

Uniform Informal Public Appeals Act

CHAPTER I

OBJECT AND SCOPE

1. This Act establishes a legal framework for informal public appeals in order to enhance public participation in such appeals, in particular through rules ensuring that donations are appropriated to the purpose for which they are made and that the residue of the donations is suitably disposed of once that purpose has been fulfilled or has become impossible to fulfill.

2. For the purposes of this Act, an informal public appeal means any message, disseminated by whatever means, requesting donations from the public generally or from a section of the public in order to fulfill a personal purpose or a purpose of private or social utility, whether the donations are made in the form of a sum of money, including sums derived from a sale, the provision of a service, or a lottery, contest, entertainment or other event, or in the form of movable or immovable property.

[Section 1(1): “public appeal”]

3. The provisions of this Act do not apply to public appeals carried out on a permanent or continuing basis.

In addition, the provisions of this Act do not apply to public appeals conducted by a body that is a qualified donee within the meaning of the *Income Tax Act* (Canada).

[Section 1(1): “public appeal”; section 2(1)]

CHAPTER II

CONSTITUTION OF A TRUST AND LEGAL REGIME APPLICABLE

4. Every informal public appeal results in the constitution of a trust.

An exception to this rule is made only where the terms of the appeal state clearly that a different legal regime applies. “Terms of the appeal” means the information given to the public in relation to the appeal on which a decision to make a donation may be based.

[Section 1(1): “terms of the public appeal”; section 2(3); section 3(1)]

Commentary: The Uniform Act makes informal public appeals subject to the legal regime of trusts, except if the intention, as clearly expressed in the terms of the appeal, is to subject the appeal to a different legal regime. The trust is formed by operation of law; as a result, the participants are not required to comply with the conditions for establishing a trust set out in article 1260 C.C.Q.

5. The trust may result from any act whose effect is to establish a trust under the provisions of the Civil Code. It may also result from an act drawn up in accordance with the model provided for in the schedule to this Act.

In the absence of any such trust act, the trust results simply from the fact that one or more persons hold and administer sums of money or other property donated during an appeal, in order to ensure their appropriation in accordance with the object of the appeal.

[Sections 5(1), (2) and (3)]

6. The trust is governed, first, by the trust act and the terms of the appeal, which may, unless otherwise indicated, derogate from, complement or specify the application of the provisions of this Act.

The trust is also governed by the provisions of the Civil Code applicable to trusts of the relevant nature, unless they are incompatible, adapted as required.

[Section 2(3); sections 5(1), (2) and (3); section 23(5); section 24(5)]

7. If the trust act and the terms of the appeal are inconsistent, the latter take precedence.

[Section 6]

CHAPTER III

ADMINISTRATION OF THE TRUST

8. The trust patrimony, made up in particular of the property donated during the appeal, is administered by the trustee or trustees designated in the trust act or in accordance with the trust act, and also by the persons who in fact hold and administer the property making up the trust patrimony.

In the absence of a trust act, the trust patrimony is administered by the person who in fact holds and administers the property making up the trust patrimony.

[Section 1(1) “fund”; section 4(1)]

9. Notwithstanding section 8, a bank, trust company, savings company or other financial institution is not considered to be a trustee on the sole grounds that it holds or administers the sums of money or other property donated during an appeal.

[Section 4(2)]

10. The administration of the trust is gratuitous, notwithstanding any contrary provision.

Commentary: Article 1300 C.C.Q. specifies that unless the administration is gratuitous according to law, the act or the circumstances, the administrator is entitled

to remuneration. In the present case, the administration must be gratuitous. Section 10 has no equivalent in the common law version.

11. The trustee may accept any donation made during an appeal, provided that the donation is not subject to a condition that is irreconcilable with the object of the appeal or with the provisions otherwise governing the trust.

[Section 15(2)]

12. The trustee may repeat an appeal or launch a new appeal and take any other step considered necessary or useful by the trustee to increase the trust patrimony.

[Section 15(1)]

13. The trustee, although acting as the administrator of the property of others charged with full administration, is required to invest the sums administered in accordance with the rules of the Civil Code respecting presumed sound investments.

[Section 14(1)]

Commentary: Section 14(1) of the common law version refers to the *Trustee Act* of the province concerned. In Quebec, the trustee acts as an administrator of the property of others charged with full administration, which gives the trustee broad powers relating to investments (articles 1278, 1306 and 1307 C.C.Q.). In the present case, the goal of the administration is to conserve the donated property and preserve its value until it is used for the purposes of the trust. However, the trustees are unlikely to be investment experts and must be prevented from making high-risk investments. For this reason, it seems advisable to subject them to the rules on presumed sound investments, which normally apply only to administrators charged with simple administration, such as a tutor to a minor (article 1301 and following C.C.Q.). Since this provision is not imperative, it may be superseded by the provisions of the trust act or the terms of the appeal.

14. The trustee may, with respect to any matter concerning the administration of the trust or the appropriation of the property making up the trust patrimony, seek the opinion of the person for whose benefit the appeal was made or, where applicable, of that person's parent, tutor or other representative.

The opinion is sought for consultation purposes only. It is not binding on the trustee.

[Section 20(3)]

Commentary: This provision stems naturally from the principle that the trustee is bound to act in the best interest of the beneficiary or in keeping with the purpose of the trust. The trustee must seek to discover the needs of the beneficiary, but also exercises independent judgment. See articles 1278 and 1309 C.C.Q.

15. The trustee must, notwithstanding any contrary provision, allow any interested party, including a donor, to examine the trust act if such an act exists.

[Section 5(4)]

Commentary: Section 5(4) of the common law version gives this right to the donors of large amounts. This section creates a broader, imperative right.

16. The trustee ensures that the sums of money and other property making up the trust patrimony are appropriated in accordance with the trust act and the terms of the appeal.

[Section 24(1)]

17. Any payments made by the trustee to fulfill the purpose for which the trust was constituted or because of expenses arising out of its administration are paid out of the trust patrimony, without the trustee being required, in connection with the payments, to distinguish between the capital administered and the fruits and revenues generated by that capital.

[Section 13(1)]

18. The trustee is required to indicate, in the summary account of the trustee's administration that must be rendered at least once a year in accordance with the provisions of the Civil Code, whether the sums of money or other property making up the trust patrimony are sufficient to fulfill the purpose for which the trust was constituted, if they are still necessary to fulfill that purpose, or if they can no longer be used to fulfill that purpose.

The obligations imposed by this section cannot be set aside or reduced by the trust act or the terms of the appeal.

[Section 24(2) and (6)]

Commentary: An administrator of the property of others must render an account of the administration at least once a year (article 1351 and following C.C.Q.). The obligation imposed by this section is in addition to the obligation provided for in the Civil Code.

19. The trustee may transfer all or part of the property making up the trust patrimony to a not-for-profit corporation, a contractual association, a foundation or another trust pursuing similar objects, if in the opinion of the trustee such an action will facilitate the fulfillment of the purpose for which the trust was constituted.

The trustee may, with a view to making such a transfer, establish such a corporation, association, foundation or trust.

[Section 17(1) and (2)]

Commentary: Although section 17 of the common law version does not state this as clearly, this section stipulates that only not-for-profit entities may benefit from the transfer of property from the trust patrimony. The section must not be used to circumvent the rules governing the termination of the trust and the disposal of the

residue; a transfer may only take place in order to fulfill the purpose for which the trust was constituted.

20. If there is more than one trustee, the trustees act as a majority unless the trust act or the terms of the appeal provide for them to act jointly or in a determinate proportion.

[Section 21(1)]

Commentary: This section restates the rule found in article 1332 C.C.Q., the effects of which are broadly similar to those targeted by section 21(1) of the common law version.

21. Every donor is an interested party within the meaning of articles 1290 and 1291 of the Civil Code relating to the supervision and control of the trust administration.

[Section 8]

CHAPTER IV

TERMINATION OF THE TRUST AND DISPOSAL OF THE RESIDUE

Division I – Termination of the trust

22. Unless the trust act provides for a shorter term, every trust terminates not later than 100 years after its constitution, whether it was originally constituted to fulfill a personal purpose or a purpose of private or social utility.

[Section 7(1)]

Commentary: Under the Civil Code, a personal trust cannot last longer than 100 years, whereas a private trust or social trust may be perpetual (articles 1272 and 1273 C.C.Q.). Section 7(1) of the common law version does not limit the duration of a charitable purpose trust (equivalent to the social trust in Quebec law). This section limits the duration of all trusts resulting from an appeal, regardless of their nature.

23. Besides the expiry of the term and the other causes provided for in the Civil Code, the trust terminates when, in the opinion of the trustee, the sums of money and other property making up the trust patrimony are insufficient to fulfill the purpose for which the trust was constituted, are no longer necessary to fulfill that purpose, or can no longer be used to fulfill that purpose.

The opinion of the trustee must be recorded in a written document setting out the reasons for the trustee's decision.

[Section 24(3)]

Commentary: Article 1296 of the Civil Code states that a court must confirm the impossibility of attaining the purpose for which a trust was constituted. This section

creates an exception to the rule by authorizing the trustee to terminate the trust without applying to the court.

Division II – Disposal of the residue

§1. – *Refund, restitution and redirection*

24. When the trust terminates, if sums of money or other property remain in the trust patrimony, every donor of a sum of \$500.00 or more, or of movable property of equivalent value, is entitled to the refund of the donor's share of the residue or its disposal as the donor may direct, provided the donor so requested in writing when making the donation.

The share is determined by applying the following formula:

Share of donor = (value of donation made by donor / total value of all donations made by donors) X value of residue.

[Section 11(1), (2) and (3)]

25. Unless the act of donation provides otherwise, the donor of immovable property that still exists in that form is entitled to the restitution of the property or its disposal as the donor may direct.

[Section 12(1)]

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

[Sections 11(4) and 12(2)]

§2. – *Residual modes of disposal*

27. If sums of money or other property remain in the trust patrimony after the refunds, restitutions and redirections performed by the trustee or, where applicable, if the trustee has declared that the underlying rights have lapsed, the trustee disposes of the money or property in accordance with the provisions of this subdivision, depending on whether the trust was originally constituted to fulfill a personal purpose or a purpose of private or social utility.

[Sections 7(2), 11(5), 12(3) and 24(4)]

Commentary: The effect of this section is, in particular, to prevent the application of the second paragraph of article 1297 C.C.Q., which states that where there is no beneficiary, any property remaining when the trust is terminated devolves to the settlor or his heirs.

I – Personal trust

28. The sums of money and other property remaining in a trust constituted to fulfill a personal purpose are remitted to the beneficiary or to the beneficiary's heirs, except if the terms of the appeal provide for another mode of disposal.

[Section 10(9)]

II – Private or social trust

29. The sums of money and other property remaining in a trust constituted to fulfill a purpose of private or social utility are disposed of in accordance with the trust act and the terms of the appeal.

If the trust act and the terms of the appeal do not provide for disposal and if the value of the sums of money and other property does not exceed \$20,000, the money and property are remitted to one or more qualified donees within the meaning of the *Income Tax Act* (Canada) that pursue objects consistent with the spirit of the appeal, as chosen by the trustee.

In all other cases, the property of the trust may only be disposed of with prior authorization from the court.

[Section 10(1) and (6)]

30. The trustee is only bound by the stipulations of the trust act providing for the disposal of the property of the trust if they are clearly stated in the terms of the appeal.

[Section 10(2)]

31. Any interested party may, if the stipulations of the trust act and the terms of the appeal provide for the disposal of the property of the trust in a manner that is inconsistent with the spirit of the appeal, apply to the court to declare the stipulations null and the terms non-opposable.

In addition, any interested party may submit to the court a mode of disposal for the property of the trust, even if the disposal of the property is not subject to the prior authorization of the court.

The court may make any order it considers just in the circumstances.

[Section 10(5)(b) and 10(7)]

CHAPTER V

FINAL PROVISIONS

32. The Minister of Justice is responsible for the administration of this Act.

33. The provisions of this Act do not apply to informal public appeals under way on *(insert here the date of coming into force of this Act)*.

[Section 2(4)]

34. This Act comes into force on (*insert here the date of assent to this Act*).

Schedule to the Uniform Informal Public Appeals Act

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

TRUST ACT

The persons who have signed this document as Trustees wish to declare the terms on which they [hold] [will hold] ¹ the property forming part of the trust patrimony and will deal with it in order to achieve the objects of the trust, and to declare how they will deal with any residue in the trust patrimony. ²

Governing Statute

1. This Trust Act is made pursuant to the *Informal Public Appeals Act* (the "Act") ³

Name of Trust Patrimony

2. This Trust Act concerns a trust patrimony called: _____ ⁴ (the "Trust Patrimony").
(name of trust patrimony)

How the Trust Patrimony Came into Being

- 3.(1) The Trust Patrimony was created because: ⁵

- 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 names are : "Doe Family Disaster Relief Trust Patrimony, and "Town of XYZ Hurricane Relief Fund".*
- 5 *List the reasons for the creation of the Trust Patrimony, including particular facts and events that led to a need for its creation. See examples set out in Appendix 1 to this form for guidance.*

3.(2) An appeal to the public for donations to the Trust Patrimony [was made on _____] [will be made].⁶
(date)

Objects of the Trust

4. The objects of the Trust are:⁷

Residue

5. If sums of money or other property remain after the purposes of the Trust have been fulfilled as far as possible, that money or property 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 objects similar in spirit to those of the Trust.⁸

⁶ Strike out and initial inapplicable text in square brackets.

⁷ Set out the purposes for which the Trustees are able to make payments from the Trust Patrimony. These purposes must be in keeping with the terms of the informal public appeal. 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 a residue.

SIGNED by the following persons as Trustees of the Trust Patrimony on _____⁹

(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])

(Print name)		(Signature)
(Address)	(Telephone)	(Email [if any])

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.

SIGNED by the following persons as new Trustees appointed to replace Trustees of the Trust
 Patrimony on _____: ¹⁰
 (date)

(Print name)	(Signature)
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(Address)	(Telephone)	(Email [if any])

(Print name)	(Signature)
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(Address)	(Telephone)	(Email [if any])

(Print name)	(Signature)
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(Address)	(Telephone)	(Email [if any])

10 Any new or replacement trustees should become parties to the Trust Act. Each should print his or her name, address, telephone number, and e-mail address, and sign here.

APPENDIX TO SCHEDULED TRUST ACT - EXAMPLES

A. Examples of reasons for creating the Trust Patrimony

Example No. 1:

The John Doe Special Needs Trust Patrimony 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

Example No. 1:

The objects of the John Doe Special Needs Trust Patrimony 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 a residue

The residue 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