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UNIFORM LAW CONFERENCE OF CANADA

**REPORT ON AMENDMENT OF UNIFORM BENEVOLENT AND
COMMUNITY CROWDFUNDING ACT**

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Report on Amendment of Uniform Benevolent and Community Crowdfunding Act

[1] I was asked to comment on amendments to the *Uniform Benevolent and Community Crowdfunding Act*, proposed as a consequence of the adoption of the civil law counterpart statute, the *Uniform Gratuitous Crowdfunding Act* (UGCA), at the 2022 Annual Meeting of the ULCC. Prof. Cumyn has kindly provided a memorandum dated 14 February 2023 describing amendments to the UBCCA that have been proposed.

[2] The proposed amendments described in Prof. Cumyn's memorandum affect both the English and French versions of the UBCCA, although the amendments proposed for each version are not all the same. The proposed amendments are addressed below in the same order in which they appear in Prof. Cumyn's memorandum, which is appended for ease of reference.¹

[3] In this report, I employ the terminology used in the English version of the UGCA when referring to UGCA provisions. When referring to UBCCA provisions, I employ the terminology used in the English version of the UBCCA. Where it is necessary to point out the equivalence of a term in the UGCA and a different term used in the UBCCA that denotes the same or a similar concept, and vice versa, I indicate the equivalent term found in the other uniform Act in parentheses.

[4] As the request to consider the amendments suggested by the UGCA Working Group was addressed to me alone and related to the future agenda of the ULCC, I treated it as internal to the ULCC. For this reason, I have not consulted other members of the Working Group that developed the 2020 UBCCA. Accordingly, this memorandum reflects only my own opinions.

French Title and Commentaries to UBCCA

[5] The issue concerning the title of the French version of the UBCCA and commentaries is essentially one of securing the proper translation to avoid confusion between the technical and popular meanings of "charitable" in the common law jurisdictions. The issue and the two proposed changes to deal with it are succinctly described in the following extract from Prof. Cumyn's memorandum:

The French title of the UBCCA is the *Loi uniforme sur le sociofinancement a des fins caritatives ou communautaires*. The translation of "benevolent" by "caritatives" (ie "charitable") is problematic. This is because the word "charitable/ caritatif" has a technical legal meaning, whereas the English title deliberately uses terms that are descriptive but have no technical legal meaning: "benevolent" and "community". I recommend the following title for the French version of the UBCCA: *Loi uniforme sur le sociofinancement philanthropique ou communautaire*.

In the text of the Act and commentaries, the French UBCCA uses the word "caritatif" to translate "charitable", which is correct. However, the opening commentary adds quotation marks, probably to emphasise that the word is here being used in its technical sense. The quotation marks are unnecessary and should be removed.

¹ Appendix: Memorandum by Prof. M. Cumyn entitled "*Uniform Benevolent and Community Crowdfunding Act*" dated 14 February 2023

[6] The suggested amendment to the French title of the UBCCA is appropriate and should be made. The scope of the UBCCA extends well beyond legally charitable fundraising. It is important to avoid confusion over this point. That is why "benevolent," a term lacking arcane legal baggage, is used in the English title instead of "charitable."

[7] The second suggested amendment to the opening commentary in the French version of the UBCCA is less crucial but is probably advisable as well.

Concepts and Definitions

[8] Evidently, the UGCA Working Group took exception to the drafting of the UBCCA on grounds not limited to goals of harmonization. Two specific objections to the existing language of the UBCCA have been raised. As will be evident from my remarks below, I dispute the assertion that the terminology of the UBCCA is problematic as well as the suggestion that the UBCCA requires significant redrafting.

Use of the term "crowdfunding campaign" in place of "public appeal"

[9] The first objection raised is to the retention of the term "public appeal" in the UBCCA. This term was used in the 2011 common law and 2013 civil law versions of the *Uniform Informal Public Appeals Act* (UIPAA). The suggestion is that the term used in the UGCA, namely "crowdfunding campaign," should be substituted, together with consequential changes in other terms and definitions, e.g. "appeal organizer" would become "campaign organizer." The purpose would be to assimilate the language of the UBCCA with that of the UGCA to a greater extent.

[10] In evaluating these proposed amendments, it should be borne in mind that the UBCCA and UGCA both came into being as an effort only to update the original UIPAA framework to take account of the role internet platforms have come to play in fundraising since the two versions of the UIPAA were promulgated. The term "crowdfunding" appears in the English title of the UBCCA to indicate that the uniform Act applies to fundraising via the internet and social media. Use of that term in the English title does not represent a wholesale replacement or reworking of the basic concepts and scheme of the UIPAA, which remain essentially intact in both the UBCCA and UGCA.

[11] In addition to fundraising via the internet or social media platforms, the UBCCA and UGCA remain fully applicable to localized, community-level fundraising appeals made using older forms of communication like newspapers, radio, and local television stations.

[12] "Crowdfunding" is a term that came into use only after the practice began of raising funds through the internet. Definitions of this term in various common sources clearly link its meaning with use of the internet and social media:

The Cambridge Dictionary:

the practice of getting a large number of people to each give small amounts of money in order to provide the finance for a project, typically using the internet

Merriam-Webster:

the practice of obtaining needed funding (as for a new business) by soliciting contributions from a large number of people *especially from the online community*

[italics added]

Collins Dictionary:

Crowdfunding is when a large number of people each give an amount of money to pay for a project, especially by using a website to collect the money.

USNews:

Crowdfunding is a method of raising funds for a business or project by collecting relatively small amounts of money from a large number of contributors using an online platform.

Investopedia:

Crowdfunding is the use of small amounts of capital from a large number of individuals to finance a new business venture. *Crowdfunding makes use of the easy accessibility of vast networks of people through social media and crowdfunding websites to bring investors and entrepreneurs together, with the potential to increase entrepreneurship by expanding the pool of investors beyond the traditional circle of owners, relatives, and venture capitalists.*

[italics added]

[13] Whatever may be the full breadth of the of the term "sociofinancement" in French, "crowdfunding" carries a definite connotation to anglophone ears of fundraising via the internet or social media.

[14] By contrast, the term "public appeal" as defined in the UBCCA is completely descriptive of the full scope of activity embraced within the scope of the uniform Act, which is not restricted to online fundraising:

“public appeal” means a message directed at the public generally, or at a section of the public, requesting donations to a fund that is intended to be used for a specified object, whether charitable or non-charitable, but does not include a message communicated as part of a fundraising effort carried out on a permanent or continuing basis. « appel aux dons du public »

[15] Mention of any specific means of mass communication is wisely omitted from this definition, because the UBCCA requires a term that is capable of covering one-off calls for donations from the public, regardless of the means of communication employed. "Crowdfunding" would not serve that purpose in the English version of the UBCCA because of its distinct association with websites and social media platforms.

[16] Furthermore, "crowdfunding" is a recently invented term that may have its day and quickly be supplanted by some other invented term in the future, eventually requiring further amendment to keep up with contemporary parlance. "Public appeal" consists of words with static meaning. Its use as a carefully defined term in the body of the UBCCA continues to be appropriate.

Alleged over-definition in the UBCCA

[17] The second objection that has been made is that the UBCCA contains too many defined terms and some terms are unnecessary altogether. The definitions mentioned specifically in this regard are: "beneficiary," "vulnerable beneficiary," "user agreement," "governing authority," "intermediary," and "appeal organizer".

[18] I strongly suspect this objection derives simply from basic differences between civil and common law drafting styles. The UGCA follows civil law drafting conventions to which Quebec jurists are accustomed. Those conventions involve less definition and a more text-like or narrative paragraph style. The UBCCA was drafted in a conventional formulaic manner for use in the common law provinces and territories. Lawyers and judges in common law jurisdictions are accustomed to seeking interpretive guidance from definitions in legislation.

[19] The defined terms contribute to brevity in the substantive provisions of the UBCCA. Some of the defined terms to which the UGCA Working Group has objected appear in numerous provisions of the UBCCA. Defining terms in a single interpretation section avoids the need to repeat strings of qualifying phraseology in each provision where the term reappears, or strings of the nouns covered by the compendiously defined terms to achieve the same degree of precision as the definitions provide. Far from increasing the complexity of the UBCCA, the definitions make its substantive provisions simpler and less prolix than they would otherwise be.

[20] For example, if the compendious term "governing authority" were to be deleted as a defined concept in the UBCCA, as has been suggested, it would be necessary to repeat five distinct elements concerned with the organization and operation of a public appeal in each of nine provisions of the UBCCA.

[21] If "vulnerable beneficiary" were to be dropped as a defined term, for example, the words "identifiable minor or otherwise legally incapable individual" would have to be repeated in five separate provisions.

[22] Deleting the definitions of the terms and concepts the UGCA Working Group asserts are unnecessary would give rise to numerous interpretive questions under the UBCCA that should not have to be faced. The better course by far is to err in favour of greater precision. The definitions of all the terms should remain.

Right to halt a public appeal: UGCA s.22 / UBCCA s.25

[23] A question arose during the discussion of the UGCA at the 2022 Annual Meeting concerning a situation in which one of several beneficiaries demands a crowdfunding campaign be halted on the ground that it was initiated without that beneficiary's consent. As

originally drafted, s. 22 of the UGCA would have required compliance with a single objecting beneficiary's demand. It did not contemplate a case where only one of several beneficiaries objected. Section 25 of the UBCCA is likewise.

[24] In the final version of the UGCA that appeared in December 2022, s. 22 of the UGCA was amended to deal with a situation in which one of several beneficiaries objects to the continuation of the crowdfunding campaign by allowing the exclusion of that beneficiary from the campaign as long as this does not alter its object.

[25] As the same issue could arise under s. 25 of the UBCCA, it would make sense to amend that provision similarly.

Illegality and Public Policy

Approach taken in the UGCA

[26] The UGCA contains provisions addressing illegality and violations of public order associated with crowdfunding campaigns. The UBCCA does not.

[27] Section 23 of the UGCA provides that any interested party may apply to the court to terminate a crowdfunding campaign if its object is prohibited by law or is contrary to public order.

[28] The Final Report of the UGCA Working Group explains that the impetus for the inclusion of s. 23 was the so-called "Freedom Convoy" that occupied downtown Ottawa in early 2022 and the fundraising for it conducted through the online platforms GoFundMe and GiveSendGo.

[29] The UGCA Working Group report further explains that a violation of public order could have the effect under Quebec law of nullifying the donations collected under the crowdfunding campaign. In those circumstances, article 1422 of the Civil Code of Quebec would require restitution of prestations, i.e., refunding the donations to the donors. The UGCA Working Group decided that the UGCA should require donations to be refunded in all cases in which a crowdfunding campaign is terminated for illegality or violation of public order.

[30] Section 24 of the UGCA comes into play when an order is made under s. 23 to terminate a crowdfunding campaign. Section 24 requires that contributions be refunded to the donors who made them. Section 24 also specifies that if donors cannot be located, the trustee is empowered to declare their right to a refund has lapsed. Amounts contributed by donors whose right to a refund has lapsed would be disposed of as "residue of the trust" under Division III of Chapter V of the UGCA (ss. 27-34).²

² Division III of Chapter V of the UGCA provides for different modes of disposition of residue (corresponding to a "surplus" under the UBCCA) in the trust, depending on whether the trust was constituted for the benefit of a third party (beneficiary), or for "a purpose of private or social utility." If the trust was constituted to secure a benefit for a third party, and if the terms of the campaign do not provide for any other mode of disposal, s. 31 requires the funds to be paid to that beneficiary or the beneficiary's heir. If the trust existed to serve a purpose of private or social utility, s. 32 requires the residue to be disposed of in accordance with the trust act (trust document) and the terms of the crowdfunding campaign. If these contain no instructions for disposal of the residue and the value of the residue does not exceed an amount set by regulation, it goes to one or more qualified donees under the *Income Tax Act* (Canada) selected by the trustee that have objects consistent with the spirit of the crowdfunding campaign. In other cases, the court must authorize the disposal of the residue.

Should the UBCCA be amended to have provisions similar to those in the UGCA addressing illegality and violations of public policy?

[31] Before the advent of online crowdfunding, illegality and violations of public policy were not significant concerns surrounding public appeals for funds, as they were normally launched for clearly benevolent purposes or broadly acceptable civic ones. Recent events in Canada and elsewhere have shown, however, that crowdfunding via internet and social media can be used with considerable success to raise large amounts of money very quickly to fund activities and aims that may be illegal under national or international law or are incompatible with broadly held sociopolitical values. In light of this, it would be realistic to provide in the UBCCA for termination of a public appeal for reasons of illegality.

[32] As the UGCA Working Group's report mentions, illegality could arise at various stages of a public appeal and in different ways. It could be obvious from the terms of the public appeal, such that the appeal organizer and donors would be fully aware of it from the outset. It could arise or come to light only at a later stage. The appeal organizers, or a sub-group of them, might divert funds for purposes not authorized by the terms of the public appeal.

They might also pursue the authorized purposes of the public appeal in an illegal manner.

[33] An online platform might discontinue its involvement in a public appeal under its own terms of service if illegality came to its attention after the public appeal commenced. A public appeal might conceivably be shut down by the action of law enforcement authorities as well.

[34] In some cases, however, illegality will only be exposed through the initiative of someone associated with the public appeal. For this reason, it is probably advisable to add a provision in the UBCCA similar in principle to s. 23 of the UGCA, allowing an application for an order terminating a public appeal on the basis of illegality, at least in the sense of conduct or aims that are prohibited by law.

[35] Whether symmetry with s. 23 of the UGCA should extend as far as including violation of public policy as a ground for a termination order is a more complex and potentially very contentious question. The concept of "public order" in the Civil Code of Quebec is not easily transposable to a common law setting. The loose approximation, namely the quasi-legal concept of "public policy," has much narrower scope and much less significance in common law systems. Common law judges are traditionally reluctant to base decisions on it.

[36] The phrase "prohibited by law or contrary to public order" appears numerous times in the Civil Code of Quebec, and presumably the Quebec judiciary is well-accustomed to applying it according to established doctrine. I believe, however, that courts in the common law jurisdictions would be uncomfortable with being asked to decide whether a public appeal that did not contravene any legislative provision or an existing rule of law should nevertheless be shut down on the ground that it somehow offends public policy.

[37] It is also worth bearing in mind that the purpose of the UBCCA is not to police or regulate crowdfunding as an activity. The UBCCA does not attempt to distinguish legally or socially desirable goals of fundraising from ones that are not legally or socially desirable. Its principal purpose, like that of the UIPAA before it, is to fill a gap in the law to allow for the orderly and transparent disposition of a surplus in a public appeal fund where no adequate provision for this has been made by the appeal organizers. Creating a forum for disputes about whether a particular fundraising effort contravenes public policy would be a significant departure from that purpose.

[38] In my view, an amendment to the UBCCA adding a provision corresponding to s. 23 of the UGCA should allow for termination of a public appeal on the ground that its object, the manner in which the public appeal is conducted, or the administration of the trust attaching to the fund are contrary to law, but should not list violation of public policy as an additional ground for termination.

Who should have standing to apply for termination of a public appeal on grounds of illegality?

[39] In my view, the persons who should be eligible to apply for an order terminating a public appeal on the ground of illegality are the same as those listed in s. 8 of the UBCCA as having standing to enforce the statutory trust created by s. 3(1). The categories of trust enforcers listed in paragraphs (a) to (h) of s. 8, coupled with the discretion given to the court under s.8(i) to accord standing to any other person whom the court considers to have a sufficient interest, should be adequate to deal with all contingencies while excluding officious or vexatious applicants lacking a genuine interest in the outcome.

What should happen to the fund when a public appeal is terminated for illegality?

[40] Amendment of the UBCCA is not required to deal with the disposition of a surplus in a fund resulting from the termination of a public appeal for illegality. Part 3 (Surpluses and Refunds) of the UBCCA is adequate to deal with any unexpended portion of the fund in such a case.

[41] It may not always be necessary to invoke Part 3, particularly if an online platform refunds undisbursed donations made in an abortive appeal. If a public appeal is conducted through an online platform and is terminated for illegality before the platform has paid out the full fund to the appeal organizers, the platform would probably be motivated to refund any donations that it had not already paid out, unless legally constrained from doing so.³

[42] Subject to an exception discussed below, an issue is not likely to arise in those circumstances about the disposition of the portion of the fund that is returned to donors by an online platform.

[43] The terms of service of the online platform might call for a refund of undisbursed donations if the appeal fails or is terminated for any reason before payment out to the appeal organizers. If those terms of service are incorporated in a user agreement, they become part of a governing authority for the public appeal. Subject to the exception I will mention, s. 2(4) of the UBCCA would allow them to prevail over the provisions of the UBCCA concerning disposition of a surplus. Again, if donors get their money back, an issue is not likely to arise about the disposition of a surplus.

³ GoFund Me refunded donations after it terminated its involvement in fundraising for the "Freedom Convoy" because of the concerns around illegality that emerged after the operation had started: evidence of Juan Benitez, President of GoFundMe, before House of Commons Standing Committee on Public Safety and National Security, 3 March 2022, online: <https://www.ourcommons.ca/DocumentViewer/en/44-1/SECU/meeting-12/evidence>. Some of the money collected through the other online platform involved in the Freedom Convoy crowdfunding, GiveSendGo, was reportedly refunded to donors as well in March 2022: Elizabeth Thompson, "More than half of convoy donors who haven't received refunds are Americans," CBC News, 17 November 2022, online: <https://www.cbc.ca/news/politics/convoy-protest-donations-refunds-1.6654063>

[44] The exception in which terms of service of an online platform calling for undisbursed donations to be refunded might clash with Part 3 of the UBCCA relates to a public appeal for the benefit of a "vulnerable beneficiary" (defined as an identifiable minor or incapable individual).

[45] Section 3(3) of the UBCCA is a mandatory provision that overrides the terms of the public appeal or terms in a user agreement. It states that all donations in a public appeal for the welfare, relief, or advancement of a vulnerable beneficiary are the property of the trustee (generally, the appeal organizer) to be administered according to the UBCCA and general trust law. In combination with s. 9, which prevents a resulting trust in favour of donors from arising in relation to a surplus, s. 3(3) might preclude an online platform from refunding undisbursed donations in an abortive public appeal for a vulnerable beneficiary. In such a case, however, Part 3 of the UBCCA would apply to provide for the appropriate disposition of any portion of the fund that cannot be used for its original object.

[46] Part 3 calls for donations to be refunded in two cases: when a donor who has given \$500 or more has made a written request at the time of donation to have a prorated amount refunded in the event of a surplus (s. 11), and when real property has been donated in a public appeal with a non-charitable object (s. 12).

[47] In other cases, s. 10 provides for the distribution of the surplus under an approved scheme. If the illegality leading to the termination of the public appeal did not touch the object of the public appeal itself, a scheme could be approved under ss. 10(1)-(6) inclusive. These provisions call for the surplus to be used for an alternate object consistent with the spirit of the public appeal.

[48] Sections 10(1)-(6) could obviously not be invoked if the reason for the termination of the public appeal is that the original object was itself illegal. In that case, a scheme to use the surplus for a lawful alternative object could be approved under s. 10(7). The application could be made by anyone having standing under s. 8 to commence proceedings to enforce the statutory trust. Section 8 gives standing to a sufficiently large class of potential applicants representing enough distinct interests that some member of that class would be unconnected with the illegality and in a position to propose a scheme of alternate distribution for the court's approval. The class includes, for example, the Attorney General and the Public Guardian and Trustee (or equivalent) in the enacting jurisdiction.

[49] There is no need to add a provision like s. 24 of the UGCA to the UBCCA to cover off a public appeal being shut down for illegality. The Final Report of the UGCA Working Group makes it clear that the approach taken in UGCA to prioritize refunds of unused donations over disposition as residue ("surplus" under the UBCCA) is inextricably connected to the concept of nullity under the Civil Code and its effects.

[50] The UBCCA approach is opposite. The UBCCA prioritizes disposition of surplus under a statutory cy-pres regime that applies regardless of whether the object of the public appeal was charitable or non-charitable. Refunds are allowed only in restricted cases. This is because one of the principal purposes of the UBCCA is to overcome the gap in the law that leaves funds in limbo when there is a failure of objects and the resulting trust arising in favour of donors cannot be fully performed. That gap in the law remains in the common law jurisdictions of Canada, apart from the one province that has enacted the UIPAA. The statutory cy-pres model of the UBCCA would fill that gap, even when the failure of objects is due to illegality. That model should be left undisturbed.

Summary

- [51] I agree that it is advisable to amend
- a. the French title of the UBCCA to read: *Loi uniforme sur le sociofinancement philanthropique ou communautaire*;
 - b. the opening commentary of the French version of the UBCCA by deleting the quotation marks around "caritatif."
- [52] The terminology, definitions, and drafting of the UBCCA do not require amendment.
- [53] It is advisable to amend s. 25 of the UBCCA to permit a public appeal to continue with the exclusion of a non-consenting beneficiary when one of several beneficiaries demands the public appeal be halted on the ground that it was commenced without that beneficiary's consent.
- [54] It is advisable to add a provision to the UBCCA to add a provision corresponding to s. 23 of the UGCA. The additional provision should authorize an application to the court by a person listed in s. 8 of the UBCCA for an order terminating a public appeal on the ground that
- a. the object of the public appeal,
 - b. the conduct of the public appeal, or
 - c. the administration of the trust under s.3(1) of the UBCCA, is contrary to law.
- [55] Amendments are not needed to provide for the disposition of a surplus in the event that a public appeal is terminated for illegality. Part 3 of the UBCCA is adequate to provide for appropriate disposition of a surplus in that circumstance.
- [56] The following resolution is proposed:

RESOLVED:

- THAT the Report on amendment of *Uniform Benevolent and Community Crowdfunding Act* be accepted;
- THAT amendments to the *Uniform Benevolent and Community Crowdfunding Act* be prepared in accordance with the Report; and
- THAT the draft amendments be presented to the ULCC at its 2024 Meeting.

APPENDIX

UNIFORM LAW CONFERENCE OF CANADA

Memorandum

To: Peter Lown, Chair of ACPDM

From: Michelle Cumyn

Date: 14 February 2023

Subject: Uniform Benevolent and Community Crowdfunding Act

[1] At its annual meeting in August 2020, the ULCC adopted the *Uniform Benevolent and Community Crowdfunding Act* ("UBCCA"). The UBCCA is proposed for enactment in the common law provinces and territories excluding Québec.

[2] At its annual meeting in August 2022, the ULCC adopted the *Uniform Gratuitous Crowdfunding Act* ("UGCA"). Modelled on the UBCCA, the UGCA is proposed for enactment in Québec.

[3] There are several differences between the UBCCA and the UGCA owing to the distinct legal traditions and drafting style that characterise the common law jurisdictions, on the one hand, and Québec on the other. Yet the Québec working group, as it drafted the UGCA, encountered a few difficulties with the UBCCA. Another difficulty was raised by the Conference at its annual meeting in 2022. Finally, new questions came to light during the recent crowdfunding campaigns in support of the "Freedom Convoy" in January and February 2022.

[4] The ACPDM has recommended that the UBCCA be revised in light of the above. The purpose of this memo is to identify the issues that the person put in charge of the revision might wish to address.

1) French title and commentaries

[5] The French title of the UBCCA is the *Loi uniforme sur le sociofinancement à des charitables*) is problematic. The translation of "benevolent" by "caritatives" (*ie* "charitable") is problematic. This is because the word "charitable/ caritative" has a technical legal meaning, whereas the English title

deliberately uses terms that are descriptive but have no technical legal meaning: "benevolent" and "community". I recommend the following title for the French version of the UBCCA: *Loi uniforme sur le sociofinancement philanthropique ou communautaire*.

[6] In the text of the Act and commentaries, the French UBCCA uses the word "caritatif" to translate "charitable", which is correct. However, the opening commentary adds quotation marks, probably to emphasise that the word is here being used in its technical sense. The quotation marks are unnecessary and should be removed.

[7] For greater certainty, I attach an annotated copy of the French version of the UBCCA.

2) Concepts and definitions

[8] The Québec working group found the conceptual structure of the UBCCA to be excessively complex. Moreover, the drafting is rather intricate. We believe that the Act could be drafted in plainer language. Here are some suggestions in that regard:

- The UBCCA refers to "crowdfunding" in the title and opening commentary. However, that term is never used in the body of the Act. Instead, the Act refers to a "public appeal". For greater clarity, "public appeal" should be removed and replaced by "crowdfunding campaign" throughout. "Appeal" should be replaced by "campaign" and "appeal organizer" by "campaign organizer".
- There is a question as to whether the following concepts need to be defined: beneficiary, vulnerable beneficiary, user agreement, governing authority, intermediary, and appeal organizer (*ie* campaign organizer). The concepts of governing authority and intermediary may not be necessary.

3) Right to halt a crowdfunding campaign

[9] Section 25 of the UBCCA and section 22 of the UGCA concern the right of an intended beneficiary to halt a campaign if they do not wish such a campaign to be brought on their behalf. Section 25(1) reads as follows:

Right to halt public appeal

25(1) If a public appeal has been initiated without the consent of

- (a) an identifiable individual that is the beneficiary of the appeal, or
- (b) a qualified donee for whose benefit the appeal was initiated,

subject to this section, the beneficiary or qualified donee may demand that the appeal be halted.

[10] During the ULCC's annual meeting in 2022, the issue was raised whether halting a campaign is always the best outcome. If there are several beneficiaries, some may wish the campaign to go forward. A better solution in such a case might be to exclude the beneficiary who does not wish to be associated with the campaign. Accordingly, the Québec working group amended section 22 of the UGCA by adding a new paragraph as follows:

22. The trustee must terminate the crowdfunding campaign towards a person for whose benefit the crowdfunding campaign was carried out without the person's consent or, where applicable, from the person's parent, tutor, or other representative, upon receipt of a written demand from the person or representative.

Similarly, if the crowdfunding campaign is carried out through a crowdfunding platform, the platform must terminate the campaign upon receipt of such a demand.

Where there is more than one beneficiary, the renunciation by one of them does not entail the end of the campaign if it does not alter its object.

[11] A similar addition should be made to section 25 of the UBCCA.

4) Illegality and public policy

[12] This issue arose in connection with the crowdfunding campaigns launched to assist truckers expressing their disagreement with COVID-19 health measures during the "Freedom Convoy."

[13] There have been other examples. In 2015, GoFundMe terminated a crowdfunding campaign that had raised more than \$580 000 to free sexual slaves captured in Iraq by the terrorist organization Islamic State. GoFundMe took this decision having realized that the campaign organizer intended to free the captives by paying ransom to the terrorist group.

[14] Another example is the "We Fund the Wall" campaign, which raised over \$25 million through GoFundMe in the United States. The campaign was ostensibly to help build part of the wall that President Donald Trump had promised along the U.S.-Mexico border. After the campaign was launched (and presumably at the request of GoFundMe), the campaign organizers formed a

not for-profit organization to administer the fund. However, several individuals, including Steve Bannon, allegedly diverted some of the funds to themselves. They face criminal charges for fraud. An illegal purpose might be present from the beginning of a crowdfunding campaign, or it might appear later. It might be apparent from the terms of a campaign, or a campaign organizer might pursue it without the knowledge of donors. The Québec working group determined that in all such cases, it should be possible for an interested party to halt the campaign, if necessary by applying to a court. The trust should then be unenforceable. To the extent possible, donors should be reimbursed. If donors cannot be found, excess funds constitute a surplus.

[15] Thus, the UGCA provides:

23. Any interested party may apply to the court to terminate a crowdfunding campaign whose object is prohibited by law or contrary to public order.

24. If a crowdfunding campaign is terminated under sections 22 or 23, the trust is thereby terminated. Every donor is then entitled to a refund, unless a court decides otherwise.

The trustee may, if unable after taking all reasonable steps to locate a donor entitled to a refund, declare that the donor's right to the refund has lapsed.

If sums of money or other property remain in the trust patrimony, the trustee must dispose of the property in accordance with the provisions of Division III.

[16] The UGCA and report of the Québec working group may be found on the ULCC's Web site: [https://www.ulcc-chlc.ca/Annual-Meetings/Annual-Meetings/Edmonton,-AB\(3\)?lang=en-us](https://www.ulcc-chlc.ca/Annual-Meetings/Annual-Meetings/Edmonton,-AB(3)?lang=en-us)