

Alberta Law Reform Institute Recommends Reform to Trustee Act with Clear, Simple, and Comprehensible Legislation

By: Robyn Mitchell

Matter Commented On: Alberta Law Reform Institute, [Final Report No. 109, A New Trustee Act for Alberta](#)

The Alberta Law Reform Institute has just released [Final Report No. 109, A New Trustee Act for Alberta](#). The Report sets out ALRI's final recommendations for new trustee legislation in Alberta. Using the Uniform Law Conference of Canada's Uniform Trustee Act 2012 as a starting point, ALRI then tailored its recommendations to reflect Alberta's trusts law and practice.

The current *Trustee Act* is out of date. While there have been some changes over the years, some provisions of the Act remain unchanged since trustee legislation was first enacted in 1893 in what is now Alberta. There has never been a complete review of the entire *Trustee Act*.

Practitioners in Favour of Trustee Act Reform

In November 2015, ALRI released a Report for Discussion which included research and preliminary recommendations. ALRI then undertook extensive consultation jointly with the Ministry of Justice. Overwhelmingly, the trusts law practitioners who provided feedback were very supportive of having Alberta's trust legislation updated and agreed that the current legislation could be improved.

ALRI relied extensively on the helpful and high quality feedback received from the trusts law community in crafting its final recommendations. In fact, twenty-three of the recommendations in the Final Report are either new or amended based on the feedback we received during consultation.

Proposed New Trustee Act Provides Clarity

Trustee legislation should make creating and administering a trust simple and easy to understand. With this in mind, the trustee powers and duties, and the way trusts should be administered, are clearly explained in the new Act. Persons who create trusts retain great power and autonomy under the new Act. The bulk of the legislative provisions are intended to assist in situations where a trust is unclear or silent on a particular matter. The court is intended to be the last resort for assistance or to settle disputes.

New Trustee Act Includes Both New and Reformed Legislation While Keeping What Works

While ALRI's Final Report recommends many changes to the current *Trustee Act*, not all of the changes are unexpected. Some of the changes from the current Act simply capture the actual

practice of trusts. For example, under the current Act, the default rule is that trustees must make decisions unanimously. However, most trusts are actually drafted to have trustees making decisions by majority. Our Report recommends that the Act provide for majority decision-making by trustees as the default position.

Some of the changes recommended are simply new. For example, we have recommended that the Act allow trusts to use temporary trustees when a trustee is unable to administer the trust for some reason.

The Final Report also recommends that certain parts of the current Act remain in the new legislation. The prudent investor rules are a relatively new addition to the current *Trustee Act*. We have been advised that these rules work well in practice and should remain in any new legislation.

We hope you will take some time to review the Final Report and recommendations for new trustee legislation in Alberta. The Final Report can be found [here](#).

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