



# 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](mailto:bcli@bcli.org)

Website: [www.bcli.org](http://www.bcli.org)

## Backgrounder

### BCLI Report no. 25—Report on the Variation and Termination of Trusts

Date: October 2003

A trust is a relationship in which a designated trustee holds title to assets for the benefit of a designated person or persons, who 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. Sometimes trusts are created that are not adequately drafted to address changing or unforeseen circumstances. This report addresses situations such as these and the law surrounding the variation of trusts.

The *Trust and Settlement Variation Act* enables courts to approve an arrangement varying or revoking all or any of the beneficial interests under a trust or enlarging the powers of trustees to manage or administer property subject to the trust. The court can only approve a proposal if it is for the benefit of each of the persons on whose behalf the court's approval is sought and, in the view of the court, the arrangement ought to be approved. The Act follows the original English trust variation legislation, which has largely remained unchanged since 1968 when it was enacted.

The report embodies a number of recommendations to modernize the law and to allow trust instruments to be amended more effectively and efficiently. The report also addresses some particular areas of concern regarding trust variation, including the scope of the court's power to approve proposals to vary and terminate trusts, the persons on whose behalf the court is empowered to give approval, and the application of trust variation legislation to charitable trusts and corporations. This topic was addressed as part of the broader project on the modernization of the *Trustee Act*.