

Except in cases of mental incapacity, upon turning 18 years of age or other date of entitlement, your child is considered legally to be capable of looking after the money. The Accountant must make payment when your child becomes entitled to it. You can help by providing your child with advice from a financial planning professional whom you trust. In the case of mental incapacity, The Accountant will advise you on how to proceed.

22. My child has passed away ... how do I get their money out of court?

You should contact The Accountant for information on how to proceed.

Answers to Frequently Asked Questions about Assets Held in Court for Litigants

General questions are addressed at the beginning of this section, while questions relating to lien bonds & letters of credit are addressed at the end of this section.

23. I have to pay money into Court – to whom should the cheque be payable?

Payment may be made by certified cheque, bank draft or money order payable to **The Accountant of the Superior Court of Justice**. You will need to attach a copy of the documents requiring the payment into court with your funds.

24. Will interest be paid on money held in court?

Yes. A prudent investment framework has been developed for the management of money held by The Accountant. Money is invested in OPGT Fixed Income Funds, comprised of high quality fixed income securities (primarily staggered maturities of five year Federal and Provincial Government or high quality corporate bonds). Interest is paid monthly on the average daily balance based on an interest rate determined by the income generated by these Funds and approved by the OPGT's Investment Advisory Committee.

25. Does The Accountant charge fees?

Yes, a fee of 3/5 of 1% per annum on the average annual value of the funds held by The Accountant, plus applicable HST, will be charged monthly as set out in the OPGT's Fee Schedule.

26. My property was sold because there were some taxes owing and I was told that the balance, after payment of the taxes, was paid into court. How can I get the rest of my money?

You may write to The Accountant to find out if there are funds in court from the sale of your property. In your letter you should provide information about the property and attach a copy of any documents you may have. When money has been paid into court as the result of a municipal tax sale, a court order is required to release the funds.

27. How do I get a court order?

You can get information about this from your local court office or from a lawyer.

28. I cannot afford a lawyer – how can I get some help?

If you do not have a lawyer, you may wish to contact the Lawyer Referral Service operated by the Law Society of Upper Canada. The phone number is 1-800-268-

8326 and it operates from 9 a.m. to 5 p.m. Monday to Friday. Lawyers participating in the service will offer you up to a half hour free consultation. If you need further legal assistance but are unable to afford a lawyer, you may contact the Legal Aid Ontario office nearest you to discuss your eligibility for fully or partially funded legal aid. Legal Aid phone numbers can be found in the white pages of your local telephone directory.

Alternatively, you may contact JusticeNet which is a not-for-profit service promoting increased access to justice for low and moderate-income Canadians. The lawyers in the program offer their skills at a reduced fee to clients of limited means, based on a sliding scale that takes into account both income and number of individuals supported. They can be contacted at: Toll Free: 1-866-919-3219 or by e-mail at www.justicenet.ca.

29. Funds are held in Court “subject to further court order”. The parties to the action have settled the dispute and one party needs funds urgently. What can that party do to obtain the money without delay?

If the Order is obtained on consent of the other parties to the action and so indicated in the Order, funds may be paid out of court without delay. An order which is not obtained on Consent which “waives the affidavit required under rule 72.03(c)(ii) of the Rules of Civil Procedure” does not eliminate the appeal period for the order, it only waives the requirement for the affidavit.

30. I am required to give security in respect of a proceeding in court – do I have to pay money into court or can I provide a bond or letter of credit?

If the court order specifically states, a bond of an insurance company which is licensed under the *Insurance Act* to write surety or fidelity insurance or a letter of credit drawn on a bank may be paid into court as security, subject to the following conditions:

- The court may approve the form and content of the bond or letter of credit that is paid into court by affixing a court stamp; or
- In the absence of court approval, the parties to the action may, by affidavit supported by their written consent provided to The Accountant of the Superior Court of Justice, approve the form and content of the bond or letter of credit that is paid into court; or
- In the absence of court approval or consent, The Accountant of the Superior Court of Justice will approve the form and content of the bond or letter of credit that is paid into court. Generally, The Accountant will require that
 - a letter of credit be drawn on a chartered Canadian bank; and
 - the bond or letter of credit be made in favour of The Accountant (payable to The Accountant of the Superior Court of Justice); and

- The Accountant must be able to draw on the bond or letter of credit on demand; and
- the bond or letter of credit must be irrevocable for the term for which it is issued.

31. Can I find out if The Accountant is (still) holding a lien bond or letter of credit?

The Accountant is only able to provide information to a party, a party's solicitor, or to the issuer of the security. Requests must be made in writing, providing the name of the issuer, the bond or letter of credit number, the date and the amount.

32. Will interest be paid on a lien bond or letter of credit?

The Accountant does not pay interest on lien bonds or letters of credit.

33. Does The Accountant charge fees on lien bonds or letters of credit?

The Accountant does not charge fees on lien bonds or letters of credit.

34. How can we draw on a lien bond or letter of credit?

A court order is needed to (partially or fully) draw on a lien bond or letter of credit. The order will require The Accountant to make a demand on the bond/letter of credit, make payment from the proceeds to a specified party and will provide for what is to happen to the bond/letter of credit once the funds have been drawn.

35. What are the requirements to release a lien bond or letter of credit?

A court order or the consent of the parties to the proceeding is required to release a lien bond or letter of credit for cancellation posted as security for the return of property, pursuant to Rule 44.06 of the Rules of Civil Procedure. A court order is required to release security posted under the *Construction Lien Act*, in accordance with section 45(3) of that Act.

36. The Accountant is holding money for a person who owes me a debt. Can I collect the money owed to me by sending The Accountant a Notice of Garnishment?

The Accountant cannot pay money out of court in response to a Notice of Garnishment. A court order is required.

37. My spouse and I are divorced and the court has my money; how do I get it back?

The court document directing the payment into court will determine what is required for the release of funds. In some cases, another court order will be required to pay out the funds. Your lawyer can advise you or contact The

Accountant's office directly for assistance in determining if another court order is required.

If your case is a proceeding under the Family Law Rules, please refer to question 40 below.

Family Court Proceedings

38. How and where do I pay money into court under Family law proceedings?

A copy of the court order and completed "Request to Pay Money into or out of Court – Family" form are required. You may pay the funds into court by obtaining a Direction to Receive Funds from the Registrar or Clerk of the Court where the proceeding is, by courier/mail a bank draft, certified cheque or money order to The Accountant of the Superior Court of Justice, or by attending in person at the Office of The Accountant of the Superior Court of Justice.

Please refer to the following brochure for more information:

http://www.attorneygeneral.jus.gov.on.ca/english/family/Family_Money_Paid_Into_Court_Guide.pdf

39. How and where do I apply for funds out of court under Family Court proceedings?

There are two ways to obtain funds out of court under Family Court proceedings. In both cases, a completed "Request to Pay Money into or out of Court – Family" form is required, and must be accompanied by the following:

- A certified copy of the court order directing payment out of Court; or
- Written consent to the payment out of court by ALL parties to the action.

You may apply for the funds to be paid out of court at the office of The Accountant of the Superior Court of Justice, by mail or in person. Payment cannot be made on the same day.

Please refer to the following brochure for more information:

http://www.attorneygeneral.jus.gov.on.ca/english/family/Family_Money_Paid_Into_Court_Guide.pdf

Small Claims Court Proceedings

40. How and where do I pay money into court in a Small Claims Court proceedings?

You may obtain from the clerk of the Small Claims Court where the proceeding is, a Direction to Receive Funds form to deposit the funds at the Bank shown on the

form, or courier/mail the documents and certified cheque, bank draft or money order to The Accountant of the Superior Court of Justice, or appear in person at 595 Bay Street, Suite 800, Toronto, ON M5G 2M6. All funds deposited directly at the Bank must be in “guaranteed funds” such as bank draft, certified cheque or cash.

A “Request to Pay Money into or out of Court – Small Claims” form is also required, together with a copy of the Small Claims court order, or documents required under the Statute or Court Rule that applies to your situation.

Please refer to the following link for more information:

http://www.attorneygeneral.jus.gov.on.ca/english/courts/guides/Guide_to_Money_Paid_Into_Court_EN.pdf

41. How and where do I apply for funds out of court under Small Claims Court proceedings?

Complete section B of the “Request to Pay Money into or out of Court – Small Claims” form, and attach a copy of the Small Claims court Endorsement record stamped with a red court seal**.

Please refer to the following link for more information:

http://www.attorneygeneral.jus.gov.on.ca/english/courts/guides/Guide_to_Money_Paid_Into_Court_EN.pdf

**For funds held in court under the *Repair and Storage Liens Act*, please refer to the guidelines under section 24(15) or 24(11) of the Act. You may find a copy of the Act here:

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90r25_e.htm#BK27

This brochure provides a very general overview of the mandate and operation of The Accountant of the Superior Court of Justice. It does not include all of the details of the law, policies, procedures and exceptions that may apply in a particular case. For information about the law please refer to the applicable statutes and contact your lawyer.

Alternate formats of this brochure are available upon request. Please contact 416-314-2803 or toll free 1-800-366-0335.

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