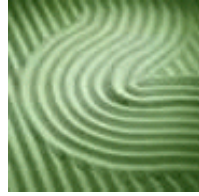


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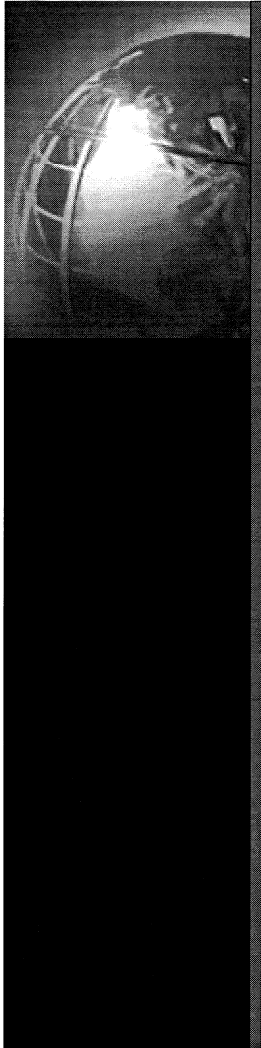
WASHINGTON, D.C.

New Investment Rules For British Columbia Charities

by Sandra L. Enticknap

This article is provided as an information service only and is not meant as legal advice. Readers are cautioned not to act on the information provided without seeking specific legal advice with respect to their unique circumstances.

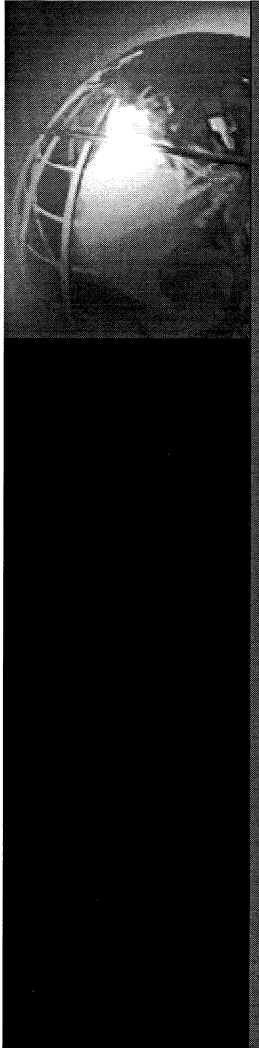
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BACKGROUND

- **Trustees and Directors of Charitable Trusts and Charitable Corporations are fiduciaries of the charity and as such responsible and accountable for investment decisions made**
- **Based on common law in British Columbia-no specific legislation**

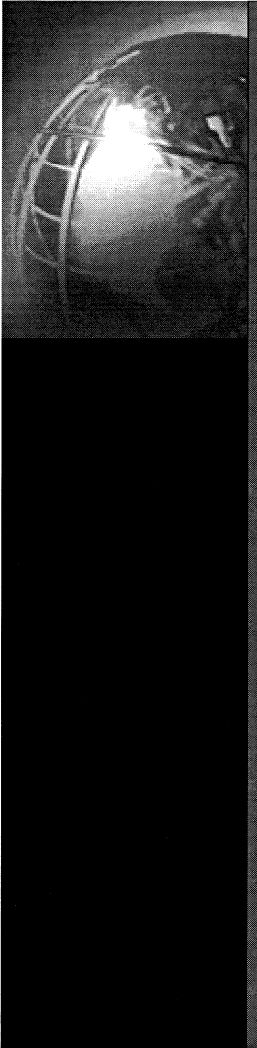
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BACKGROUND (cont.)

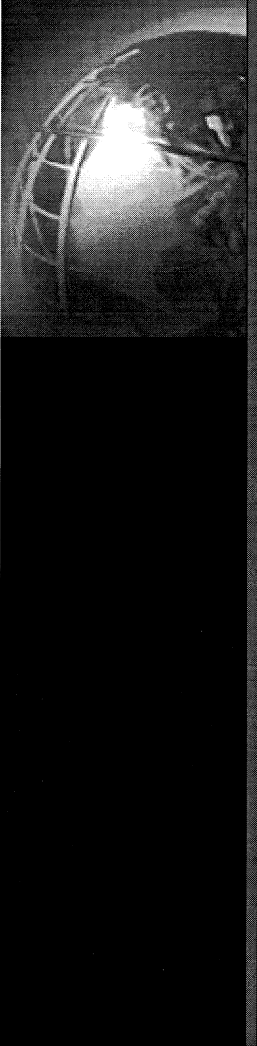
- **Responsibility for review of charitable trusts – in British Columbia, the Attorney General**
- **Charitable corporations (Societies) established under the Society Act – can be investigated under s.84**

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BACKGROUND (cont.)

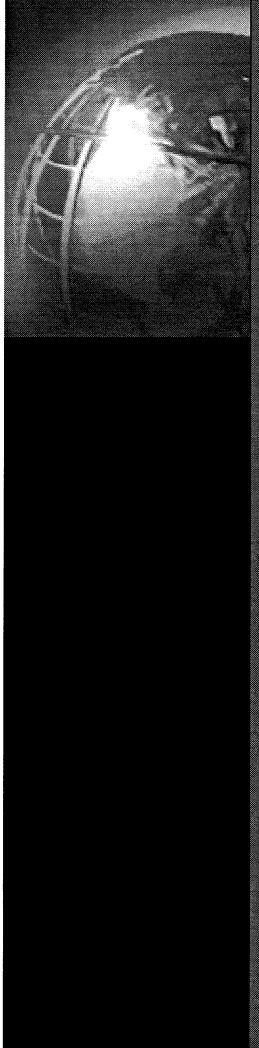
- **Where Trust or constating documents of a charity were silent with respect to investments, Section 15 of the *Trustee Act* applied**
- **Section 15 contained “legal list” of statutorily permitted investments**
 - **comprised of fixed income and blue chip type investments**
 - **mutual funds were not included**



BACKGROUND (cont.)

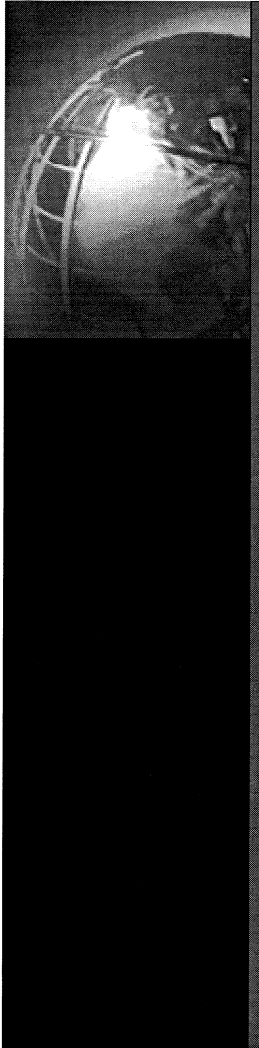
- **U.S. experience**
 - **amended legislation and rules more quickly than Canada**
 - **recognized reliance on fixed income conservative securities, no longer the “best” or a “prudent” strategy to preserve capital and general income**
 - **the positive aspects of “portfolio diversification” emerged**

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BACKGROUND (cont.)

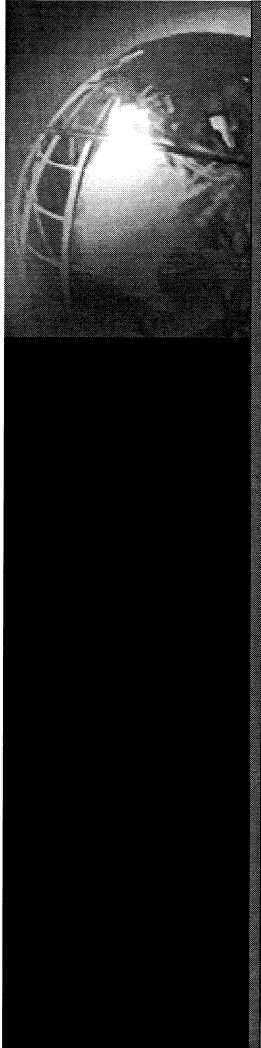
- **U.S. implemented “Prudent Investor Rule”**
- **Uniform Law Conferences of Canada recommended provinces adopt “Prudent Investor” approach**
- **Ontario adopted Prudent Investor approach in amendments to the *Trustee Act* effective July 1, 1999**



AMENDMENTS TO *TRUSTEE ACT*

- **Enacted in 2002 – but not yet proclaimed - into force on a date set by regulation**
- **Replace the old statutory list of permitted investments with the “prudent investor” rule**
- **New statutory standard for investment is that a trustee *“must exercise the care, skill, diligence and judgment that prudent investor would exercise in making investments”***

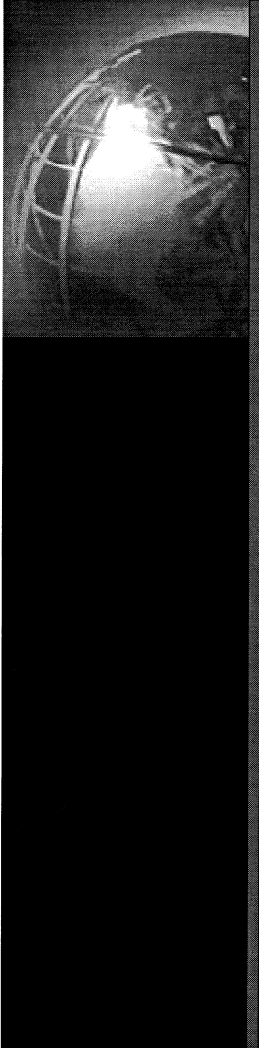
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AMENDMENTS (cont.)

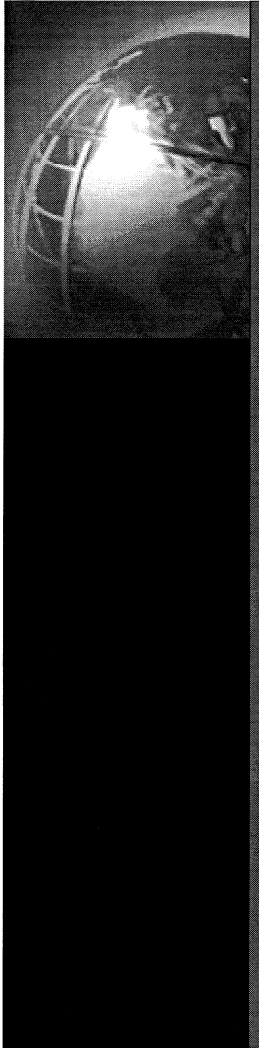
- **Applies to:**
 - **NPO's and charities incorporated under the Society Act of British Columbia whose investment powers were previously governed by Section 15**
 - **Colleges, institutes, municipalities**
 - **Any trusts where the investment powers of trustees were governed by Section 15**

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AMENDMENTS (cont.)

- **Investments must not be “inconsistent with the trust”**
- **New rules also specifically permit Trustees/Directors to invest in mutual funds and “common trust funds”**

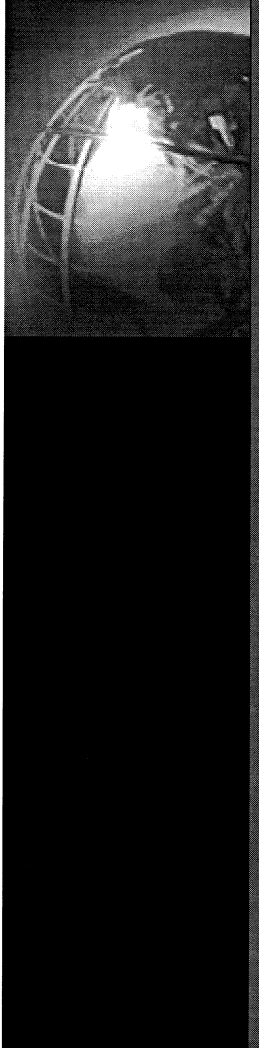


AMENDMENTS (cont.)

- **Trustees will not be liable for a loss in the portfolio, if the conduct that led to the loss**

“conformed to a plan or strategy for the investment of the trust property comprising reasonable assessments of risk and return, that a prudent investor would adopt under comparable circumstances”

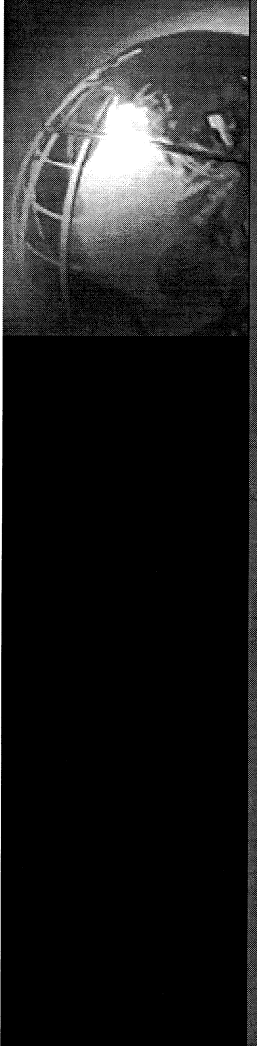
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AMENDMENTS (cont.)

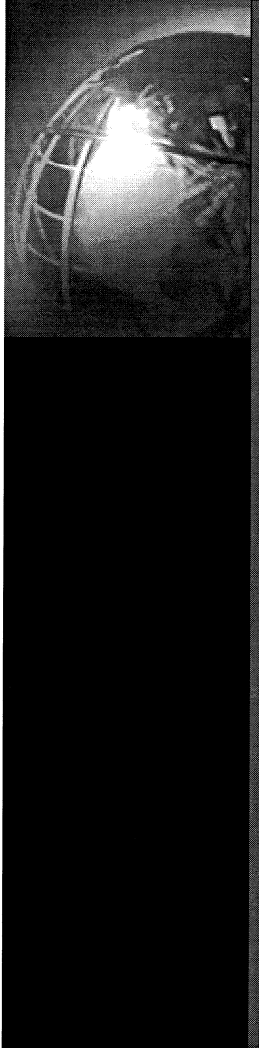
- **Assessing trustee's decisions on an investment by investment basis no longer required**
- **Losses can now be set off by gains in assessing damages for breach of trust**

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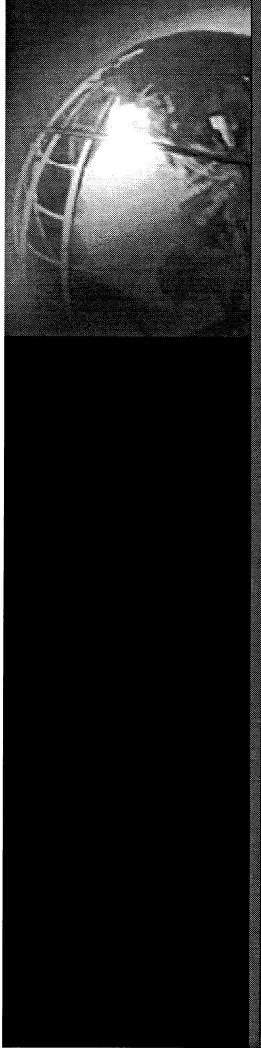
DELEGATION RULES

- **If a prudent investor would delegate investment authority, then a Trustee may do so**
- **Under Section 15.5(3), no delegation permitted unless the Trustee**
 - **determines the investment objectives for the trust**
 - **exercises prudence**
 - **In selecting the Agent**
 - **Establishing the terms of authority**



DELEGATION RULES (cont'd)

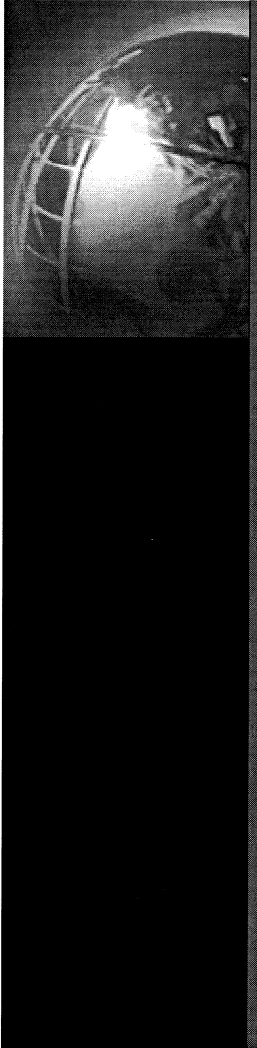
- **Making sure the Agent knows the investment objectives**
- **Monitoring performance**
- **With a view to ensuring compliance with terms of the delegation**
- **Trustees cannot delegate where the trust requires the trustee to act personally**



PRUDENCE

- **Prudence in monitoring includes:**
 - **Review of Agent's report**
 - **Regular review of terms of agreement and its efficacy, including the effectiveness of the investment plan or strategy and compliance therewith**
 - **Consideration of need for direction to Agent**
 - **Revoking appointment if appropriate**

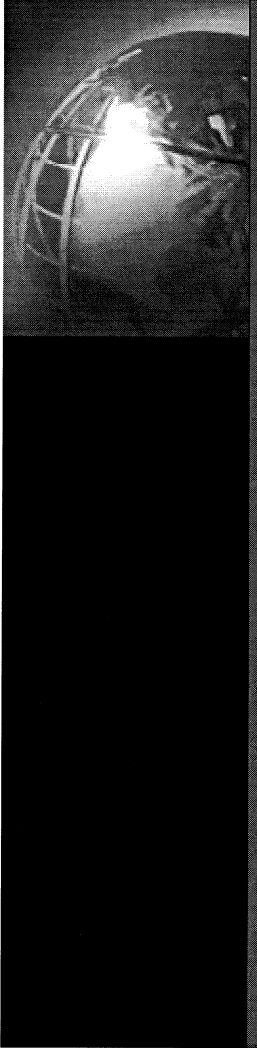
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DUTIES OF AGENT

- **Agent must act:**
 - **With standard of care expected of a person investing money of others**
 - **In accordance with the terms of the delegation**

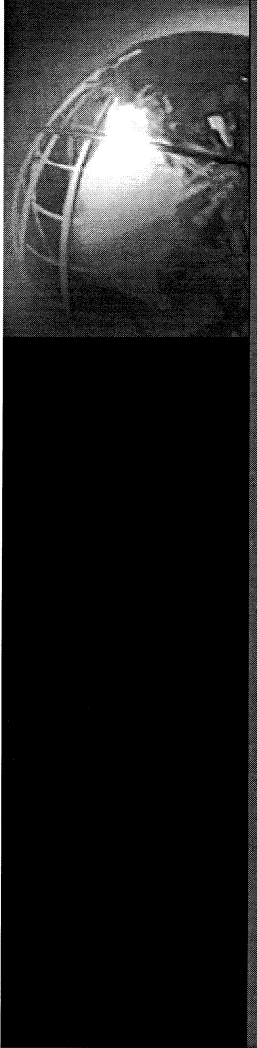
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PROTECTION OF TRUSTEES

- **Trustees not liable for decisions or actions of Agents if:**
 - **Trustees complied with Section 15.5(3)**

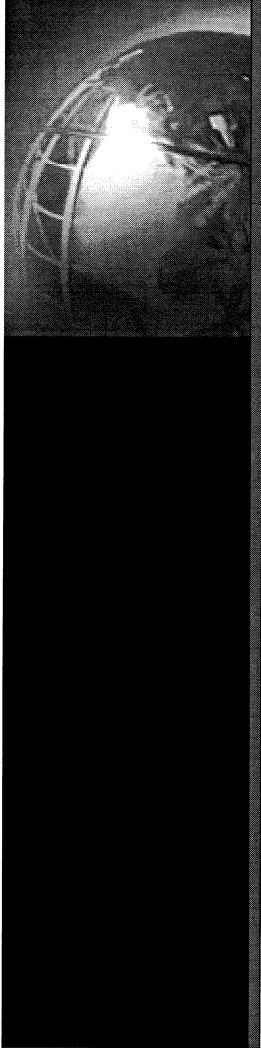
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What's Different About the B.C. Legislation?

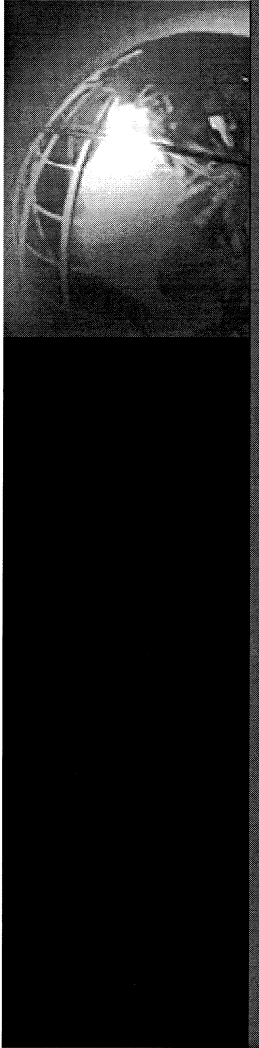
- **No reference to diversification**
- **No list of investment criteria**
 - **general economic conditions**
 - **possible effects of inflation or deflation**
 - **expected tax consequences of investment decisions or strategies**
 - **role that each investment or course of action plays within the overall trust portfolio**

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What's Different About the B.C. Legislation? (cont'd)

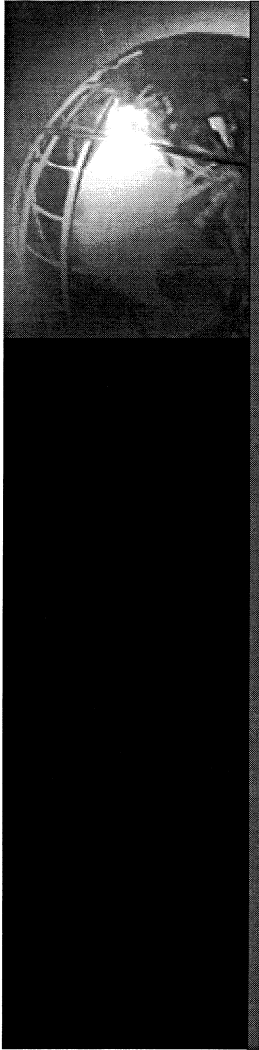
- expected total return from income and the appreciation of capital**
- need for liquidity, regularity of income and preservation or appreciation of capital**
- an asset's special relationship or special value to the purposes of the trust or to one or more of the beneficiaries**



What's Different About the B.C. Legislation? (cont'd)

- **The “legal list” is not retained as an optional express investment power (as in Alberta)**
- **You can invest in pooled funds and it is not considered to be a delegation**

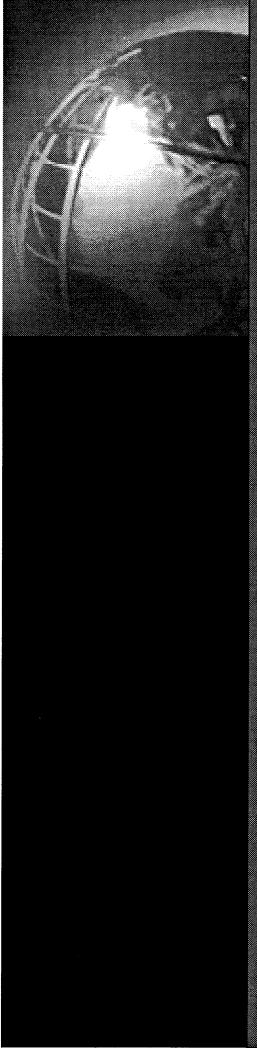
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WHAT NOW?

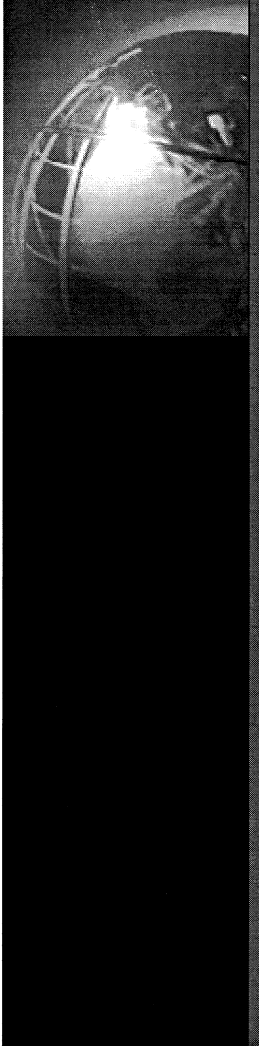
- **Are the investment powers of your NPO or charity governed by the *Trustee Act*?**
- **Do you want them to be?**

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WHAT NOW? (cont'd)

- **If so**
 - **Need an investment plan**
 - **Look at the existing portfolio**
 - **Do you delegate?**
 - **If you have already delegated or decide to do so, consider Section 15.5**



THANK YOU

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