

LAW REFORM COMMISSION OF BRITISH COLUMBIA

c/o British Columbia Law Institute
1822 East Mall, University of British Columbia
Vancouver, British Columbia V6T 1Z1
Voice: (604) 822 0142 Fax: (604) 822 0144 E-mail: bcli@bcli.org
Website: www.bcli.org

Backgrounder

LRC 128—Report on Non-Charitable Purpose Trusts

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As a general rule, a trust that is framed for the benefit of a purpose rather than a person is invalid unless the purpose is charitable. In law, charity is a narrow concept that excludes many activities beneficial to the public. In this report the Commission examines the rule and anomalies that flow from it, and concludes that the current limitations that the law places on the creation of non-charitable purpose trusts should be abolished. The report examines the current law regarding purpose trusts, defects within that sphere, and potential reforms.

The preamble to the *Charitable Uses Act* 1601 restricts the eligible grounds for a charitable trust, and since then there have been few related statutory reforms in British Columbia. One of the changes is in a provision of the *Law and Equity Act*, which can save the charitable portion of a trust when non-charitable and charitable objects are intermingled in a prescribed way. Before this amendment trusts that were not exclusively for a charitable purpose would fail. Another provision, found in the *Perpetuity Act*, allows non-charitable purpose trusts, but limits them in both time and scope.

The ability to create a valid non-charitable purpose trust provides opportunities for sustainable funding on the endowment model for many non-profit activities that are not legally charitable. Currently, non-charitable purpose trusts are limited to 21 years in duration and it is unclear as to the manner in which these trusts take effect. Its applicability to trusts that do not appear to be covered by the *Law and Equity Act* is uncertain. Further reform is needed to remove these ambiguities and to make the non-charitable purpose trust a more useful device. The doctrine of *cy-près*, which allows a court to approve an alternate scheme to fulfill a purpose is discussed, although it is only applicable to charitable trusts.

The Commission recommends that the relevant provisions of the *Perpetuity Act* and the *Law and Equity Act* be repealed and replaced with legislation that validates non-charitable purpose trusts as fully enforceable. The legislation should provide for the variation of objects, enforcement, validation of mixed charitable and non-charitable purpose trusts, and the requirements for a valid non-charitable purpose trust. The report also recommends

that there should be no time limit on how long non-charitable trusts may operate for, and that the doctrine of *cy-près* be extended to operate in those circumstances.

The report concludes by summarizing the recommendations for improving the non-charitable interest trust. This would be a useful and flexible device that would facilitate long-term support for many worthwhile activities and allow settlors to order their affairs in ways the current law does not permit. This is important due to the increasing requirement for private funds to further goals previously served by government.

Further Developments

The report's recommendations have not been implemented.