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Sunlight and Shadow

The disclosure of trust information: how the common law has evolved, and how legislatures around the world have rewritten it

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THE CORE TENSION

Two duties, pulling in opposite directions

Confidentiality

Trust documents belong to the trustee as legal owner. Settlors often intend privacy — commercial sensitivity, family dynamics, protection from external threats.

Accountability

Trust property is held subject to the beneficiaries' equitable rights. Without information, beneficiaries cannot police the trust — and the duty to account collapses.

"If the beneficiaries have no rights enforceable against the trustees there are no trusts."

Millett LJ, Armitage v Nurse [1998] Ch 241 — the irreducible core

COMPETING INTERESTS

Why settlors want silence — and why it is dangerous

Commercial sensitivity

Confidential business information inside trust structures

Avoiding dependency

Beneficiaries losing motivation to build independent wealth

External threats

Fraud, scams, undue influence, frivolous litigation

Genuine unsuitability

Some information is simply inappropriate to share

The cost of secrecy

A trustee who withholds information from every beneficiary becomes effectively unaccountable.

That raises the risk of mismanagement and breach of fiduciary duty — and of failing the duty to account, which sits at the very core of the trust relationship.

Without accountability, there is no trust.

WHERE WE STARTED

The traditional common law: property and its limits

Disclosure on demand

- The 'proprietary approach' (late 19th c.): beneficiaries entitled to see 'their' documents
- Right to accurate information as to the state of the trust — the trustee must be ready to account
- Right to inspect trust documents at all reasonable times, copies at own expense
- No reasons needed from the beneficiary

The Londonderry carve-out

- Re Londonderry's Settlement [1965]: trustees need not disclose reasons for discretionary decisions
- Protected: agendas, trustee minutes, correspondence, deliberative materials
- Mere objects of discretion? No duty to volunteer anything (Re Manisty's Settlement)
- **The line between 'entitled' and 'excluded' turned on proprietary interest — untenable once discretionary trusts became dominant**

THE TURNING POINT — PRIVY COUNCIL, 2003

Schmidt v Rosewood Trust Ltd

1

Not a proprietary right

Disclosure is no longer anchored to a beneficiary's proprietary interest in trust assets. A proprietary interest guarantees nothing — and its absence bars nothing.

2

The court's inherent jurisdiction

The right to seek disclosure is one aspect of the court's inherent jurisdiction to supervise — and if necessary intervene in — the administration of a trust.

3

No entitlement as of right

No beneficiary, whatever their status, is automatically entitled to trust information. Everything turns on the circumstances of the particular trust.

The claimant was neither beneficiary nor object of a power — yet the door to disclosure was not closed. Disclosure became part of the trustee's duty to account.

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THE NEW FRAMEWORK

Exercising the discretion: the Schmidt factors

Confidentiality

Personal or commercial confidentiality in the material sought

Nature of interests

The character of the interests held by those seeking access

Impact on others

Effect on trustees, other beneficiaries and third parties

Partial disclosure

Whether documents can be withheld or supplied in redacted form

Safeguards

Undertakings or restrictions on the use of trust documents

Family harmony

Whether disclosure would embitter family relationships

A GLOBAL MAP

How the world responded: three legislative postures

CATEGORY 1

Default transparency

Common law / codified duty to inform. Disclosure is the starting point.

England & Wales · Australia · Singapore · Hong Kong · New Zealand · Canada · Mauritius · BVI · Bermuda · Cayman (ordinary) · USA (UTC)

CATEGORY 2

Flexible by design

Statute lets the trust instrument restrict or shape disclosure — subject to court oversight.

Jersey · Guernsey · Bahamas · Dubai (DIFC)

CATEGORY 3

Deliberately opaque

Silence is the statutory default or a permitted design choice.

Cook Islands · US 'silent trust' states (DE, NV, SD…) · Cayman STAR trusts

CATEGORY 1 UP CLOSE

Spotlight: common law friction

Australia — a house divided

- No state has codified disclosure; no duty to volunteer, but requests must be met — even for contingent interests
- Most courts endorse Schmidt (Avanes v Marshall and a long line since)
- But McDonald v Ellis (Bryson AJ): Schmidt swaps a concrete rule for 'litigious debate' — entitlement should be the starting point
- Rinehart v Rinehart [2022]: the question expressly left open

England — the data protection flank

- Dawson-Damer v Taylor Wessing: beneficiaries used subject access requests to reach information trust law would not give them
- Court of Appeal: legal professional privilege did not shield the trustee's solicitors; joint privilege applied
- GDPR art 15(4) + DPA 2018 have since narrowed the flank — Londonderry-type material likely protected again
- **Lesson: privacy law may now sits alongside trust law**

Spotlight: the American experiment with silence

From UTC to silent trusts

- UTC §813: duty to keep qualified beneficiaries reasonably informed; §105(b) makes parts of it mandatory
- 37 states adopted the UTC — 17 stripped out the mandatory disclosure floor
- Delaware: silence for a defined period only, with a designated representative to whom the trustee accounts
- Nevada & South Dakota: no time limit at all

Wilson v Wilson — the limit

- North Carolina omitted the mandatory disclosure provisions; the trust instrument negated disclosure
- Beneficiaries alleged breach; trustee refused discovery, citing the silent-trust terms
- Court of Appeals: good faith is non-waivable — beneficiaries are always entitled to information reasonably necessary to enforce their rights
- **Someone must always be able to call the trustee to account**

CODIFICATION

Spotlight: New Zealand writes Schmidt into statute

Trusts Act 2019

- s 51: presumption that every beneficiary receives 'basic trust information' — their status, the trustee's identity, changes of trusteeship, the right to request terms
- s 53: thirteen factors may displace the presumption (interests, confidentiality, settlor intent, family effects, practicality…)
- Withhold from every beneficiary? The trustee must apply to court for directions
- Reasons for trustee decisions remain outside 'trust information'

The dog that didn't bark

- The disclosure provisions were expected to trigger a wave of litigation — directions applications, beneficiary enforcement claims
- Five years on, the wave has not arrived
- Possible reasons: limited awareness among settlors and advisers — or settlors taking a more humanistic view, engaging beneficiaries early rather than litigating late

THE OUTER EDGE

Engineered opacity — and governing laws of convenience



Deliberately opaque regimes

- Cook Islands: disclosing international trust information is an offence, subject to limited exceptions — the trustee holds full discretion
- Cayman STAR: beneficiaries as such have no information rights at all — only enforcers do (though beneficiaries can be appointed enforcers)
- *Opacity as consequence, not purpose — accountability is redirected, not abolished*



Choosing your disclosure law

- Hague Convention: the settlor's chosen law governs administration — including the duty to account (arts 6, 8)
- A Bahamian-law trust administered in England is judged by Bahamian disclosure rules
- Public policy override (art 18) exists but is rarely invoked
- **Risk is mitigated where accountability flows through another channel — e.g. reporting to a protector**

BRINGING IT HOME

Singapore: Schmidt, expressly adopted

- No statutory disclosure regime — the common law duty to account governs
- Mustaq Ahmad v Providentia Wealth Management [2023] SGHCF 52: the High Court expressly endorsed Schmidt — disclosure, including of trustee–beneficiary communications, is an aspect of the court's supervisory jurisdiction
- Duty to maintain accounts and generally provide them on request (Chiang Shirley v Chiang Dong Pheng)

Propriety

Unilateral communications from beneficiaries may hold sensitive, confidential material

Transparency

The need to promote openness between beneficiaries and trustees

Practicality

Avoiding onerous burdens that impede administration and breed satellite litigation

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CONCLUSION

The case for engagement

Trusts at their best

Protect a family legacy, secure future generations, and deliver the settlor's true objectives.

Trusts at their worst

Rigid, opaque structures that strip families of agency — breeding disharmony and fracturing the wealth they were built to preserve.



My contention

There has been too much emphasis on restricting information.

Start with the settlor's real objective — usually preserving and growing family wealth across generations.

Most of the time, transparency and engagement with beneficiaries will achieve that objective better than silence ever will.

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Questions & discussion



Full paper in your conference materials

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