

**UNIFORM LAW CONFERENCE OF CANADA  
CIVIL SECTION**

**REPORT OF THE WORKING GROUP ON A**

**Uniform Informal Public Appeals Act**

**Loi uniforme sur les appels  
informels aux dons du public**

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**Winnipeg Manitoba  
August 2011**

# REPORT OF THE WORKING GROUP ON A UNIFORM INFORMAL PUBLIC APPEALS ACT

## OVERVIEW

### About the Project

[1] This project was added to the program of the Uniform Law Conference of Canada [ULCC] by the Advisory Committee on Program Development and Management [ACPD] in October 2009. The topic commended itself to the ACPD as a Civil Section project because it responded to a demonstrated need and a considerable amount of work had already been done on it by both the former Law Reform Commission of BC and by the BC Law Institute. Thus it would not constitute a significant drain on ULCC resources.

[2] Arthur Close was asked to form and lead a Working Group to carry this project forward. He did this in the autumn of 2009. The Working Group members are as follows.<sup>1</sup>

Gregory G. Blue, Q.C.  
Arthur L. Close, Q.C.  
Prof. Michelle Cumyn  
Vera Mesenzew  
Prof. Albert Oosterhoff

[3] The preliminary work of the Group was described in a Status Report made to the Civil Law Section at its meeting in August 2010.<sup>2</sup> That Report described the background to the project, the need for legislation, the issues to be addressed and Group's approach to them. A short time earlier the Group had issued and distributed a Consultation Paper<sup>3</sup> setting out proposed draft legislation and a call for comment. The proposals in the Consultation Paper provided the basis for substantive discussion at the 2010 meeting that was most helpful to the Working Group.

### Informal Public Appeals - the Issues

[4] Appeals to the public for donations are a feature of everyday life. Appeals that occur on a regular basis are usually conducted by registered charities and other organizations having the benefit of experienced fundraisers and professional advice. But spontaneous appeals occur frequently as well, especially after a disaster like a fire or a flood. They may follow publication of a news item about a family or individual in some sort of distress. Campaigns on behalf of individual children requiring specialized medical treatment elsewhere have also become familiar examples of this kind of fundraising.

[5] Unlike the regular campaigns of established fundraising organizations, spontaneous appeals are often begun by a single person or a small group. Rarely is an organization or foundation created at the beginning to manage the fund. The fundraisers simply issue a message asking for donations and, frequently, open a bank account to hold the fund. The help of the press and the electronic media may be enlisted to publicize the appeal. The emergency that gives rise to the appeal may have substantial emotional impact, and the generosity of the public's response is sometimes astonishing. The amount donated may go well beyond what is required to meet the original need. Sometimes the appeal turns out to have been unnecessary, because the need is met through governmental or other sources. Substantial amounts may already have been collected, however. Occasionally the opposite situation arises. Too little may be raised to be of any use at all.

[6] In either case, the fundraisers may be left with money on their hands. This does not cause any difficulty if the terms of the appeal indicate clearly how any surplus or unused funds will be handled, and if donations are made with that understanding. But in the heat of the moment, the fundraisers may not have thought of the possibility of a surplus or unusable donations.

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[7] At first glance, the courses of action open to the fundraisers appear to be straightforward. Either give the money back, turn it over to an equally worthy cause, or retain it for similar emergencies in the future. But all of these seemingly self-evident alternatives are rife with legal pitfalls.

[8] If the purpose of the fund falls within the legal definition of “charity,”<sup>4</sup> returning the contributions to those who gave them would probably amount to a breach of trust. It would also be legally incorrect for the fundraisers to turn over the unused funds to an equally worthy cause without the permission of the court. People who issue spontaneous appeals for donations out of public-spiritedness or humanitarianism rarely appreciate the complexities of the law of charity. In an emergency, there is little or no time to get legal advice on the subject.

[9] If the purpose of the fund is not legally charitable, the surplus may have to be returned to the donors. Chances are, however, that the fundraisers will encounter difficulty with this. Many of the donations are likely to be anonymous, since collections are often made door-to-door or on the street. In this setting, donors' names and amounts given are not usually recorded. Some portion of a non-charitable fund is almost sure to be unreturnable for reasons like these. Moreover, even if the donors can be identified, if the amounts of the individual donations are small the cost of processing refunds may well exceed the amount available for distribution.

[10] What does the law say must be done with the unreturnable portion in a case where the donors are entitled to get their donations back? The answer is surprising. *Nothing can be done with it except to let it accumulate interest indefinitely or else pay it into court.* This was confirmed in 1958 in the notorious English case *Re Gillingham Bus Disaster Fund*.<sup>5</sup> The law is clearly unsatisfactory with regard to surpluses or unusable balances in informally created public appeal funds.

[11] A second difficulty in relation to public appeal funds was noted by of the British Columbia Law Reform Commission in a Report submitted in 1993. Their creation is seldom well documented.<sup>6</sup>

As with most other legal relationships, there is less room for disputes and misunderstandings in connection with a trust if the rights, powers, and duties involved are spelled out clearly in a written document. Trustees of a public appeal fund should be encouraged to enter into such a document. It is to their benefit to assume administrative powers that other trustees normally have, and to establish procedures for retirement and the appointment of new trustees. It is also to their benefit to put in place the kinds of limitations on trustee liability that are commonly found in modern trust documents. The fact that the trustees of a public appeal fund may have little or no background in trust administration makes an explicit trust document all the more important. A trust document is more likely to be signed by trustees of public appeal funds if a workable standard form in plain language is available.

[12] The uniform legislation proposed by the Working Group is designed to address both of these difficulties.

### **The Approach of the Working Group**

[13] Early in the project, the Working Group concluded that uniform legislation in this area was called for and proposed the creation of a uniform *Informal Public Appeals Act*. It then developed the features that should be embodied in the proposed Act:

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- Reform should be pursued through a stand-alone act dedicated to public appeal funds rather than as an amendment to an existing *Trustee Act*.<sup>7</sup>
- The application of the proposed Act should be narrow in scope so as to exclude the fundraising activities of established bodies for their usual purposes. In particular, charities and other qualified donees registered under the *Income Tax Act* (Canada)<sup>8</sup> should be excluded.
- The proposed Act should confirm that money raised through a public appeal is held in trust for the objects of the appeal.
- The proposed Act should be largely default in character and capable of being displaced by more specific documents and rules created to govern the appeal.
- The proposed Act should confirm a power in the court to direct the application of surplus funds raised for non-charitable objects.
- The proposed Act should provide a mechanism for the disposition of small surpluses.
- The proposed Act should provide a mechanism for refunds to identifiable donors of larger amounts where an appeal for non-charitable objects results in a surplus.
- The proposed Act should include, as a schedule, a model trust document that, in conjunction with the Act, would provide a default governance structure for the trust created by the appeal. Where a governance structure otherwise exists, the default structure would apply only to the extent that it did not conflict with the existing one.

[14] These principles were reflected in a preliminary draft act that formed part of the Consultation Paper and which was discussed by the Civil Law Section at its 2010 meeting. That discussion along with the response to the Consultation Paper informed the contents of the *Uniform Informal Public Appeals Act* [hereafter *UIPAA*] proposed in this Report.

### Features of the Proposed *UIAPP*

[15] The main features of the Act are described below in broad outline only. Greater detail may be found in the commentaries to its individual provisions.

#### *Scope*

[16] A starting point in assessing the scope of the Act is its core concept - the “public appeal” which is broadly defined to include a variety of communications for the purpose of soliciting donations. The definition is immediately narrowed by excluding “a message communicated as part of a fundraising effort carried out on a permanent or continuing basis” Thus, for the purposes of the Act “public appeal” is confined to sporadic, informal appeals.

[17] The application of the Act is further narrowed by two additional provisions. One states that the Act does not apply to a fund raised by a body that is registered with the Canada Revenue Agency as a charitable organization or other qualified donee.<sup>9</sup> The reference to CRA registration constitutes a bright line test that will clarify the applicability of the Act in many otherwise problematic cases.

[18] The other provision that limits the application of the Act states that it is displaced by a number of more specific features of a governing authority or the terms of the appeal that may conflict with the Act.<sup>10</sup>

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### *The Trust*

[19] The Act confirms that a public appeal fund is subject to a trust for the benefit of the object for which it is raised and is enforceable whether or not the object is charitable.<sup>11</sup> The persons who direct the management and disbursement of a public appeal fund are its trustees and a savings institution in which the fund is deposited is not a trustee.<sup>12</sup> Persons entitled to enforce the trust include a trustee, donor, beneficiary, the Attorney General and any person having a “sufficient interest” in enforcement.<sup>13</sup>

### *Terms of the Trust*

[20] The Act confirms the role of a formal trust document. It also refers to the model trust document [MTD] in the Schedule to the Act as one that trustees may wish to adopt. The approach to the MTD in this Report differs somewhat from that taken in the Consultation Paper. The version of the MTD set out in the Consultation Paper contained an extensive list of trustee powers with a trust document created for the purposes of the appeal deemed to include as much of the MTD as does not conflict with its other provisions or the terms of the appeal.

[21] On further reflection it was the conclusion of the Working Group that the MTD should, as far as possible, be kept short and simple by confining its contents to information concerning the background and objects of the appeal and relocating the provisions on trustee powers into the Act itself. Thus, Parts 4 and 5 of the proposed Act set out trustee powers and duties that were part of the MTD in the previous draft.

### *Surplus Funds*

[22] “Surplus” is defined to mean money or other property remaining in a public appeal fund that ceases to be needed or cannot be used for the object described in the appeal. To avoid a *Gillingham* outcome the Act sets out several measures. First, it stipulates that where a surplus occurs there is no resulting trust in favour of a donor.<sup>14</sup> Second the principle of *cy pres* is extended to trusts for non-charitable objects.<sup>15</sup> The Act permits a distribution of a surplus whether or not the appeal that led to the surplus was charitable. If the appeal that led to the surplus was charitable, a distribution of surplus may be made for a charitable object only. If the appeal was for a non-charitable object a distribution of surplus may be made for a charitable object or for another non-charitable object that is consistent with the spirit of the original appeal.

[23] Any person entitled to enforce the trust may apply to the court for a distribution of a surplus. But an application to court may be unnecessarily expensive and cumbersome if the surplus is small. For this reason, if the surplus is below some threshold amount, the Act permits the trustees, without court approval, to distribute the it among one or more registered charities or other qualified donees having objects similar in spirit to the original appeal. The value of the threshold suggested in the Act is \$20,000.

### *Refunds*

[24] If the appeal was for a charitable object the donor has no claim to a refund if there should be a surplus. If, however, the appeal was for a non-charitable object other considerations may apply. Since donors are often motivated to give only for the specific purpose of the campaign, a person who has made a substantial donation should be able to obtain a refund if the donation will not be used for that purpose. The Act allows such a donor to claim a refund, or call for a reapplication, of a *prorated* share of the surplus. The right to a refund arises only with a donation valued at \$500 or more and only where the donor had, at the time of the donation, made a written request for a refund in the event there should be a surplus. In the rare case of a donation of real property that is no longer needed or can not be used for the object of the appeal the donor may be entitled to its return.

### *Accumulations*

[25] In some provinces the law, based on an English statute of 1800, limits the time during which a fund is permitted to accumulate (the “rule against accumulations”).<sup>16</sup> While the rule against accumulations has no application to charitable trusts, In those provinces where the rule is in force the permitted accumulation period (in

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most cases, 21 years) may be too short to allow the objects of the public appeal fund that is made for non-charitable objects to be fully realized. For this reason, the Act stipulates a much longer permitted period of duration for non-charitable funds (80 years)<sup>17</sup> and the application of the old rule against accumulations is abrogated with respect to them.<sup>18</sup>

### *Trustee Powers and Duties*

[26] Part 4 of the Act sets out an array of provisions that would most likely be found in a well-drafted trust instrument created expressly for most informal public appeals. They include powers of the trustees in relation to:

- further appeals and donations,
- payments from the fund,
- investing and otherwise dealing with the fund
- the use of nominees and professional advisors
- transfer of the fund to another body with similar objects including one formed by the trustees

[27] The provisions also address the discretion of the trustees in administering the fund; the ability of the trustees to act by majority; and the retirement and appointment of trustees.

[28] Part 5 of the Act places a duty on trustees in the form of a requirement that at least once each year the trustees consider whether any money remaining in the fund is needed or can be used for its objects. If not, it is surplus and must be dealt with accordingly.

### *The Model Trust Document*

[29] The model trust declaration set out in a schedule the Act is designed to assist trustees in documenting the most important features of the public appeal. The objects of the appeal and the reasons for its creation are left sufficiently open-ended to permit the model to be adapted to the circumstances of the particular case. It also permits the trustees to deal expressly with the disposition of a surplus should one arise. The MTD provides examples to assist fundraisers in adapting it to their appeal without legal assistance.

[30] A common thread that links almost all public appeal funds is that the person or persons who spearhead the appeal will open an account in a bank (or similar deposit-taking institution). Particulars of the account may often be widely publicized through the media with the public urged to donate directly through a deposit. Since banks play a pivotal role in relation to public appeal funds the Working Group hopes that the development of uniform legislation on public appeals funds will stimulate banks to examine their own role in this area. A particular aspect of this is the use of the Model Trust Document. There will be many cases where the leaders of a public appeal seek to open an account but do not appear to have prepared any documentation in relation to the appeal. Their attention should be drawn to the MTD and they should be urged to complete it or develop a governing document more closely tailored to their needs.

### *Relationship to the Uniform Trustee Act Project*

[31] Work on the development of the *Uniform Informal Public Appeals Act* proceeded concurrently with is the development of a *Uniform Trustee Act* [hereafter *UTA*].<sup>19</sup> Since trust law lies at the core of both projects a question naturally arises as to the relationship between the two projects.<sup>20</sup>

[32] At the time this Report was settled the *UTA* remained a work-in-progress. The comments below reflect the most recent drafts of the *UTA* and the current thinking of the *UTA* Working Group.<sup>21</sup>

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[33] The proposed *UIPAA* and the proposed *UTA* would not operate in isolation from each other. A fund raised by a public appeal would be a trust and, subject to specified exceptions, would be subject to most provisions of the *Trustee Act* such as those concerning trustee investments.

[34] There are also a handful of areas in which the two uniform acts will likely overlap and address the same issue. This is deliberate. There is no assurance that both uniform acts will be adopted in a particular jurisdiction or what the timing of implementation would be. Thus, some changes to the current law are embodied in each act to ensure that it is capable of operating in isolation from the other if necessary. Three examples:

- In both acts the need to demonstrate a “general charitable intent” to apply the *cy pres* doctrine would be abolished.
- Both acts would be capable of dealing with a *Gillingham* type of scenario should it arise although the *UIPAA* would provide a more sophisticated range of options.
- Both acts would permit the enforceability of certain non-charitable purpose trusts although the purposes validated by each act are not identical.

[35] Since the membership of the two working groups partially overlaps, the two acts operate in harmony.

<sup>1</sup> Mr. Blue is the Senior Staff Lawyer with the BC Law Institute and was the principal author of the BC Law Reform Commission’s 1993 Report on Informal Public Appeal Funds. Arthur Close is a Past President of the ULCC. Prof. Cumyn Teaches at Laval and has assisted the ULCC with its projects on Unincorporated Associations and on Illegal Contracts. Ms. Mesenzew is Counsel with RBC and is a member of both the Ontario and Quebec bars. Prof. Oosterhoff is Professor Emeritus at the Faculty of Law, the University of Western Ontario and was project leader of the ULCC project on Charitable Fundraising. Both Messrs. Blue and Close are members of the Working Group developing a Uniform *Trustee Act*.

<sup>2</sup> Hereafter “Status Report 2010”. It can be accessed at [http://www.ulcc.ca/en/poam2/2010-14 Informal Public Appeals.doc](http://www.ulcc.ca/en/poam2/2010-14%20Informal%20Public%20Appeals.doc)

<sup>3</sup> Hereafter “Consultation Paper.” It can be accessed at <http://ulcc.weebly.com/>

<sup>4</sup> In its popular sense, “charity” means virtually the same thing as “benevolence.” In law, however, “charity” has a narrower meaning. Essentially, the legal idea of charity is that of a private gift for a public purpose. A “public purpose,” in this context, means a benefit to the community as a whole, or to a significant segment of it. In addition, the purpose of the fund must fit within a limited category of purposes.

<sup>5</sup> [1958] Ch. 300, *aff’d* [1959] Ch. 62 (C.A.). In 1951, a large bus ploughed into more than 50 marine cadets, aged 10 to 13 years, who were marching along the street. Twenty-four cadets were killed and the rest seriously injured. A fund was launched to defray the funeral expenses of the boys who were killed, to assist the injured boys, and to support worthy causes connected with boy cadets. More than £10,000 was raised but not all was needed because the bus company’s insurers settled the case against them. On an application to court by the trustees, Harman J. held that the surplus was money that had been collected for a non-charitable purpose and that the donors were entitled to the money under a resulting trust. Consequently, he directed that the money – some £7,300 -- be paid into court and an inquiry should be made as to the persons entitled to the surplus. The donors were not found and the money languished in court for 42 years. See A.H. Oosterhoff, Robert Chambers, Mitchell McInnes, and Lionel Smith, *Oosterhoff on Trusts: Text, Commentary and Materials*, 7<sup>th</sup> ed. (Toronto: Thomson Reuters/Carswell, 2009), at 599; Donovan W.M. Waters, Mark R. Gillen, and Lionel Smith, *Waters Law of Trusts in Canada*, 3<sup>rd</sup> ed. (Toronto: Thomson/Carswell, 2005), at 441, note 357. An administrative solution for distributing the *Gillingham* fund itself emerged many years later. In 1992 some of the survivors of the injured cadets brought the existence of the fund to the attention of the Treasury Solicitor, who applied to the court to have the funds declared *bona vacantia* (ownerless). The court granted the application in 1993, thus the funds became available to the Treasury Solicitor for distribution among the survivors as a discretionary grant. The survivors submitted claims in relation to the fund which was subsequently distributed among 17 survivors of the disaster, each of whom received slightly more than £400. See Treasury Solicitor, Press Release, 1 September, 1993; *The Guardian*, 4 December, 1993.]

<sup>6</sup> Law Reform Commission of British Columbia, Report on Informal Public Appeal Funds (LRC 129 1993) at 29. Hereafter “BCLRC Report.” See: [http://www.bcli.org/sites/default/files/LRC129-Informal\\_Public\\_Appeal\\_Funds.pdf](http://www.bcli.org/sites/default/files/LRC129-Informal_Public_Appeal_Funds.pdf)

<sup>7</sup> The *Trustee Acts* of most provinces are basically a re-enactment of trustee legislation enacted at various times during the 19<sup>th</sup> century in the UK; and see note 20 *infra*.

<sup>8</sup> *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.).

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<sup>9</sup> Section 2(1).

<sup>10</sup> Sections 10 2(2) and 2(3). See the definition of “governing authority.”

<sup>11</sup> Section 3.

<sup>12</sup> Section 4.

<sup>13</sup> Section 8.

<sup>14</sup> Section 9. In some circumstances a donor may be entitled to a refund when there is a surplus or a return of unused property. See sections 11 and 12.

<sup>15</sup> Section 10.

<sup>16</sup> *Accumulations 16 Act, 1800*, 39 and 40 George III, c. 98 commonly known as the *Thellusson Act*.

<sup>17</sup> Section 7(1).

<sup>18</sup> Section 7(3). In those provinces that have legislated to abrogate the rule against accumulations section 7(2) may be omitted.

<sup>19</sup> This project also uses B.C. law reform work as its point of departure. See British Columbia Law Institute, *A Modern Trustee Act for British Columbia* (2004).

<sup>20</sup> A threshold question was whether work in relation to public appeal funds should simply be merged with and form part of the larger project. A difficulty with that approach is that a larger *Trustee Act* operates at a much higher level of generality and the legislation in relation to public appeals requires a level of detail that makes it a bad fit with legislation applicable to trusts generally. The Working Group therefore concluded that its goal should be the development of a separate uniform statute.

<sup>21</sup> Gregory G. Blue, Q.C. and Arthur L. Close, Q.C. are members of the Working Groups for both projects.

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**Commentary/Introduction:** Informal public appeals arise frequently. Often their object is to provide relief in relation to a misfortune that has struck an individual, family or community. They are usually locally based and are led by persons with limited experience in fundraising and in the administration of funds that are the proceeds of the appeal.

Although the leaders may not be aware of it, their public appeal is at the centre of a complex web of trust and charity law, much of which is obscure and inaccessible. So long as nothing unexpected arises in the course of the appeal or the administration of the fund this may not pose a problem. However, unforeseen questions can arise. Often these questions can be answered if the leaders have appropriately documented the circumstances that led to the appeal and its objects but, in reality, this is seldom done. Nor does the general law provide a clear legal framework to guide the leaders. This gap may subject them to legal liability or cause the appeal to fail to fulfill its objects.

A recurring issue concerns informal public appeals that result in a surplus where more money is raised than is needed to satisfy the objects of the appeal. The law governing the proper way to distribute a surplus is

particularly unsatisfactory. This is a reflection of a distinction the law draws between objects of an appeal that are “charitable” and those that are not. This distinction can be highly technical and elusive with the result that some objects that might reasonably be described as “philanthropic” or “benevolent” fail to satisfy the strict legal definition of “charitable”. An example would be an appeal to send an ailing child to an out-of-province hospital for necessary surgery – not “charitable”.

The purpose of the Uniform Informal Public Appeals Act is to provide an appropriate legal framework to assist in their creation and administration. It reforms some aspects of the general law to ensure that trust law applies evenly to all appeals; it provides special guidance in relation to surpluses; it contains a list of powers available to the fundraisers to properly administer the fund raised by the appeal. Finally, set out as a Schedule to the Act is a simple model trust document that can be adapted to properly document most informal public appeals.

## PART 1

### DEFINITIONS AND APPLICATION

#### Definitions

**1(1)** The following definitions apply in this Act.

**"court"** means the [insert the name of superior court of the enacting province or territory], except in the definition "governing authority" and in clause 6(a).

**Commentary:** Matters involving trusts are dealt with by the superior trial court of the enacting jurisdiction.

**"fund"** means a fund of money or other property raised through a public appeal.

**Commentary:** The definition of “fund” covers funds raised in any of the ways covered by the definition of “public appeal,” e.g. simple gift, purchase of a nominal benefit, buying a raffle ticket, or sponsoring an entrant in a competition. It also covers a fund consisting in whole or in part of donations in kind as well as in money.

**"governing authority"**, in relation to a trust referred to in subsection 3(1), means

(a) the constitution, charter, incorporating document or bylaws of an incorporated body or foundation;

(b) a contract;

(c) an order of a court; or

(d) a trust document;

that governs or regulates the trust or the public appeal associated with it.

**Commentary:** The definition of “governing authority” covers various sources of authority that may constitute the basis of a public appeal and which, in conjunction with this Act, stipulates the characteristics and purposes of the appeal.

**"public appeal"** means a message directed at the public generally, or at a section of the public,

(a) requesting donations to; or

(b) indicating that the proceeds of any sale, competition, lottery, raffle, entertainment, service or event will be applied towards;

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.

**Commentary:** At some stage in a fundraising effort a request for donations must go out to the public. The request is commonly called a “public appeal.” It invariably mentions the reason why the fund is being raised. That reason need not be charitable in the technical sense of that term. The definition of “public appeal” in this Act is restricted to sporadic, informal appeals.

**"surplus"** means assets remaining in a fund that are no longer needed or that cannot be used for the object of the public appeal.

**Commentary:** This definition is relevant to sections 2, 7, 9, 10, 11, 12 and 24.

**"terms of the public appeal"** means the information given to the public on which a decision to donate to the appeal may be based.

**Commentary:** This definition is relevant to sections 2, 5, 6 and 10.

**"trust document"** means a trust document executed or deemed to be executed under section 5.

**"trustee"** means a trustee of a fund.

**1(2)** Unless the context requires otherwise, a reference in this Act to a "public appeal" includes a reference to a fund raised through a public appeal and the trust associated with the fund.

### **Application of this Act**

**2(1)** This Act does not apply to a public appeal conducted by a body that is a qualified donee within the meaning of the Income Tax Act (Canada).

**Commentary:** Subsection (1) makes it clear that fundraising campaigns by registered charities and similar organizations recognized by the Canada Revenue Agency are unaffected by this Act.

**2(2)** The following provisions of this Act apply to a public appeal to which this Act applies regardless of the terms of the public appeal or its governing authority:

- (a) subsection 4(1) (trustees);
- (b) section 7, to the extent that it sets a fund's maximum duration;
- (c) subsection 10(2) (distributing a surplus).

**Commentary:** Despite the default role of this Act (see commentary to subsection (3)) there are a handful of provisions that should not be capable of being overridden by an otherwise applicable authority or the terms of the appeal. See also section 24(6).

**2(3)** The remaining provisions of this Act apply to a public appeal only to the extent that they do not conflict with the terms of the public appeal or its governing authority.

**Commentary:** Many appeals are issued informally with little planning, especially at the local level. Usually, the rights and obligations that attach to them are poorly understood by fundraisers and donors alike. This draft legislation is intended to establish a “default” scheme to apply only to the extent that a public appeal fund is not regulated under some other legal structure, such as other legislation or a formally created trust. When money is raised by an incorporated society or foundation for its normal purposes, its use will generally be governed by the organization's constitution.

**2(4)** This Act does not apply to a public appeal initiated before this section comes into force.

**Commentary:** Self-explanatory.

## **PART 2**

### **THE TRUST**

### Trust of public appeal fund

**3(1)** A fund is subject to a trust for the benefit of the object for which the public appeal was conducted.

**Commentary:** Subsection (1) confirms that a public appeal fund is subject to a trust. It restates the effect of case law, but in so doing it highlights the nature of the rights and obligations surrounding the fund. A trust is a relationship in which a person or entity (the trustee) has legal ownership of certain property, but also has a duty to administer the property for the benefit of another person (the beneficiary) or so that a legally permissible purpose is served.

**3(2)** The trust is enforceable regardless of whether a trust with the same object would be enforceable under the general law. .

**Commentary:** Subsection (2) allows a public appeal fund to be protected by a trust even if a valid, enforceable trust with the same object would be legally impossible in another context. (The persons whom or the purposes which a trust is intended to benefit or sustain are called its “objects.”) Generally speaking, an enforceable trust must have as its object specific persons or an identifiable class of persons, or else the furtherance of a purpose the law regards as charitable. Formerly, trusts for non-charitable purposes were invalid apart from a few exceptions. Combinations of charitable and non-charitable objects were not permitted. The present law still affords them only limited recognition such as where a jurisdiction has enacted legislation comparable to section 20 of the *Uniform Perpetuity Act*.

Subsection (2) recognizes that appeals are often launched spontaneously, without prior legal advice on their wording. For example, an appeal might be launched for “the relief of the X and Y families, left homeless after a flood. Any excess will go for other local causes.” Apart from statutory validation, this combination of objects could not give rise to a valid trust for a number of technical reasons. The effect of subsection (2) would be to permit this appeal to take effect as a valid trust..

**3(3)** The trust is governed by the law of the jurisdiction stipulated in the governing authority.

**3(4)** However, if the governing authority does not stipulate a jurisdiction, the trust is governed

(a) by the law of the jurisdiction in which a deposit account to hold the fund has been opened in a bank, credit union, trust company or similar savings institution; or

(b) if clause (a) does not apply, by the law as determined without reference to this Act.

**Commentary:** Subsections (3) and (4) provide guidance as to the law that governs the trust. It will be relevant where a public appeal spans two or more provinces.

**3(5)** [A provision similar to section 20 of the Uniform Perpetuity Act] does not apply to a trust referred to in subsection (1).

**Commentary:** Section 20 of the *Uniform Perpetuity Act* provides that “[A] trust for a specific non-charitable purpose that creates no enforceable equitable interest in a specific person shall be construed as a power to appoint the income or the capital” for a period no longer than 21 years. Subsection (5) was included out of an abundance of caution to ensure that, as a matter of statutory interpretation, the policy of subsection (2) and section 7(1) is not overridden by a section 20 type of provision. In those jurisdictions that do not have such a provision, subsection (5) can safely be omitted.

## Trustees

**4(1)** A person who directs the management and disbursement of a fund, or who has the authority to do so, is a trustee of the fund.

**Commentary:** Subsection (3) states who is a trustee of a public appeal fund.

**4(2)** A bank, credit union, trust company or similar savings institution in which a fund is held is not, for that reason only, a trustee of the fund.

**Commentary:** A bank or other savings institution which merely holds the public appeal fund on deposit is not treated as a trustee. Section 437 (3) of the *Bank Act* (Canada) exempts chartered banks from having to ensure that a trust attaching to a deposit is carried out. Legislation governing provincially regulated bodies such as credit unions and trust companies may also provide a similar exemption. The interpretation legislation of the enacting jurisdiction should also be consulted for a definition that includes “near banks”.

## Trust document

**5(1)** A trustee of a fund, or a person intending to become a trustee, may execute a trust document for the administration of the trust.

**5(2)** A trust document may be in the form of the Schedule, adapted to meet the circumstances.

**Commentary:** Normally the source of trustees' powers over the trust property, and their duties in respect of it, is a formal trust document. When a trust comes into being through creation of a fund by means of an appeal, the persons in charge of the fund should enter into a trust document, so that the rights and obligations surrounding the fund are made clear. While present law allows fundraisers to sign a document of this kind, it is rarely done. The

Schedule to the Act contains a Model Trust Document which could be adapted to most situations.

**5(3)** If a trust document has not been executed in respect of a fund, every trustee of the fund is deemed to have executed a trust document containing as much of the Schedule as does not conflict with

- (a) the terms of the public appeal; or
- (b) the governing authority of the trust;

and the terms of the public appeal and the circumstances in which it is made form the contents of paragraphs 2, 3 and 4 of the Schedule.

**Commentary:** In order to clarify the rights and duties surrounding the fund, subsection (3) makes the terms of the Model Trust Document apply to every public appeal fund, except to the extent that they are inconsistent with any express provision of a governing authority or the terms of the public appeal. Such express provisions will prevail over any inconsistent terms in the Model Trust Document. Because the Model Trust Document is specific to the appeal, its provisions are to be inferred from the terms of the appeal and the surrounding circumstances.

**5(4)** A trustee who has custody of a trust document must allow it to be inspected by any person who establishes to the trustee's satisfaction that he or she has made a donation to the fund of an amount provided for in subsection 11(1).

**Commentary:** Major donors are permitted to inspect the trust document.

#### **If conflict about governing authority**

**6** If there is a conflict or incompatibility among governing authorities applicable to a public appeal, or between a governing authority or authorities and the terms of the public appeal, the conflict or incompatibility must be resolved in favour of the earliest listed item that gives rise to the conflict or incompatibility:

- (a) a governing authority that is a court order;
- (b) the terms of the public appeal;
- (c) a governing authority that is a trust document;
- (d) a governing authority that is a contract;
- (e) a governing authority that is the constitution, charter, incorporating document or bylaws of an incorporated body or foundation.

**Commentary:** Occasionally there may be a conflict between or among the terms of the appeal and a governing authority. Section 6 sets out a hierarchy that stipulates which is to prevail in case of a conflict.

### **Duration of the fund — accumulations**

**7(1)** If a fund is held in trust for a non-charitable object, the maximum permitted duration of the fund is 80 years, beginning on the day the first donation was received in response to the first public appeal. But if a shorter period is set out in the trust document, that shorter period is the maximum permitted duration.

**Commentary:** While a fund for charitable objects has always been permitted to endure for an unlimited period, some limitation in relation to non-charitable objects is appropriate. In subsection (1) the outside limit is set at 80 years which is consistent with perpetuity legislation.

**7(2)** If a fund is held in trust for a non-charitable object, any property remaining in the fund when the maximum permitted duration expires is deemed to be a surplus, which the trustee must distribute in accordance with Part 3.

**Commentary:** Self-explanatory.

**7(3)** Subsection (1) applies despite any other law to the contrary.

**Commentary:** In some provinces legislation is in force that limits the time during which a fund is permitted to accumulate. This “rule against accumulations” is based on an English Act of 1800. The permitted accumulation period under this legislation may be too short to allow the objects of the public appeal fund to be fully realized so the application of the rule against accumulations is abrogated for public appeal funds.. In those provinces that have legislated to abrogate the rule against accumulations, subsection (2) may be omitted.

### **Enforcement of the trust**

**8** Any of the following persons may commence a proceeding in court to enforce a trust to which a fund is subject or to enforce a duty imposed by this Act:

- (a) a trustee;
- (b) a donor;
- (c) a person or a member of a class of persons for whose benefit a public appeal is conducted, in whole or in part, or their legal representative;
- (d) the Attorney General;

(e) any person the court considers to have a sufficient interest in the enforcement of the trust;

and the court may make any order in respect of the trust that it considers just in the circumstances.

**Commentary:** Section 8 allows for the enforcement of the trust affecting a public appeal fund. Allowing a donor to enforce the trust is a departure from existing law, which generally does not give the right to enforce the trust to the person who creates it by providing the trust property. Instead, the right to do so belongs to the beneficiary. Since a public appeal fund is created by many different donors and the trustee of such a fund is not necessarily under the same degree of scrutiny by a beneficiary as those of a trust created under a will, for example, a donor should be able to seek the court's aid to ensure that the fund is used properly. The section also confirms that anyone for whose specific benefit a public appeal fund is raised has the same right of access to the court to ensure that the trust is carried out as other trust beneficiaries do. In this respect, it restates what probably is the present law regarding the ability of a person named in an appeal to enforce the trust attaching to the appeal fund, but confirms that ability expressly. It also extends it to the legal representative of a person under disability, such as a minor, and the Attorney General. The Attorney General is included because there is a public interest in the proper administration of a fund that is created by public donation. Finally, provision is made for any other sufficiently interested party to act where no other person otherwise entitled to do so is able or willing to enforce the trust.

### PART 3

#### SURPLUSES AND REFUNDS

##### No trust in relation to a surplus

**9** Subject to the requirement to refund or return an unused donation under section 11 or 12, a trust does not arise in favour of a donor in relation to a surplus.

**Commentary:** Trustees may be left with surplus funds on their hands for a number of reasons. More may have been collected than was needed to achieve the purpose of the appeal, or perhaps the need was satisfied from some other source. The trust of the fund is said to fail with respect to the remaining balance, since the balance cannot be used for the original purpose of the fund. The trustees cannot act unilaterally to re-allocate it, nor can they give the donors their money back. Under a power known as *cy-pres* the court, in some cases, may order the re-allocation of charitable funds. If the purpose of the fund was non-charitable (such as assistance to specific persons) and the purpose cannot be fulfilled, the balance is said to be held on a resulting

trust in favour of the donors. This requires the balance to be returned *pro rata* to the donors. Often it is impossible to return the money, because the donors may have given anonymously or money may have been collected in a way which does not allow one donation to be distinguished from another. Both of these problems may be present when funds are raised informally. This subsection reverses the rule that a resulting trust arises on the failure of a non-charitable trust, insofar as public appeal funds are concerned. Section 11 provides for refunds to donors who formally request them with respect to a donation over a stipulated threshold amount.

### **Scheme to distribute a surplus**

**10(1)** A trust document may provide for a scheme to distribute a surplus.

**10(2)** A scheme to distribute a surplus that is provided for in a trust document is effective without court approval only if that scheme

- (a) formed part of the terms of the public appeal when donations were made; and
- (b) complies with subsections (4) and (5).

**Commentary:** The trustees of a public appeal fund may contemplate the possibility of a surplus and expressly provide a scheme for its distribution in the trust document. Subsection (1) confirms that they may do so. There are, however, limits on the schemes that are permissible. First, the scheme must comply to subsections (4) and (5). See the commentary to those subsections.

Second, the distribution scheme must have been made known to potential donors as part of the “terms of the appeal” (see definition of that expression). It would be unfair to donors if money given for a specified purpose was, in case of a surplus, diverted to a different and unpublicized purpose of which the donor may disapprove.

Where a distribution scheme in a trust document fails to meet these requirements or where no such scheme is provided any distribution scheme proposed by the trustees must be approved by the court. The requirement for court approval of reallocation of surplus balances is subject to the trustees’ powers in relation to small surpluses under subsection (6) and to a donor’s rights under section 11.

**10(3)** When court approval is required to distribute a surplus, it is required whether the object of the appeal that resulted in the surplus was charitable or non-charitable.

**Commentary:** Subsection. (3) extends the principle of *cy-pres* to non-charitable public appeal funds.

**10(4)** A scheme to distribute a surplus in a fund with a charitable object must require the surplus to be used only for a charitable object.

**Commentary:** Usually, once money or other property has been given to charity, it must be used only for charitable purposes. Subsection (4) restates this principle in relation to public appeal funds raised for purposes that are legally charitable.

**10(5)** A scheme to distribute a surplus in a fund with a non-charitable object may allow the surplus to be used for

(a) a charitable object; or

(b) a non-charitable object consistent with the spirit of the public appeal.

**Commentary:** Many worthwhile purposes fall outside the legal concept of charity. Subsection (5) indicates that a distribution scheme may provide for a re-allocation of a balance in a non-charitable public appeal fund to a purpose that may not be legally charitable. It must, however, be used in a way that is in keeping with the underlying spirit leading to the appeal. This gives donors some assurance that their gifts will not be used in ways they would not have intended. The term “object” is used here in the sense in which it is used in trust law. It refers to the person for whom or the purpose for which the trust is created and must not allow for any benefit to a trustee or a donor from the money or other property.

**10(6)** Despite subsection (2), court approval is not required to distribute a surplus of \$20,000 or less, or another amount prescribed by regulation, if the trustee distributes the surplus to one or more qualified donees within the meaning of the Income Tax Act (Canada) whose objects are consistent with the spirit of the public appeal.

**Commentary:** If the surplus is small, an application to the court for approval of a *cy-pres* scheme would be uneconomical. But if the trustees are given free rein to donate it to whatever cause they wish, donors may be dissatisfied with the way their money is being used. Subsection (6) creates a compromise by allowing trustees to donate a surplus under \$20,000 (or other prescribed amount) to a charity or other qualified donee without having to apply to the court for approval. The charity selected must be one whose objects are consistent with the spirit of the public appeal. If no such charity can be identified, the trustees remain free to devise an alternative distribution scheme and seek court approval under subsection (7).

**10(7)** Any person who can commence proceedings to enforce a trust under section 8 may

(a) apply to the court to approve a scheme to distribute a surplus, whether court approval is otherwise required under this section or not; and

(b) appear, make submissions or propose an alternative or amended scheme in an application for approval made by another person.

**Commentary:** It is desirable for donors and others connected with a public appeal fund to be able to express their views before a decision is made on how to distribute the unused balance.

**10(8)** In distributing a surplus in a fund with a charitable object or under subsection (6), it is not necessary to demonstrate that any donor had a general charitable intent.

**Commentary:** It is a condition of the court's exercise of its *cy-pres* powers (see commentary to section 9) in relation to funds with a charitable object that the donor be shown to have had a "general charitable intent." This is an elusive concept which has the potential to cause an otherwise appropriate disposition of a surplus to fail. Subsection (8) ensures that this limitation has no application to a distribution under this Act whether the object of the fund was charitable or non-charitable.

**10(9)** This section does not apply if the object of a public appeal was for the relief of a specified person or persons who would be regarded as a beneficial owner of the surplus under general trust law.

**Commentary:** If the surplus belongs beneficially to the person for whose benefit the fund was raised under general trust law, the court will not have the power to approve a scheme to re-allocate it without that person's consent.

### **Refund of unused donation**

**11(1)** A person who donates at least \$500 to a fund with a non-charitable object, or such other amount as may be prescribed by regulation — or personal property of equivalent value — may request the trustee, in the event of a surplus,

(a) to refund an amount calculated in accordance with subsection (3); or

(b) to apply that amount as the donor may direct.

**Commentary:** Since donors are often motivated to give only for the specific purpose of the campaign, a person who has made a substantial donation should be able to obtain a refund if the donation will not be used for that purpose. Subsection 11(1) allows such a donor to claim a refund or call for a reapplication of a *pro rated* share of the surplus. It applies only to non-charitable public appeal funds, since charitable ones are subject to the doctrine of *cy-pres*. See the commentary to subsection 10(4).

**11(2)** A request must be made in writing at the time the donation is made.

**Commentary:** The possibility that a belated demand might be made for refunds would be a major administrative problem for trustees. It would prevent them from knowing the extent of the balance available for other worthwhile purposes. For this reason, subsection (2) requires that a donor declare an intention to claim a refund at the time the donation is made..

**11(3)** If a donor has made a request and there is a surplus, the trustee must refund an amount calculated in accordance with the following formula, or apply that amount in any way the donor directs:

$$\text{amount} = \frac{(\text{value of the donation})}{(\text{value of the total of all donations to the fund})} \times (\text{value of the surplus})$$

**Commentary:** The refund is simply a *pro rata* share of the surplus.

**11(4)** If, after making all reasonable efforts, the trustee cannot locate a donor who has made a request, the trustee may deal with the amount as if it were surplus for which no request was made.

**Commentary:** Self-explanatory.

**11(5)** The trustee's obligation to refund or direct an amount under this section applies notwithstanding any scheme to distribute a surplus under section 10.

**Commentary:** Where a surplus exists, a donor's right to a refund under this section prevails over a distribution scheme.

### **Return of unused real property**

**12(1)** If real property forming part of a fund with a non-charitable object

- (a) is no longer needed or cannot be used for the object of the public appeal; and
- (b) has not been converted into money or another form of property;

the trustee must return the real property to the donor, or dispose of it as the donor may direct, unless the terms of the donation provide otherwise.

**Commentary:** Section 12 provides that if land has been donated and will not be used for the purposes of a non-charitable public appeal fund, it must be returned to the donor rather than become subject to reallocation for other purposes, unless the donor has stipulated otherwise. The reason for this is that land is unique and generally of much greater value than other kinds of property, and it would be reasonable to assume that the donor would want it

back if it is not to be used as the donor intended. Because of land registration, it is most unlikely that return of a non-charitable gift of land would be frustrated by the anonymity of the donor. Section 12 would apply in very few cases, since land would seldom be donated and if it were, special conditions would likely be imposed on the gift to protect the donor's interests.

**12(2)** If, after making all reasonable efforts, the trustee cannot locate a donor to whom real property must be returned, the trustee may dispose of the property and deal with the proceeds as if it were surplus for which a return or refund was not required under this section.

**Commentary:** Self-explanatory.

**12(3)** The trustee's obligation to return real property under this section applies notwithstanding any scheme to distribute a surplus under section 10.

**Commentary:** A donor's right to a return of real property under this section prevails over a distribution scheme.

## PART 4

### TRUSTEE'S POWERS

**Commentary:** The trustee's powers set out in Part 4 cover a variety of matters that one would expect to find in any well-drafted trust document that has been created expressly for most informal public appeals. A majority of the provisions are self-explanatory and require no further comment.

The powers in Part 4 play a default role and will be displaced by express provisions contained in a trust document or other governing authority that address the same issues in a different fashion..

#### **Payments from the fund while the trust continues**

**13(1)** A trustee may make payments from a fund, without having to distinguish between capital and income,

- (a) in the amounts and at the times the trustee considers appropriate for an object of the fund;
- (b) to pay expenses, taxes or charges for an object of the fund or arising in respect of the fund; or
- (c) to make a refund to a donor or return donated property if required by section 11 or 12.

**Commentary:** Subsection (1) exempts the Trustees from having to apportion many kinds of receipts and expenses between capital and income for the purpose of making disbursements. The wording of paragraph (a) when read together with section 20, makes the trust discretionary.

**13(2)** Subsection (1) does not affect the jurisdiction of the court to determine the receipts and disbursements that relate to capital or income.

**Commentary:** Subsection (2) reflects case law indicating that a discretionary power to adjust between capital and income accounts which purports to oust entirely the jurisdiction of the court to categorize receipts and disbursements as “capital” or “income” will be unenforceable: *Re Bronson*, [1958] O.R. 367 (H.C.).

### **Investment**

**14(1)** A trustee may invest any part of a fund that is not needed immediately for payments under subsection 13(1) as permitted by [the Trustee Act of the enacting jurisdiction].

**14(2)** With regard to any property forming part of the fund, a trustee may

- (a) keep the property uninvested for a reasonable length of time;
- (b) leave the property in a particular form for any length of time;
- (c) convert the property or any part of it to money;
- (d) convert one form of investment into another; or
- (e) authorize securities belonging to the fund to be commingled with other securities in order to facilitate investment and reinvestment, as long as the share of the fund in the commingled pool of securities is accounted for separately.

**14(3)** A trustee may allow any investments or other property forming part of the fund to be held by or in the names of nominees.

**14(4)** A trustee may accumulate and add to the capital of the fund any income arising from the fund that is not otherwise used in a manner allowed by this Act or a governing authority, subject to the maximum duration on accumulations set out in section 7.

### **Further public appeals and donations**

**15(1)** A trustee may issue further public appeals for donations to the fund and raise money for the fund by any other lawful means whenever the trustee believes it necessary or advisable to do so.

**15(2)** A trustee may accept any donations to the fund as long as the donations are not made on conditions that are inconsistent with the object of the fund.

### **Professional advice and services**

**16(1)** In relation to any matter concerning a fund, a trustee may arrange for a person, firm, organization or corporation engaged in any profession, trade or business to give advice or perform services (including the receipt and payment of money) on the trustee’s behalf.

**16(2)** A trustee is not liable for any loss arising from the trustee's reliance in good faith on advice or services obtained under subsection (1).

**Transfer of fund to another body**

**17(1)** A trustee may transfer all or part of a fund to a corporation, society, foundation or other entity that has objects similar to the object of the fund, or into another fund with similar objects, if the trustee considers that the object of the fund will be better served by doing so.

**17(2)** The trustee may form a corporation, society, foundation or other entity for the purpose of transferring a fund.

**Other transactions, elections and consents**

**18** A trustee may enter into any transaction, execute any document, make any election or give any consent concerning the fund or property forming part of a fund if the trustee considers it will better enable the fund to serve its object.

**Trustee may make rules**

**19** A trustee may make rules to govern

- (a) management of a fund generally, including an investment plan or policy;
- (b) criteria for determining if, to what extent and to whom a payment from the fund is to be made to serve its object; and
- (c) meetings of trustees if there is more than one trustee.

**Commentary:** Paragraph (b) will be relevant if the Fund is for the benefit of a class of persons such as victims of a particular disaster.

**Trustee's discretion**

**20(1)** A trustee's powers must be used to administer the fund effectively in the service of its object and to comply with any relevant law, but not for any other purpose.

**20(2)** In using the trustee's powers under subsection (1), the trustee has absolute discretion.

**20(3)** A trustee may seek the opinion of

- (a) a person whose welfare is an object of the fund; or
- (b) a parent, guardian or legal representative of a person referred to in clause (a);

on a matter affecting the administration of the fund or the exercise of the trustee's powers, but the trustee is not bound by the opinion.

**Trustees may act by majority**

**21(1)** If there is more than one trustee, a majority of the trustees may validly do anything that the trustees may lawfully do if acting unanimously.

**21(2)** A trustee who disagrees with a decision or action of the majority may state the disagreement in writing but, unless the decision or action is unlawful, that trustee must join with the majority in doing anything necessary to carry out the decision or action if it cannot otherwise be carried out.

**21(3)** A trustee who has stated a disagreement with a decision or action is not liable for any breach of trust or any loss resulting from the decision or action even if he or she joined with the majority to carry it out.

**Trustee protected from liability**

**22** A trustee is not liable for any loss incurred in respect of a fund unless the loss is due to that trustee's own

(a) dishonesty; or

(b) willful conduct, which the trustee knows to be inconsistent with this Act or a governing authority.

**Retirement and appointment of trustees**

**23(1)** If there are at least two trustees of a fund, a trustee may retire by delivering a signed notice of retirement to the remaining trustees, either personally or by registered mail.

**23(2)** On the personal delivery or mailing of a notice of retirement, the retiring trustee ceases to be a trustee for all purposes except for any action required to vest any property of the fund in the remaining or new trustees.

**23(3)** After a trustee retires, the remaining trustee or trustees may appoint, in writing, a person to replace the retiring trustee.

**23(4)** The appointment of a replacement trustee takes effect when he or she signs a written acceptance of the appointment.

**23(5)** The provisions of [the Trustee Act of the enacting jurisdiction] concerning the appointment, retirement and removal of trustees apply to the fund, except as otherwise provided in this section.

**PART 5**

## TRUSTEE'S DUTIES

**Commentary:** Part 5 places a duty on trustees to diligently monitor the operation of the trust and the objects for which it was established. Funds should not be allowed to fall into desuetude and to require a periodic review as called for by this Part goes some way to ensure that money collected through a public appeal continues to serve a useful purpose.

### Trustee's duties

**24(1)** A trustee must hold the fund for the duration of the trust and use the income and capital for the object of the fund.

**24(2)** At least once in each year in which money or other property remains in the fund, the trustee must consider whether the remaining money or property is still needed or can be used for the object of the fund.

**24(3)** If the trustee decides that money or other property remaining in the fund is no longer needed or cannot be used for the object of the fund, the trustee must set out in writing the reasons that led to that decision and declare the trust at an end.

**Commentary:** Subsection (3) empowers Trustees to wind up the trust without having to make an application to the court, if they determine the Fund is no longer needed or usable for its stated purposes. Since the Trustees actually administer the Fund, they are better situated to determine if it continues to perform a useful function.

**24(4)** After the trust is declared at an end, the money or other property remaining in the fund is surplus and the trustee must distribute it in accordance with section 10 (distributing a surplus) or section 11 or 12 (refund or return of unused donations).

**Commentary:** While the Trustees may have to apply to the court for the approval of a scheme to distribute any surplus (see section 10 of the Act), application for approval of a scheme would normally be much more straightforward and less costly than one in which the continued usefulness of the Fund was in issue. An application that would force the court to make determinations of fact regarding the continued usefulness of the Fund could be expensive and time-consuming.

**24(5)** The duties imposed by this section are in addition to any other duty imposed by [the *Trustee Act* of the enacting jurisdiction] and the general law of trusts.

**24(6)** The duties imposed by this section may not be excluded by a trust document.

**Schedule to the Uniform Informal Public Appeals Act**

**[Important Information for Trustees - Included with this trust declaration are some examples and notes that will explain some of its features and assist trustees in completing the declaration. They do not form part of the declaration itself.]**

**TRUST DECLARATION**

The persons who have signed this document as Trustees wish to declare the terms on which they [hold] [will hold] <sup>1</sup> the Fund in trust and will deal with it in order to achieve its objects, and to declare how they will deal with any surplus in the Fund. <sup>2</sup>

**Governing Statute**

1. This Trust Declaration is made pursuant to the *Informal Public Appeals Act* (the "Act") <sup>3</sup>

**Name of Trust Fund**

2. This Trust Declaration concerns a Fund called the \_\_\_\_\_ <sup>4</sup>Trust Fund (the "Trust Fund").  
(name of fund)

**How the Trust Fund Came into Being**

3.(1) The Trust Fund was created because: <sup>5</sup>

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3.(2) An appeal to the public for donations to the Trust Fund [was made on \_\_\_\_\_] [will be made]. <sup>6</sup>  
(date)

**Objects of the Trust Fund**

4. The objects of the Trust Fund are: <sup>7</sup>

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Surplus Money**

5. If any money remains after the purposes of the Trust Fund have been fulfilled as far as possible, that money will be donated to one or more of the following organizations, all of which are registered Canadian charities or qualified donees under the *Income Tax Act* ,(Canada) or are bodies that have purposes similar in spirit to the objects of this Trust Fund. <sup>8</sup>

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNED by the following persons as Trustees of the Trust Fund on \_\_\_\_\_ <sup>9</sup>  
(date)

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(Email [if any])

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(Print name)

---

(Signature)

---

(Address)

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(Telephone)

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(Email [if any])

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(Print name)

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(Signature)

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(Address)

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(Telephone)

---

(Email [if any])

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---

(Print name)

---

(Signature)

---

(Address)

---

(Telephone)

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(Email [if any])

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SIGNED by the following persons as new Trustees appointed to replace Trustees of the \_\_\_\_\_  
 Trust Fund on \_\_\_\_\_: <sup>10</sup>  
 (date)

\_\_\_\_\_  
 (Print name) (Signature)

\_\_\_\_\_  
 (Address) (Telephone) (Email [if any])

-----

\_\_\_\_\_  
 (Print name) (Signature)

\_\_\_\_\_  
 (Address) (Telephone) (Email [if any])

-----

\_\_\_\_\_  
 (Print name) (Signature)

\_\_\_\_\_  
 (Address) (Telephone) (Email [if any])

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- 1 *Strike out and initial inapplicable text in square brackets.*
- 2 *It is advisable to have at least two, but not more than four trustees.*
- 3 *Trustees have a number of powers and duties that are set out in the Act. It should be consulted when any question arises concerning the administration of the Trust.*
- 4 *Insert information in blanks where indicated. Examples of Trust Fund names are : "Doe Family Disaster Relief" Trust Fund, and "Town of XYZ Hurricane Relief" Trust Fund.*
- 5 *List the reasons for the creation of the Trust Fund, including particular facts and events that led to a need for the Trust Fund. See examples set out in Appendix 1 to this forms for guidance.*
- 6 *Strike out and initial inapplicable text in square brackets.*

- 7 *Set out the purpose for which the Trustees are able to make payments from the Fund.. These purposes must be in keeping with the terms of the appeal for donations. See examples set out in the Appendix to this form for guidance.*
- 8 *See examples in the Appendix to this form for guidance about how to dispose of surplus funds. It is important to note that if the objects of the Trust fund are charitable, surplus moneys **must** be given to registered Canadian charities or other bodies that are "qualified donees" under the Income Tax Act. Trustees should be aware that whether an object is charitable is a highly technical legal question since not all benevolent objects are charitable. If a trustee is in any doubt as to whether the objects of the trust are charitable legal advice should be sought. The safest course for a trustee is, in every case, to stipulate that any surplus should go to a registered charity.*
- 9 *Each trustee must print his or her name, address, telephone number, and e-mail address, and sign here. See note 2 concerning the number of trustees.*
- 10 *Any new or replacement trustees should become parties to the declaration. Each should print his or her name, address, telephone number, and e-mail address, and sign here.*

## **APPENDIX TO SCHEDULED TRUST DECLARATION - EXAMPLES**

### **A. Examples of reasons for creating the Fund**

#### **Example No. 1:**

The John Doe Special Needs Trust Fund was created because:

- (a) John Doe is a 5-year old boy living in [city or town and province].
- (b) On July 1, 2010 John Doe was injured in a motor vehicle accident. His left arm was amputated.
- (c) John Doe needs a state-of-the-art artificial arm to enable him to carry out day-to-day tasks. The arm will have to be replaced several times as John grows. It will also have to be serviced regularly to keep it in good working order.
- (d) The parents of John Doe cannot afford an advanced electronic artificial arm.
- (e) John Doe and his parents will need other special equipment to meet his needs.
- (f) Many members of the community have offered to help John Doe and his family.

#### **Example No. 2:**

The XYZ Earthquake Relief Fund was created because:

- (a) On August 1, 2010 an earthquake devastated the community of XYZ.
- (b) The earthquake destroyed many homes in XYZ, damaged roads, and disrupted communications.
- (c) Many residents of XYZ were injured and many lost all their belongings.

- (d) A fund is needed to supplement efforts by government and private agencies to relieve the community of XYZ.

## **B. Examples of the Objects of a Trust Fund**

### **Example No. 1:**

The objects of the John Doe Special Needs Trust Fund are:

- (a) to purchase an artificial arm for John Doe and replace it when the Trustees agree a replacement is needed;
- (b) to maintain the artificial arm and its replacements in good functioning order;
- (c) to purchase, maintain, and replace other technological aids, which the Trustees think are necessary or desirable to meet the special needs of John Doe;
- (d) to assist the parents of John Doe to equip their home to accommodate his special needs.

### **Example No. 2:**

The objects of the Town of XYZ Earthquake Relief Fund are:

- (a) to provide medical treatment, food, clothing, and temporary shelter to victims of the earthquake;
- (b) to provide supplies and equipment to assist in the effort to rescue and evacuate victims of the earthquake;
- (c) to assist persons who are in financial need as a result of losses suffered in the earthquake.

## **C. Examples of how to dispose of surplus funds**

Surplus moneys may be paid, in equal or unequal portions, to one or more charities or other organizations with objects similar in spirit to the objects of the appeal.

### **Example No. 1:**

paid to the XYZ Hospital for Sick Children.

### **Example No. 2:**

distributed equally among the following charities:

the Town of XYZ Foodbank Society  
the Town of XYZ Community Improvement Association

