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BCLI Report no. 7—Report on Statutory Remuneration of Trustees and Trustees' Accounts

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This report contains recommendations for changes to the provisions of the *Trustee Act* dealing with the remuneration of trustees and related matters. In all Canadian provinces and territories, trustees and personal representatives (executors and administrators of estates) have a statutory right to receive remuneration for their services from the trust or estate. This remuneration is received in addition to reimbursement for out-of-pocket expenses incurred in carrying out the trust or the duties of a personal representative. If the trust instrument or will specifies the way in which the trustee or executor is to be remunerated, this term is usually considered to be in lieu of statutory remuneration, and no allowance will be receivable under the legislation.

Statutory remuneration takes the form of an allowance from the trust capital (the original trust property) and income, with a ceiling fixed by statute. Within that ceiling the court is directed to allow an amount it considers fair and reasonable. The *Trustee Act* also provides specifically for a second, newer form of statutory remuneration termed the “care and management fee” which may be allowed annually during the administration of the trust. The care and management fee is awarded in addition to the more traditional allowance from capital and income, and its precise amount is also set by the court, subject to a fixed ceiling. It reflects a modern shift in emphasis in trusteeship from preservation of capital to active portfolio management to ensure adequate return and capital growth.

Despite the introduction of annual care and management fees in order to accommodate changing demands in trusteeship, much of the law and procedure surrounding statutory remuneration of trustees in British Columbia remains complex and outdated. With the notable exception of the provisions of the *Trustee Act* dealing with investment of trust property, probably none are so frequently criticized as being in need of overhaul as those relating to remuneration.

The key section in the *Trustee Act* dealing with remuneration of trustees is section 88. Its operation is discussed with reference to case law and to the Rules of Court. The report recommends amendments to the *Trustee Act* and the Rules of Court to rationalize the legislation dealing with trustee remuneration in a manner that encourages both careful and productive trusteeship.