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## **Accessing Restricted Purpose Trust Funds**

### **Prior to Obtaining a Court Order**

#### **During the COVID19 Pandemic**

In light of the difficult economic consequences created by the COVID19 Pandemic, the Public Guardian and Trustee (PGT) has developed temporary guidelines to allow charities that are in danger of closing to access the income and capital of restricted purpose trust funds when necessary to enable them to continue their day-to-day operations.

Restricted purpose trust funds include the income and capital of perpetual endowment funds, and the income and capital of trust funds held for a restricted charitable purpose (**the funds**).

Charities may access and use the funds subject to each of the following conditions:

- The organization is in danger of closing, which includes becoming insolvent or filing for bankruptcy or receivership, unless it can access the funds;
- The organization may only access the funds as a last resort. Non-restricted funds, including reserve funds, should be used first;
- The organization must first notify the PGT. Notification should include the name and address of the organization; the name of the perpetual endowment fund or the restricted purpose trust fund; and the name, address and telephone number of a contact person for the organization. The PGT will accept notification via email to [cynthia.spencer@ontario.ca](mailto:cynthia.spencer@ontario.ca);
- All board members must approve the decision to use or encroach upon the funds and the decision should be documented contemporaneously. (The documentation will be required for the section 13 application referred to below);
- Subject to the next bullet point, the funds must be used only for operating expenses and the contractual obligations of the charity and only to the extent necessary to maintain solvency. Operating expenses include: salaries, building expenses, utilities;
- If a charity's purposes enable it to provide services in response to the COVID19 pandemic, the funds may be used for such services;

- The organization must keep an accounting of the use of the funds;
- The organization shall apply for an order approving the encroachment under section 13 of the *Charities Accounting Act* within a reasonable time after the pandemic has subsided;
- The funds must not be transferred to another organization except in compliance with previously existing contractual obligations;
- The amounts withdrawn should be reasonable given the circumstances of the organization; and
- If it is necessary to sell stocks, bonds or other securities, the PGT will consider the sale reasonable even if there is a loss of capital, provided such investments are sold to an arms-length third party on the open market.

If you have any questions or are uncertain whether your situation fits within these parameters, please contact counsel for the PGT, Charitable Property Program: Cynthia Spencer ([cynthia.spencer@ontario.ca](mailto:cynthia.spencer@ontario.ca)) or Dana DeSante ([dana.desante@ontario.ca](mailto:dana.desante@ontario.ca)).