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## Backgrounder

### BCLI Report no. 24—Creditor Access to the Assets of Purpose Trust

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When a charitable organization receives a gift of property to further its general purposes, it will usually own the property outright. However, additional factors may result in the gift being characterized legally as creating a trust. A trust is a relationship in which a designated trustee holds title to assets for the benefit of a designated person or persons, whom are called the beneficiaries. A trust is typically established when an owner of property (called the *settlor*) transfers the property to a trustee on terms describing how the trustee is to administer the property to confer the benefits that the settlor intends.

The Ontario Court of Appeal in *Re Christian Brothers of Ireland in Canada* ruled that assets held by a charity in trust for a stated special charitable purpose were available to satisfy tort claims against the charity, even in situations where those claims arose out of circumstances wholly unrelated to the purposes for which the trust property is used. The ruling generated concern among Canadian charities, trust lawyers, and academics. It has been suggested that the decision creates serious problems for charities across Canada concerning the protection of their charitable trust property from creditors having claims unrelated to the trusts, and that it may also seriously affect the ability of charities to raise funds.

This report considers whether or not the Ontario Court of Appeal reached the correct decision in terms of law and policy. The report concludes that the decision constitutes a major departure from the law of charitable trusts as it has been understood, and recommends that remedial legislation be enacted. The *Charitable Purposes Preservation Act*, enacted in 2004 and brought into force in 2007, implements the essence of the report's conclusions and recommendations, although in a different form from the draft legislation appearing in the report.

This report is the sixth of a series of reports forming part of a larger project on reform of the *Trustee Act* and related laws to meet present-day requirements of trusteeship.