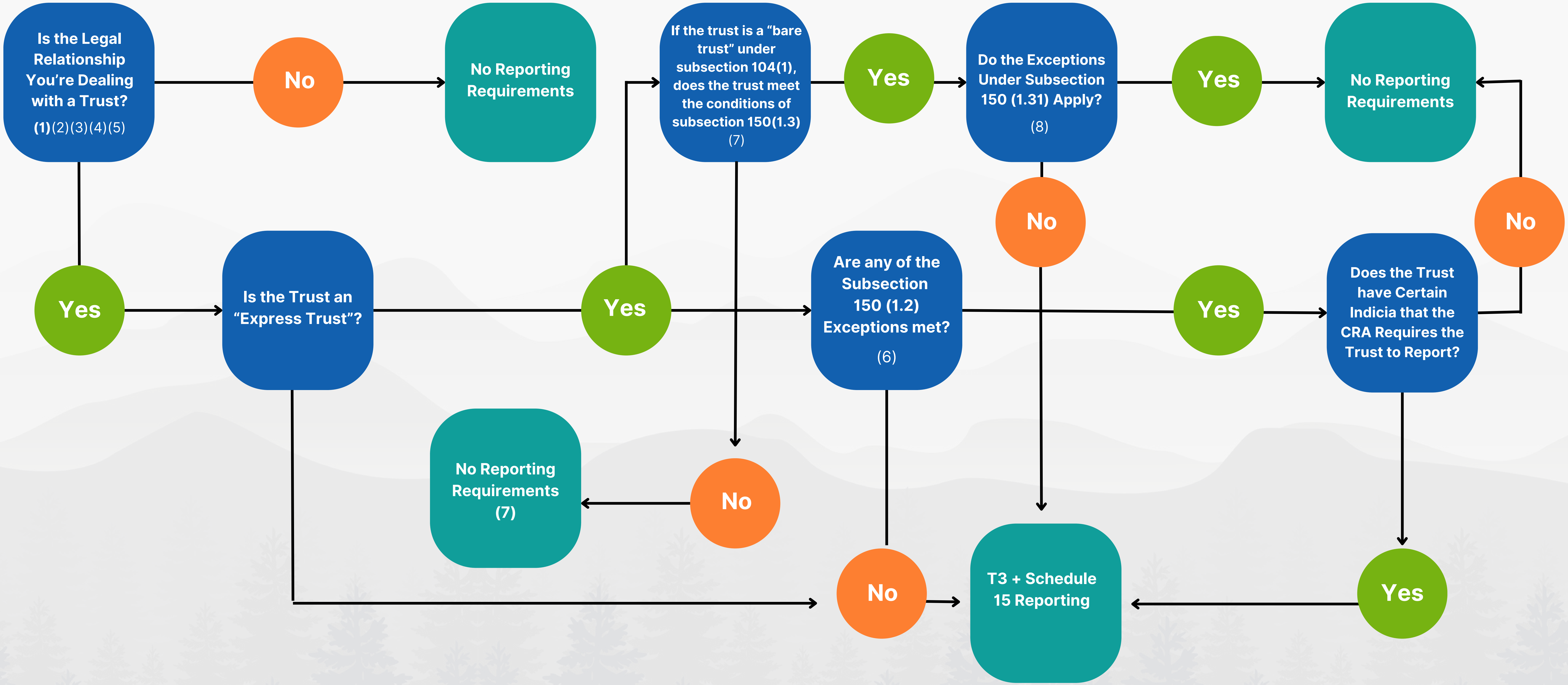
Trust Reporting Rules -

For Trusts Whose Taxation Year Ends After December 30, 2026 (1)



Flowchart Footnotes (1/6)

1. Subsection 104(1) is proposed to be amended such that “bare trusts” will be considered a trust for purposes of the trust reporting rules — applicable to trusts where the taxation year ends **after December 30, 2026** (which basically means most trusts other than GRE + QDT’s, which have off-calendar fiscal years).

2. *A trust is a legal relationship, not a legal entity. It arises when a settlor transfers property to a trustee to hold and manage for the benefit of one or more beneficiaries. The trustee holds the legal title to the trust property, while the beneficiaries hold the equitable or beneficial interest. The trustee is bound by fiduciary duties to manage the trust property in strict accordance with the terms of the trust and solely in the interest of the beneficiaries.*

To be valid, a trust must satisfy the “three certainties,” established in Knight v. Knight (1840), 49 ER 58, and adopted in Canadian law:

1. *Certainty of intention – the settlor must clearly intend to create a trust.*
2. *Certainty of subject matter – the property placed in trust must be clearly defined.*
3. *Certainty of objects – the beneficiaries (or class of beneficiaries) must be clearly ascertainable.*

Canadian courts have consistently affirmed this structure. In Guerin v. The Queen, [1984] 2 S.C.R. 335, the Supreme Court described the essence of a trust as the separation of legal and equitable ownership, with the trustee obligated to act in the beneficiaries’ best interests. In Frame v. Smith, [1987] 2 S.C.R. 99, Wilson J. highlighted that the defining characteristic of a trust is the fiduciary obligation of the trustee, which requires loyalty, good faith, and avoidance of conflict.

As Waters’ Law of Trusts in Canada (5th ed., 2021) notes:

“The trust is a relationship recognized by equity whereby a person, the trustee, is compelled in equity to hold property, whether real or personal, for the benefit of others, known as beneficiaries, or for some object permitted by law.”

Flowchart Footnotes (2/6)

3. Other legal relationships that are often confused with trust relationships are joint ventures, partnerships and joint tenancy. In addition, deemed trusts under subsection 94(3) of the Act are considered trusts for purposes of these rules.

Comparison of Trusts and Other Legal Relationships (Canadian Common Law, with Authorities)

Feature	Trust	Partnership	Joint Venture	Joint Tenancy / Co-ownership
Legal structure	Equitable relationship recognized in equity (Waters' Law of Trusts in Canada)	Statutory & contractual: Partnership Act (provincial)	Purely contractual; sometimes informed by partnership law	Form of property ownership (Ziff, Principles of Property Law)
Ownership of property	Trustee holds legal title; beneficiaries hold equitable title (Guerin v. The Queen, [1984] 2 S.C.R. 335)	Partners own property jointly for firm purposes (Partnership Act)	Joint venturers may own separately or jointly; depends on contract	Co-owners each hold legal title; right of survivorship in joint tenancy (Ziff, Property Law)
Primary duty	Fiduciary duty owed by trustee to beneficiaries (Frame v. Smith, [1987] 2 S.C.R. 99)	Partners owe duties of loyalty and good faith to each other (Continental Bank Leasing Corp. v. Canada, [1998] 2 S.C.R. 298)	Duties defined mainly by contract; limited fiduciary overlay (Central Mortgage & Housing Corp. v. Graham, [1967] S.C.R. 607)	No fiduciary duty simply from co-ownership (Ziff, Property Law)
Purpose	To hold/manage property for beneficiaries	To carry on business for profit (Partnership Act)	To pursue a common venture/project (e.g., resource development)	To share ownership/enjoyment of property
Source of rules	Common law & equity; supplemented by trust deed and statute (provincial Trustee Acts, federal Income Tax Act)	Provincial Partnership Acts, partnership agreement, common law	Joint venture agreement (contract); sometimes partnership principles	Land law, property statutes, and common law
Key distinction	Separation of legal and equitable ownership; strict fiduciary obligations	Mutual agency & profit-sharing among partners	Contract-driven cooperation; no split between legal & equitable title	Unity of title; no equitable separation

Flowchart Footnotes (3/6)

4.

Types of Trusts in Canadian Common Law

Feature	Express Trust	Resulting Trust	Constructive Trust
Creation	Deliberately created by the settlor (e.g., by trust deed, will, declaration)	Implied by law when intent is presumed, usually where property has been transferred without clear beneficial ownership direction	Imposed by court regardless of intention, to remedy unjust enrichment or wrongful conduct
Source of intention	Actual intention of the settlor (must show certainty of intention, subject matter, and objects)	Presumed or inferred intention (e.g., gratuitous transfers, purchase money cases)	No intention needed; arises from equity to prevent unfairness
Purpose	To manage property for the benefit of identified beneficiaries or purposes	To return property or benefit back to the transferor (or estate) because equity presumes no gift was intended	To prevent unjust enrichment, fraud, breach of fiduciary duty, or wrongful holding of property
Example	Parent creates a family trust by deed naming children as beneficiaries	A parent buys a house in a child's name without clear gift intention → court presumes resulting trust in favour of parent	Business partner diverts profits in breach of duty → court may impose constructive trust over those profits
Leading Canadian authority	Knight v. Knight (1840, UK); Waters' Law of Trusts in Canada	Pecore v. Pecore, [2007] 1 S.C.R. 795 (presumption of resulting trust in gratuitous transfers)	Soulos v. Korkontzilas, [1997] 2 S.C.R. 217 (constructive trust as

5. See also T3 Guide published annually by the CRA – 2024 link here —
https://www.canada.ca/en/revenue-agency/services/forms- publications/publications/t4013/t3-trust-guide.html#P308_34295

Flowchart Footnotes (4/6)

6. Subsection (1.1) does not apply to a taxation year of a trust if the trust is resident in Canada and is an express trust, or for civil law purposes a trust other than a trust that is established by law or by judgement, unless the trust

(a) had been in existence for less than three months during the year;

(b) holds assets with a total fair market value that does not exceed $50,000 throughout the year;

(b.1) meets the following conditions:

- (i) each trustee is an individual,
- (ii) each beneficiary is
  - (A) an individual (other than a trust) and is related to each trustee, or
  - (B) a graduated rate estate of an individual who was a beneficiary described in clause (A) in the year of the individual's death,
- (iii) the total fair market value of the property of the trust does not exceed $250,000 throughout the year and the only assets held by the trust throughout the year are one or more of following:
  - (A) money, including deposits in a Canadian bank, trust company or credit union incorporated under the laws of Canada or of a province,
  - (B) a guaranteed investment certificate issued by a Canadian bank, trust company or credit union incorporated under the laws of Canada or of a province,
  - (C) a debt obligation described in paragraph (a) of the definition fully exempt interest in subsection 212(3),
  - (D) debt obligations issued by
    - (I) a corporation, mutual fund trust or limited partnership the shares or units of which are listed on a designated stock exchange in Canada,
    - (II) a corporation the shares of which are listed on a designated stock exchange outside Canada, or
    - (III) an authorized foreign bank that are payable at a branch in Canada of the bank,
  - (E) a share, debt obligation or right listed on a designated stock exchange,
  - (F) a share of the capital stock of a mutual fund corporation,
  - (G) a unit of a mutual fund trust,
  - (H) an interest in a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)),
  - (I) an interest as a beneficiary under a trust, all the units of which are listed on a designated stock exchange,
  - (J) personal-use property of the trust, or
  - (K) a right to receive income or gains on property described in clauses (A) to (J);

(c) is required under the relevant rules of professional conduct or the laws of Canada or a province to hold funds for the purposes of an activity that is regulated under those rules or laws, provided

- (i) the trust is not maintained as a separate trust for a particular client or clients, or
- (ii) the only assets held by the trust throughout the year are assets described in clause (b.1)(iii)(A) or (B) with a total fair market value that does not exceed $250,000;

Flowchart Footnotes (5/6)

(d) is a registered charity;
(e) is a club, society or association described in paragraph 149(1)(l);
(f) is a mutual fund trust;
(g) is, for greater certainty, a related segregated fund trust, within the meaning assigned by paragraph 138.1(1)(a);
(h) is a trust, all the units of which are listed on a designated stock exchange; (i) is prescribed to be a master trust;
(j) is, for greater certainty, a graduated rate estate, or would be a graduated rate estate if the estate had filed a return for the year;
(k) is a "qualified disability trust", as defined in subsection 122(3); (l) is an employee life and health trust;
(m) is a trust described under paragraph 81(1)(g.3);
(n) is a trust under or governed by

- (i) a deferred profit sharing plan,
- (ii) a pooled registered pension plan,
- (iii) a registered disability savings plan, is, for greater certainty, a graduated rate estate, or would be a graduated rate estate if the estate had filed a return for the year;
- (iv) a registered education savings plan,
- (v) a registered pension plan,
- (vi) a registered retirement income fund,
- (vii) a registered retirement savings plan,
- (viii) a tax-free savings account,
- (ix) an employee profit sharing plan,
- (x) a registered supplementary unemployment benefit plan, (xi) a first home savings account; or
- (xii) a retirement compensation arrangement the primary purpose of which is to provide annual or more frequent periodic retirement benefits to supplement the benefits provided out of or under one or more registered pension plans, registered retirement savings plans, deferred profit sharing plans or pooled registered pension plans;

(o) is a cemetery care trust or a trust governed by an eligible funeral arrangement;
(p) is an "eligible trust", as defined in subsection 135.2(1);
(q) is established for the purpose of complying with a statute of Canada or a province and the person or persons acting as trustee of the trust hold the property in trust for a specified purpose; or
(r) is an employee ownership trust.

Flowchart Footnotes (6/6)

7. A “bare trust” is not considered a trust for purposes of The Act even though it is a trust legally; see subsection 104(1) of The Act. However, if the trust meets the conditions of subsection 150(1.3), outlined below, it is considered a trust for purposes of the reporting rules. If not, then subsection 104 (1) applies and no reporting.

Is the trust considered a “bare trust” under subsection 150(1.3)?

150(1.3) For the purpose of this section and section 204.2 of the Income Tax Regulations,

(a) a trust includes an express trust that would not otherwise be considered a trust under the Act if, under the trust,

- (i) one or more persons (in this subsection and subsection (1.31) referred to as a "legal owner") have legal ownership of property that is held for the use of, or benefit of, one or more persons or partnerships, and
- (ii) the legal owner can reasonably be considered to act as agent for the persons or partnerships who have the use of, or benefit of, the property;

(b) each person that is a legal owner of a trust that is described under paragraph (a) is considered to be a trustee of the trust; and

(c) each person or partnership that has the use or benefit of property under a trust that is described under paragraph (a) is considered to be a beneficiary of the trust.

8. Exceptions to “Bare Trust” Reporting

150(1.31) Subsection (1.3) does not apply to a trust for a taxation year if

(a) each person or partnership that is considered to be a beneficiary under paragraph (1.3)(c) at any time in the year is also a legal owner of the property referred to in that paragraph at that time and there are no legal owners that are not considered to be beneficiaries;

(b) the legal owners are individuals that are related persons and the property is real property or immovable that would be the principal residence of one or more of the legal owners for the year if those legal owners had designated the property for the year under the definition principal residence in section 54;

(c) the legal owner is an individual and the property is real property or immovable that

- (i) is held for the use of, or benefit of, the legal owner's spouse or common-law partner during the year, and
- (ii) would be the legal owner's principal residence for the year if the legal owner had designated the property for the year under the definition principal residence in section 54;

(d) under the trust

- (i) the property is held throughout the year solely for the use of, or benefit of, a partnership,
- (ii) each legal owner is a partner of the partnership, and
- (iii) a member of the partnership is, or but for subsection 220(2.1) would be, required under section 229 of the Income Tax Regulations to make an information return for a fiscal period of the partnership that includes December 31 of the taxation year;

(e) the legal owner holds the property as required by an order of a court;

(f) all or substantially all of the property under the trust is Canadian resource property (as defined in subsection 66(15)) that is held solely for the use of, or benefit of, one or more persons or partnerships each of which is

- (i) a corporation, the shares of which are listed on a designated stock exchange,
- (ii) a corporation that is controlled by one or more corporations described in subparagraph (i),
- (iii) a partnership if
    - (A) a majority-interest partner of the partnership is a corporation described in subparagraph (i) or (ii), or
    - (B) a majority-interest group of partners (as defined in subsection 251.1(3)) of the partnership consists of two or more corporations described in subparagraph (i) or (ii), or
- (iv) a partnership if
    - (A) a majority-interest partner of the partnership is a person or partnership described in subparagraphs (i) to (iii), or
    - (B) a majority-interest group of partners (as defined in subsection 251.1(3)) of the partnership consists of two or more persons or partnerships described in subparagraphs (i) to (iii); or

(g) under the trust

- (i) property is held exclusively for the use of, or benefit of, one or more persons described under subsection 149(1),
- (ii) each legal owner is a person described under subsection 149(1), and
- (iii) the property consists solely of funds received from His Majesty in right of Canada or a province.

9. “For the purposes of these rules, a related person includes an aunt, uncle, niece and nephew and a person is related to himself or herself.”