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Backgrounder

BCLI Report no. 33—A Modern Trustee Act for British Columbia

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A trust is a relationship in which a designated trustee holds title to assets for the benefit of a designated person or persons 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 intended benefits. Trust principles pervade a wide a range of common dealings. For example, they are commonly in play when an employee pays into a pension fund, when a person makes a will that is anything other than of the simplest kind, and in a sale of land pending actual transfer into the purchaser's name.

The law of trusts is primarily found in case law, but it is also partly statutory. Statute law relating to trusts is mainly concerned with the administration of trusts rather than with the relationships between settlors, trustees, and beneficiaries. In British Columbia, the principal statute concerned with trust law is the *Trustee Act*. The *Trustee Act* affects almost every estate and trust in the province. Like its counterparts in other provinces and territories, it is largely a re-enactment of English trustee legislation passed at various times in the nineteenth century.

Much of the *Trustee Act* is concerned with trusts under wills, and with giving trustees powers with respect to land and mortgages of land. This reflects the fact that in former times the trust was chiefly used as a means of preserving wealth in the form of land. The archaic content of much of the *Trustee Act*, and its preoccupation with testamentary trusts does not suit the great range of applications and new forms of trusts that exist today. The Act is highly antiquated in other respects as well and is overdue for comprehensive reform.

This report explains the historic and contemporary purposes and importance of the *Trustee Act* and the need for its reform. The report outlines the process by which the BCLI's Trustee Act Modernization Committee revised the Act, and a brief summary of key features of the draft *Trustee Act* recommended by the Committee. The report also contains the draft revised *Trustee Act* recommended by the Committee for enactment, with commentaries on its provisions.