

Fact Sheet

Survivor benefits and minor children

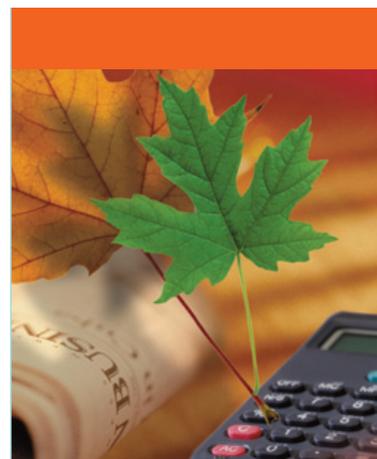
The OPSEU Pension Plan provides survivor benefits for your eligible survivors. In some cases your eligible survivors may be minor children.

This chart sets out all the potential survivor benefits payable to a minor child and assumes there is no eligible surviving spouse entitled to benefits. Please also see page 2 of the *Pension Beneficiaries* form for definition of these terms.

Pre-Retirement Death		Death after Pension Starts	
Minor child could be an:	Service up to Dec. 31/86	Service after Dec. 31/86	
eligible child	immediate 60% pension	lump sum payment	immediate 60% pension
other beneficiary	any lump sum refund	commuted value of deferred pension (as a lump sum)	residual balance (if any)

Minor child – definition

Under Ontario law, a child is considered a minor until the age of 18. Although an older child may be defined as an “eligible child” under the Plan, he/she would be regarded as an adult and not be subject to laws governing minor children. The OPSEU Pension Trust (OPTrust) does not pay survivor benefits directly to a minor child because a minor child cannot sign a valid release. However, a member may arrange to have the court appoint a Guardian of Property to receive benefits on behalf of the minor child.



If you do not have a surviving spouse, your minor children may receive survivor benefits.

Appointing a Guardian of Property

To make it easier to provide survivor benefits for the care of the minor child, a member may arrange for the Court to appoint a Guardian of Property as set out in the Children's Law Reform Act, R.S.O. 1990, c. C. 12 (CLRA). In this case, the person appointed as the Guardian will receive the survivor benefits and is bound by law to manage the funds in the best interests of the child. The Guardian must apply to the Ontario Court (Superior Court of Justice) to dispose of or use any part of the child's property.

Tax implications:

Where there is a Guardian of Property appointed, OPTrust will issue a T4A in the minor child's name. The child's custodial parent or guardian is not automatically the Guardian of Property. A Guardian of Property can only be appointed by a court order.

Without a Guardian of Property

In cases where the value of the survivor benefit to the minor does not exceed \$10,000 in total, OPTrust will pay the survivor benefits to the custodial parent or custodial guardian. Under the CLRA, that person is bound by law to use the funds for the benefit of the minor child as if he/she were the Guardian of Property.

If the value of the survivor benefit is more than \$10,000 in total the benefit will be paid into Ontario Court (Superior Court of Justice). The funds are held by the Accountant of the Ontario Court (Superior Court of Justice) and earn interest.

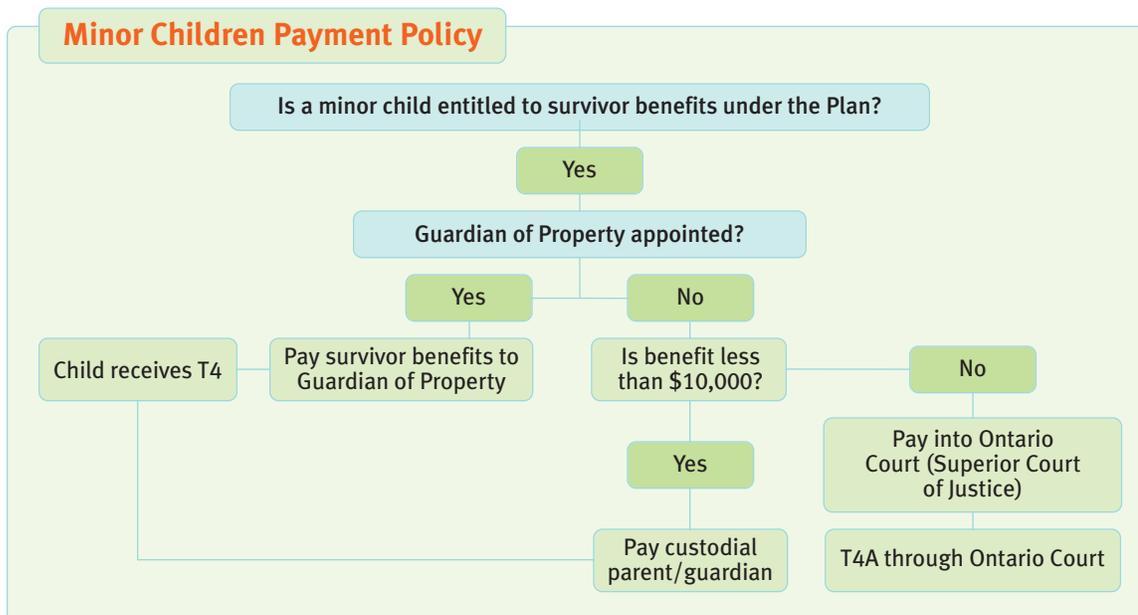
For a custodial guardian or parent to use these funds for the care of the minor child, he/she must bring a motion before a judge, with a notice to the Office of the Children's Lawyer. The custodial parent/guardian must file an affidavit in support of the motion stating why the withdrawal is justified. Once the minor child turns 18 years old, the child may request to receive the survivor benefit held by the Accountant of the Ontario Court (Superior Court of Justice).

Tax implications:

Whether the survivor benefits are paid to the custodial parent or guardian, OPTrust will issue a T4A in the minor child's name. If the survivor benefits are paid into Court, OPTrust issues a T4A to the Accountant of the Ontario Court in the minor child's name. The Court office then forwards the T4A to the minor child.



Tax implications vary depending on whether or not a Guardian of Property has been appointed.





Alternative to Court and Guardian of Property

There is no alternative to either payment into Ontario Court (Superior Court of Justice) or appointing a Guardian of Property if the minor child receives “eligible child” benefits (see chart on page 1). However, if you also want your minor child to receive other survivor benefits, there is a choice other than Guardianship. The following applies if you want a minor child to receive survivor benefits payable under the Plan to a beneficiary.

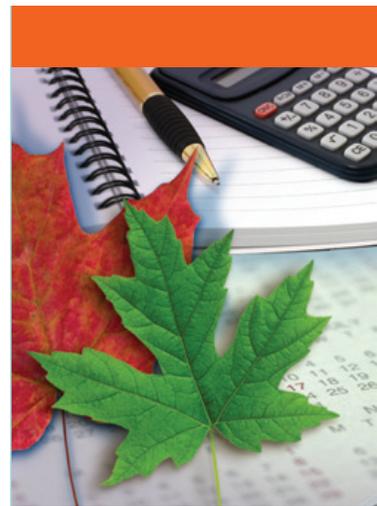
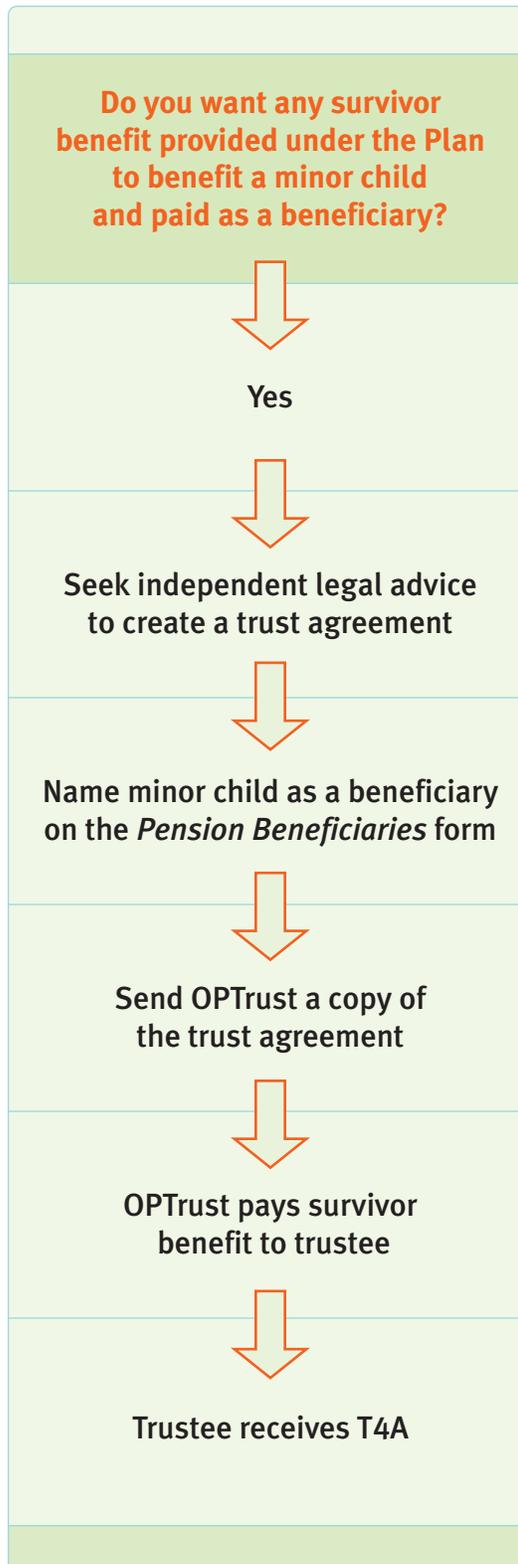
The member can name anyone in this generic category to receive these survivor benefits. To avoid payment into Court or through a Guardian of Property, the member can name the minor child as a beneficiary. In this case, the member must also name a trustee in a trust agreement to receive any funds payable from the Plan for the minor child. When OPTrust receives a copy of the trust agreement, OPTrust will pay the survivor benefit to the trustee. **It is the trust agreement that dictates how the person named uses these funds to care for the minor child.**

To avoid unnecessary delays in receiving the benefit, OPTrust recommends that you clearly identify in the trust agreement, the Plan survivor benefits that are to be paid for the benefit of the child(ren).

You should always seek independent legal advice before considering the appointment of a trustee for a minor child.

Tax implications:

In this case, OPTrust will issue a T4A to the trustee since the trust must issue its own separate tax return.



Naming a trustee to receive survivor payments for your minor child is an alternative to naming a Guardian of Property.





A Comparison of Guardian of Property and Trustee Roles

Guardian of Property	Trustee
<ul style="list-style-type: none"> is appointed by a Court order on application by the member/pensioner or other person 	<ul style="list-style-type: none"> is named by a member/pensioner under a trust agreement which may be elaborate or very simple (depending on legal advice received and the needs of the member/pensioner) and the child
<ul style="list-style-type: none"> may be required to file financial statements and post a bond 	<ul style="list-style-type: none"> obligations of trustee are normally specified in a trust agreement
<ul style="list-style-type: none"> the guardian's authority and responsibilities to dispose of or use any part of the child's property are prescribed by statute (CLRA) 	<ul style="list-style-type: none"> the trustee's authority and responsibilities to dispose of or use the funds are set out in the trust agreement created by the member/pensioner
<ul style="list-style-type: none"> must bring an application before the Court under the CLRA to dispose of or use any part of the child's property 	<ul style="list-style-type: none"> the trustee may use and dispose of the child's funds in accordance with the terms of the trust agreement



Seek independent legal advice if you are considering setting up a trust agreement or appointing a Guardian of Property for your minor child.

A member's decision to create a trust agreement for a minor child for monies received under the Plan as a beneficiary or to establish a Guardian of Property is a personal decision and should be carefully considered. We strongly advise that you seek independent legal advice before making

such a decision. **OPTrust can not give you any advice regarding which method, if any, is best for you and your child(ren). This publication is not legal advice and cannot be relied upon as such.**

For more information please contact OPTrust

This **Fact Sheet** is intended as a summary description of the OPSEU Pension Plan. The Plan text contains numerous provisions not described here that may apply to you. In the event of any conflict between this Fact Sheet and the OPSEU Pension Plan text, the Plan text will govern.

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