

UNIFORM BENEVOLENT AND COMMUNITY CROWDFUNDING ACT (2020)

Sources

The provisions of this Act are based on:

Provisions of the *Uniform Informal Public Appeals Act [UIPAA]* carried forward with no change in content or numbering and identified with the note *[Source - UIPAA]*,

Provisions of the *Uniform Informal Public Appeals Act [UIPAA]* carried forward with no change in content but with different numbering and identified with the note *[Source - UIPAA s. n(m)(o)]*,

Provisions of the *Uniform Informal Public Appeals Act [UIPAA]* carried forward with a change in content and possibly different numbering and identified with the note *[Source - UIPAA modified s. n(m)(o)]*,

New provisions identified with the note. *[Source - New]*.

Schedule - Apart from the addition of clause 3(3) to the Model Trust Document, the Schedule to the *UIPAA* has been carried forward without any changes.

Commentary/Introduction

The expression “benevolent and community crowdfunding” is meant to distinguish between the fundraising efforts carried out by organized charities and similar bodies on a continuing basis and the kind of informal fundraising through public appeals with which this Act is concerned. An informal public appeal will usually arise in reaction to a specific event or concern. A familiar example is an appeal for funds to provide relief in relation to a misfortune that has struck an individual, family or community. Such appeals are frequently led by persons with limited experience in fundraising and in the administration of funds that are the proceeds of the appeal.

Although appeal organizers 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 organizers have appropriately and clearly recorded the circumstances that led to the appeal and its objects. In reality, however, this is seldom done. Nor does the general law provide a clear legal framework to guide the organizers. 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. A surplus may occur where more money is raised than is needed to satisfy the objects of the appeal or, sometimes, too little is raised to be of any real use. 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

Uniform Benevolent and Community Crowdfunding Act (2020)

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 Benevolent and Community Crowdfunding Act* is to provide an appropriate legal framework to assist in the creation and administration of public appeals. 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; it provides for judicial oversight where appropriate; it recognizes the importance that internet-based crowdfunding platforms have come to play in the conduct of such appeals. Also, 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.

***RESOLUTION OF THE CIVIL SECTION
WEDNESDAY, AUGUST 12, 2020***

THAT subject to any commentaries made on the French language version of the draft *Uniform Benevolent and Community Crowdfunding Act, 2020*, and the commentaries with consequent adjustments to the English language version, the Act is adopted and recommended to the jurisdictions for enactment;

THAT upon adoption, the *Uniform Informal Public Appeals Act (2011)* is withdrawn;

UNIFORM BENEVOLENT AND COMMUNITY CROWDFUNDING ACT (2020)

CONTENTS

Section

**PART 1
DEFINITIONS AND APPLICATION**

- 1 Definitions
- 2 Application

**PART 2
THE TRUST**

- 3 Trust of public appeal fund
- 4 Trustees
- 5 Trust document
- 6 Terms of the public appeal and governing authority
- 7 Duration of the fund and accumulations
- 8 Right to enforce a trust

**PART 3
SURPLUSES AND REFUNDS**

- 9 No donor rights in a surplus
- 10 Scheme to distribute a surplus
- 11 Refund of unused donation
- 12 Return of unused real property

**PART 4
TRUSTEE'S POWERS**

- 13 Payments from the fund while the trust continues
- 14 Investment
- 15 Further public appeals and donations
- 16 Professional advice and services
- 17 Transfer of fund to another body
- 18 Other transactions, elections and consents
- 19 Trustee may make rules
- 20 Trustee's discretion
- 21 Trustee protected from liability
- 22 Trustees may act by majority
- 23 Retirement, replacement and appointment of trustees

**PART 5
TRUSTEE'S DUTIES**

- 24 Trustee's duties

**PART 6
GENERAL**

- 25 Right to halt public appeal
- 26 General offence provision does not apply
- 27 Regulations

Schedule

**PART 1
DEFINITIONS AND APPLICATION**

Definitions

1(1) The following definitions apply in this Act:

“**appeal organizer**” means a person that initiates a public appeal and specifies how donations are to be made to the fund « **organisateur de l’appel aux dons du public** » [*Source - New*]

“**beneficiary**” means

- (a) an identifiable individual, or
- (b) a group of identifiable individuals having a common interest

whose welfare, relief, or advancement is the object of a public appeal that has been initiated.
« **bénéficiaire** » [*Source - New*]

“**court**” means the [*insert the name of superior court of the enacting province or territory*], except in the definition “governing authority” and in section 6(4)(a). « **tribunal** » [*Source - UIPAA*]

<p>Commentary: Matters involving trusts are dealt with by the superior trial court of the enacting jurisdiction.</p>

“**fund**” means a fund of money or other property raised through a public appeal. « **fonds** » [*Source - UIPAA*]

“**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 that is an appeal organizer;
- (b) the terms of the public appeal;
- (c) a contract, including a user agreement to the extent that it embodies the terms of the appeal;

(d) an order of a court; or

(e) a trust document,

that governs or regulates the trust or the public appeal associated with it. « **document habilitant** »
[Source - UIPAA modified s. 1(1)]

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.

“**intermediary**” as the circumstances of a public appeal may require, means

(a) a savings institution that holds a fund, or

(b) an online platform. « **intermédiaire** » [Source - New]

“**online platform**” means an internet site that

(a) assists in organizing a public appeal, and

(b) collects, holds or transmits a fund raised through a public appeal. « **plateforme en ligne** »
[Source - New]

“**public appeal**” means a message directed at the public generally, or at a section of the public, requesting donations to a fund that is intended to be used for a specified object, whether charitable or non-charitable, but does not include a message communicated as part of a fundraising effort carried out on a permanent or continuing basis. « **appel aux dons du public** » [Source - UIPAA modified s. 1(1)]

Commentary: This definition sets out what must be contained in a fundraising message for it to be a “public appeal.” It must mention 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” also restricts the application of the Act to *ad hoc*, informal appeals.

“**qualified donee**” means qualified donee within the meaning of the *Income Tax Act* (Canada), « **donataire reconnu** » [Source - New]

“**savings institution**” means a bank, credit union, trust company or similar entity that holds a fund. « **établissement d’épargne** » [Source - New]

Commentary: The interpretation legislation of enacting jurisdictions should be reviewed for a definition that includes “near banks” that might be used in this Act in preference to this defined term.

“**surplus**” means the assets remaining in a fund that are no longer needed, are insufficient to satisfy or that otherwise cannot be used for the object of the public appeal. « **excédent** » [Source - UIPAA modified s. 1(1)]

“**terms of the public appeal**” means the information given to the public on which a decision to donate to the appeal may be based including information provided by an online platform in relation to the conduct of the appeal. « **modalités de l’appel aux dons du public** » *[Source - UIPAA modified s. 1(1)]*

“**trust document**” means a trust document executed or deemed to be executed under section 5. « **document de fiducie** » *[Source - UIPAA]*

“**trustee**” means a trustee of a fund. « **fiduciaire** » *[Source - UIPAA]*

“**user agreement**” means an agreement between an appeal organizer and an intermediary. « **contrat d’utilisation** » *[Source - New]*

“**vulnerable beneficiary**” means a beneficiary that

(a) is an identifiable individual, and

(b) is a minor or is otherwise legally incapable. « **bénéficiaire vulnérable** » *[Source - New]*

Commentary: See sections 2(2), 3(3), 8, 20(3), and 25 where this term is used.

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. *[Source - UIPAA]*

1(3) For the purposes of this Act any donation or disposition, whether direct or indirect, to a qualified donee is deemed to be for a charitable object. *[Source - New]*

Commentary: In some instances, compliance with this Act may require the organizer of a public appeal to characterize the appeal itself or a scheme to distribute a surplus as having a charitable object. See, for example, sections 10(2) and 10(4). Without more, a reference to charitable objects would require the organizer to engage in a highly technical legal analysis. This may be necessary in particular cases. If, however, the appeal is based on a qualified donee as the object of the appeal, or as a conduit for delivering welfare, relief, or advancement in relation to an object it is appropriate to create a presumption that it is for a charitable object.

Application of this Act

2(1) Subject to subsections (2) to (5), this Act applies to the following:

(a) any public appeal for which the associated fund is subject to a trust pursuant to subsection 3(1) that is governed by the law of *[the enacting jurisdiction]*, and

(b) any public appeal for which the associated fund is subject to a trust pursuant to subsection 3(1) that is not governed by the law of *[the enacting jurisdiction]*, but that has an object most closely connected with *[the enacting jurisdiction]*. *[Source - New]*

Commentary: This provision sets out two alternative bases on which the application of the Act to a particular appeal may rest. The first, paragraph (a), is where the choice of law rules in section 3 point to

the application of the law of the enacting jurisdiction. Here, a connection between an appeal organizer and the enacting jurisdiction may be relevant. The second, paragraph (b), is where the object of the appeal has the closest connection with the enacting jurisdiction. The application of the Act can rest on either or both. For greater certainty, section 3(7)(a) restates the closest connection test as a basis for the application of the law of the enacting jurisdiction.

2(2) Despite subsection (1) this Act does not apply to

(a) a public appeal conducted by a body that is a qualified donee, *[Source – UIPAA modified s. 2(1)]*

Commentary: Paragraph (a) makes it clear that fundraising campaigns and appeals conducted by registered charities and similar organizations recognized by the Canada Revenue Agency are unaffected by this Act.

(b) a public appeal conducted through an intermediary

(i) if the user agreement stipulates that the fund is to be paid directly by the intermediary to a qualified donee and the qualified donee has not objected to the appeal, or

(ii) if the user agreement permits the intermediary to pay the fund directly to a beneficiary other than a vulnerable beneficiary,

and the intermediary does so. *[Source - New]*

(c) a public appeal whose object is to provide an investment opportunity to the donor, including, without limitation, any other commercial or investment activity governed by *[here the enacting jurisdiction should insert the title of any applicable legislation regulating investment and securities]*, *[Source - New]*

(d) a public appeal whose object is to support partisan political activity if such fundraising is otherwise governed by *[here the enacting jurisdiction should insert the title any applicable legislation regulating political fundraising (including Federal legislation)]*, *[Source - New]*

(e) a public appeal that provides for an economic benefit to donors other than a benefit that is

(i) an opportunity for public recognition of the donation, or

(ii) a gift or reward that is of token value only. *[Source - New]*

2(3) 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 3(3) (vulnerable beneficiaries);

(b) subsection 4(1) (trustees);

(c) section 7, to the extent that it sets a fund's maximum duration;

(d) subsection 10(2) (distributing a surplus);

(e) section 24 (trustee duties). *[Source - UIPAA modified s. 2(2)]*

Commentary: Despite the default role of this Act (see commentary to subsection (4)) 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.

2(4) 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 appeal or other governing authority. *[Source - UIPAA modified s. 2(3)]*

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. If 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(5) This Act does not apply to a public appeal initiated before this section comes into force. *[Source - UIPAA s. 2(4)]*

Commentary: Jurisdictions that have adopted the *Uniform Informal Public Appeals Act*, and are enacting this Act to replace it, should revise this provision to provide for an appropriate transition.

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. *[Source - UIPAA]*

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.

Its operation must also be considered in the context of general trust law. One feature is that a trust relationship cannot arise where there is only one trustee and one beneficiary and they are the same person. Thus, if an appeal organizer seeks donations for the organizer’s sole benefit those donations normally take effect as a gift to the organizer. The coin in the mendicant’s begging bowl does not give rise to a trust.

This rule is confirmed in section 2(2)(b)(ii) for competent adult beneficiaries. The donation is to be treated as a gift to which the Act does not apply. However, where the appeal is linked to a vulnerable beneficiary the application of the principle may be more nuanced. Trust law looks to the substance of

the donation and the intention with which it is made and received rather than its form. Whether a trust arises in any particular case involving a minor, may well be fact-driven.

Also note section 10(9) which confirms that the provision concerning surpluses has no application to a donation that the general law would regard as a gift rather than giving rise to a trust.

3(2) The trust is enforceable

(a) regardless of whether a trust with the same object would be enforceable under the general law, and *[Source - UIPAA]*

(b) without limiting paragraph (a), regardless of whether the object of the trust is non-charitable and does not have identifiable beneficiaries. *[Source - New]*

Commentary: Subsection (2) is largely concerned with non-charitable purpose trusts. 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. 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) 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.”) It 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 with paragraph (b) included for greater certainty.

It would not validate, as a trust, a donation properly characterized as a gift as discussed in the commentary to subsection (1).

3(3) If the object for which a public appeal is conducted is the welfare, relief, or advancement of a vulnerable beneficiary all donations are the property of the trustee to be administered in accordance with this Act and general trust law. *[Source - New]*

Commentary: Subsection (3) is included for greater certainty concerning property rights in relation to donations to benefit vulnerable beneficiaries. The contents of section 4 should be noted. Section 4(1) identifies who is a trustee and section 4(2) provides that an intermediary is not a trustee so long as it acts as a mere conduit of donations.

3(4) The trust is governed by the law of the jurisdiction stipulated in the governing authority. *[Source - UIPAA s. 3(3)]*

3(5) Subsection (4) does not apply if the stipulated jurisdiction is contained in a provision of a user agreement unless the stipulated jurisdiction

(a) is the ordinary residence of an appeal organizer, or

- (b) has a real and substantial connection to the location of the object of the public appeal if paragraph (a) does not apply. *[Source - New]*

Commentary: This subsection addresses a concern is that the user agreement of a non-Canadian based online platform might contain a jurisdictional stipulation that would displace the Act where it should otherwise apply.

- 3(6)** In this section, if an appeal organizer is an entity that is not an individual, the location of its ordinary residence must be determined in accordance with the *[Uniform Court Jurisdiction and Proceeding Transfer Act]*. *[Source - New]*

Commentary: This subsection incorporates by reference rules respecting ordinary residence provided in the *Uniform Court Jurisdiction and Proceeding Transfer Act [UCJAPTA]*. The relevant provisions are:

7. A corporation is ordinarily resident in [the enacting jurisdiction], for the purposes of this Part, only if
- (a) the corporation has or is required by law to have a registered office in [the enacting jurisdiction],
 - (b) pursuant to law, it
 - (i) has registered an address in [the enacting jurisdiction] at which process may be served generally, or
 - (ii) has nominated an agent in [the enacting jurisdiction] upon whom process may be served generally,
 - (c) it has a place of business in [the enacting jurisdiction], or (d) its central management is exercised in [the enacting jurisdiction].
8. A partnership is ordinarily resident in [the enacting jurisdiction], for the purposes of this Part, only if (a) the partnership has, or is required by law to have, a registered office or business address in [the enacting jurisdiction],
- (b) it has a place of business in [the enacting jurisdiction], or
 - (c) its central management is exercised in [the enacting jurisdiction].
9. An unincorporated association is ordinarily resident in [the enacting jurisdiction], for the purposes of this Part, only if
- (a) an officer of the association is ordinarily resident in [the enacting jurisdiction], or
 - (b) the association has a location in [the enacting jurisdiction] for the purpose of conducting its activities.

Those enacting jurisdictions that have not adopted the *UCJAPTA* may wish to incorporate these provisions directly into subsection (6).

- 3(7)** If a jurisdiction cannot be identified under subsection (4)

(a) the trust is governed by the law of *[the enacting jurisdiction]* if the jurisdiction most closely connected to the object of the public appeal is *[the enacting jurisdiction]*.

(b) if paragraph (a) does not apply, the trust is governed by the law of the jurisdiction in which the ordinary residence of the appeal organizer is located, or

(c) if the appeal organizer is composed of

(i) two or more individuals, or

(ii) two or more entities that are not individuals, or

(iii) any combination of individuals and entities that are not individuals

and any of the individuals or entities is ordinarily resident in *[the enacting jurisdiction]* the trust is governed by the law of *[the enacting jurisdiction]*.

(d) if paragraphs (a), (b) and (c) do not apply the trust is governed by the law as determined without reference to this Act. ***[Source - New]***

Commentary: Subsection (7) sets out a hierarchy of criteria that may link the public appeal to the law to be applied to the trust created by subsection (1). Uppermost is the case where the enacting jurisdiction is the one having the closest connection to the object of the appeal. Ranked next are criteria based on the ordinary residence of the appeal organizer. Note particularly that where there are multiple organizers the residence of any one of them in the enacting jurisdiction is sufficient to trigger the Act. Note also the use of “an”, with reference to an organizer, in section 3(5)(a).

3(8) *[A provision similar to section 20 of the Uniform Perpetuity Act]* does not apply to a trust referred to in subsection (1). ***[Source - UIPAA s. 3(5)]***

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 (8) 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 provision similar to section 20. In those jurisdictions that do not have such a provision, subsection (8) 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. ***[Source - UIPAA]***

Commentary: Subsection (1) states who is a trustee of a public appeal fund.

4(2) An intermediary that holds a fund only for the purpose of collecting the fund and transmitting it to the appeal organizer is not, for that reason only, a trustee of the fund. ***[Source - UIPAA modified s. 4(2)]***

Commentary: See the definition of “intermediary”. An intermediary that is a 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. An intermediary that is an online platform and is passive in relation to the management and distribution of the fund is treated similarly.

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. *[Source - UIPAA]*

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

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 – particularly if an online platform is used in the conduct of an appeal. 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) any other governing authority of the trust;

and the terms of the appeal and the circumstances in which it is made form the contents of paragraphs 2 (name of trust fund), 3 (reason, time and intermediary in relation to trust fund) and 4 (objects of trust fund) of the Schedule and, if the terms of the appeal include a scheme for the for the distribution of a surplus, paragraph 5 of the Schedule. *[Source - UIPAA modified s. 5(3)]*

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 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). *[Source – UIPAA]*

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

Terms of the public appeal and governing authority

6(1) An appeal organizer may revise the terms of the public appeal in relation to any of the following:

- (a) the provision or modification of a scheme to distribute a surplus that conforms to section 10,
- (b) the provision or modification of an express fundraising goal,
- (c) the provision of information capable of affecting an implied fundraising goal,
- (d) the means by which the object of the appeal is to be achieved,

but the revised terms of the appeal take effect only if the spirit of the appeal is not affected by the revision.

[Source - New]

Commentary: Modifications to the terms of an appeal was not an issue when the original *Uniform Informal Public Appeals Act* was developed. The way in which informal appeals were conducted at the time gave organizers very little flexibility once an appeal was launched. Internet fundraising has changed that and given organizers an increased ability to update or modify the information made available to potential donors.

They may wish to do this to meet changing circumstances such as increased need to meet the object of the appeal (perhaps by increasing a stated fundraising goal) or to deal with decreased need that might result in the need for a scheme to deal with a surplus. The latter presents a particular problem – balancing the interests of the early (pre surplus scheme) donors and the later (post scheme) donors who may have quite different perspectives on the surplus issue.

The approach of section 6(1) is to authorize a limited group of modifications to the terms of the appeal which maintain the spirit of the original (unmodified) appeal. The organizer who purports to introduce modifications that are outside the scope of section 6(1) runs the risk of a proceeding under section 8 to enforce the trust according to the terms of the appeal.

6(2) If the terms of the public appeal

- (a) require that, for the appeal to be effective, an express fundraising goal must be met, and
- (b) provide for the disposition of donations made if the appeal fails to meet the goal

then

(c) subsection (1)(b) does not permit an appeal organizer to revise the terms of the appeal to provide a lesser goal, and

(d) if the appeal

- (ii) fails to meet the goal, or
- (ii) is halted under section 25 before the goal is met,

any donations received do not constitute a surplus. *[Source - New]*

Commentary: Section 6(2) addresses a particular kind of appeal, sometimes called the “all or nothing”. These are almost always conducted through an online intermediary and their distinguishing feature is that the organizer sets out a fundraising goal and the object of the appeal is funded only if the goal is reached. The terms usually set out what is to be done with donations made before it becomes clear the appeal has failed (most often a refund to the donors). It would be unfair to these donors to permit organizers to try and save a failed appeal by stipulating a lesser fundraising goal and subsection 6(2) limits their ability to do so.

6(3) Despite subsection (1), if a public appeal is conducted through an online platform and a provision of an applicable user agreement

- (a) prohibits any revision of the terms of the appeal, or
- (b) directly or indirectly restricts the revision of the terms of the appeal to a degree greater than that provided in subsection (1)

the provision of the user agreement prevails. *[Source - New]*

Commentary: Online platforms may vary in the extent to which they will permit or accommodate changes in the terms of an appeal. They may be more restrictive in the revisions permitted or require certain conditions to be satisfied. Subsection (1) is intended to provide a default position which permits online platforms to adopt more stringent rules in relation to revisions.

6(4) If there is a conflict or incompatibility among governing authorities applicable to a 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 appeal;
- (c) a governing authority that is a trust document;
- (d) a governing authority that is a contract except those provisions that set out the terms of the appeal;
- (e) a governing authority that is the constitution, charter, incorporating document or bylaws of an incorporated body or foundation that is an appeal organizer. *[Source - UIPAA modified s. 6]*

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. Paragraph (d) recognizes that the terms of the appeal may be embodied in a user agreement with an online platform

Duration of the fund and 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 or, if a shorter period is set out in the trust document, that shorter period. *[Source - UIPAA]*

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. *[Source - UIPAA]*

7(3) Subsection (1) applies despite any other law to the contrary. *[Source - UIPAA]*

7(4) *[Any enactment similar to the (now withdrawn) Uniform Accumulations Act]* does not apply to a trust to which this Act applies. *[Source - New]*

Commentary: The “rule against accumulations” is a feature of the common law that limits the time during which a fund is permitted to accumulate. The rule has been restated in legislation both in Canada and England. A modern Canadian restatement is found in the *Uniform Accumulations Act* which has been adopted, for example, in Ontario (*Accumulations Act*). The accumulation period permitted by the rule 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.

For greater certainty, subsection (4) expressly targets legislation of the enacting jurisdiction. The modern trend is to abrogate the rule generally, as evidenced by Part 9 of the *Uniform Trustee Act* and the withdrawal of the *Uniform Accumulations Act* in 2012. In those jurisdictions that have legislated to abrogate the rule against accumulations, subsections (3) and (4) 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 beneficiary that is an identifiable individual;
- (d) a parent, guardian or legal representative of a vulnerable beneficiary;
- (e) a member of a group of identifiable individuals that is a beneficiary;
- (f) a qualified donee for whose benefit the public appeal was initiated;
- (g) the Attorney General;
- (h) the Public Guardian and Trustee [or the comparable official of the enacting jurisdiction];
- (i) 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. *[Source - UIPAA modified s. 8]*

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, or enforce a duty such as that imposed by section 25, 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. The inclusion of the Public Guardian and Trustee is optional, depending on the policy of the enacting jurisdiction concerning the role of the PGT and issues of resource allocation.

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 or a duty under the Act. This might include an intermediary, in appropriate circumstances.

PART 3 SURPLUSES AND REFUNDS

No donor rights in 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. *[Source - UIPAA]*

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. In other cases, too little may have been collected to be of any use. 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 if funds are raised informally.

This section 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 or the terms of the public appeal may provide for a scheme to distribute a surplus.

[Source - UIPAA modified s. 10(1)]

Commentary: See the definition of “trust document” which includes a document deemed to have been executed under section 5. Where the terms of the public appeal include a scheme for the distribution of a surplus, in the absence of a formally executed document, that scheme will be imported into the deemed trust document as the contents of paragraph 5.

10(2) A scheme to distribute a surplus that is provided for in a trust document or that forms part of the terms of the public appeal is effective without court approval only if that scheme

(a) is consistent with the spirit of the appeal;

(b) forms part of the terms of the appeal; and

(c) complies with subsections (4) and (5). *[Source - UIPAA modified s. 10(2)]*

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 provide that the surplus is 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.

Second, the distribution scheme must, at some point, be made known to potential donors as part of the “terms of the appeal” (see definition of that expression). In some cases, a distribution scheme may be provided or modified through a revision of the terms of the appeal under section 6(1) after some donations have been made. Early donors who are not satisfied that the revisions conform to the spirit of the appeal would have an opportunity to challenge the revisions under subsection (7).

Third, the scheme must comply with subsections (4) and (5). See the commentary to those subsections. Compliance with subsection (4) may require the appeal organizer to determine whether or not the appeal is charitable or non-charitable. As pointed out in the introduction to this Act, the distinction can sometimes be highly technical and elusive and in some cases legal advice may be helpful.

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.

The words “or that forms part of the terms of the public appeal” in the opening flush doubly ensure that surplus schemes created or modified under section 6(1) conform to section 10.

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

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 that is consistent with the spirit of the public appeal. *[Source - UIPAA modified s. 10(4)]*

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 an object, charitable or non-charitable, that is consistent with the spirit of the public appeal. *[Source - UIPAA]*

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 consistent with the spirit of the appeal. 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 whose objects are consistent with the spirit of the public appeal. *[Source - UIPAA modified s. 10(6)]*

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 or dispute 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. *[Source - UIPAA]*

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. *[Source - UIPAA]*

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 welfare, relief, or advancement of a specified person or persons who would be regarded as a beneficial owner of the surplus under general trust law. *[Source - UIPAA modified s. 10(9)]*

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. *[Source - UIPAA]*

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. *[Source - UIPAA]*

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:

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

[Source - UIPAA]

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. *[Source - UIPAA]*

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. *[Source - UIPAA]*

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. *[Source - UIPAA]*

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. *[Source - UIPAA]*

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

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. *[Source - UIPAA]*

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. *[Source - UIPAA]*

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]*. *[Source - UIPAA]*

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. *[Source - UIPAA]*

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. *[Source - UIPAA]*

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. *[Source - UIPAA]*

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. *[Source - UIPAA]*

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. *[Source - UIPAA]*

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. *[Source - UIPAA]*

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). *[Source - UIPAA]*

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. *[Source - UIPAA]*

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

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. *[Source - UIPAA]*

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. *[Source - UIPAA]*

<p>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.</p>

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. *[Source - UIPAA]*

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

20(3) A trustee may seek the opinion of

(a) beneficiary; or

(b) a parent, guardian or legal representative of a vulnerable beneficiary;

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. *[Source - UIPAA modified s. 20(3)]*

Trustee protected from liability

21 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. *[Source - UIPAA s. 22]*

Trustees may act by majority

22(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. *[Source - UIPAA s. 21(1)]*

22(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. *[Source - UIPAA s. 21(2)]*

22(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. *[Source - UIPAA s. 21(3)]*

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. *[Source - UIPAA]*

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. *[Source - UIPAA]*

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

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

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. *[Source - UIPAA]*

Commentary: Ideally, issues concerning the appointment and replacement of trustees and issues of unanimity should be dealt with in trustee legislation of general application. Enacting jurisdictions should review their local legislation (typically a *Trustee Act*) to see how these issues are dealt with. Those that have adopted more modern legislation such as the *Uniform Trustee Act*, which addresses them satisfactorily should consider omitting sections 22 and 23.

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 in a savings institution in an account segregated from the personal funds of the trustee and designated as an account held in trust by the trustee. *[Source - New]*

Commentary: This provision is to ensure that a fund is not vulnerable to attachment by creditors of the appeal organizer or a successor trustee. If a donor responds to an appeal for funds by an organizer who proposes to use the fund for a benevolent purpose, permitting the fund to be held in an account that is vulnerable has the potential to totally frustrate the intent of the donors.

24(2) A trustee must hold the fund for the duration of the trust and use the income and capital for the object of the fund. *[Source - UIPAA modified s. 24(1)]*

24(3) 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. *[Source - UIPAA modified s. 24(2)]*

24(4) 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. *[Source - UIPAA modified s. 24(3)]*

Commentary: Subsection (4) 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(5) 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). *[Source - UIPAA modified s. 24(4)]*

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(6) 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. *[Source - UIPAA modified s. 24(5)]*

PART 6 GENERAL

Right to halt public appeal

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

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

subject to this section, the beneficiary or qualified donee may demand that the appeal be halted. *[Source - New]*

25(2) If the beneficiary referred to in subsection (1) is a vulnerable beneficiary the parent, guardian, or legal representative of the beneficiary is

- (a) the person whose consent is relevant, and
- (b) the person entitled to make the demand. *[Source - New]*

25(3) If the person referred to in subsection (1) is a qualified donee, a demand may be made by an authorized representative of the donee. *[Source - New]*

25(4) A demand under subsection (1) need not be in any particular form and must be delivered

- (a) if the public appeal is conducted through an intermediary, to that intermediary, or
- (b) if there is no intermediary, to the appeal organizer

who must comply with the demand. *[Source - New]*

25(5) Subject to section 6(2), if a demand is delivered under subsection (1), all funds raised by the public appeal, whether before or after delivery, are deemed to be surplus and must be distributed as provided in section 10 or refunded as provided in section 11. *[Source - New]*

25(6) If a demand under subsection (1) is not complied with, the beneficiary or qualified donee may apply to the court for relief in relation to the breach of duty imposed by subsection (4) which may include

- (a) an injunction, if the intermediary or appeal organizer is subject to the jurisdiction of the court,
- (b) a declaration that the intermediary or appeal organizer has breached a duty imposed by the Act, or
- (c) any other order in respect of the public appeal that the court considers appropriate and just in the circumstances. *[Source - New]*

Commentary: In many cases a public appeal may be initiated without the consent of the person or persons to be benefited. Some may perceive this as carrying the “stigma” of being an object of charity and wish to disassociate themselves from the appeal. Organized charities may also have concerns about losing control of their fundraising efforts to third parties with a fear that their “branding” may be affected. Both possibilities illustrate a need for a procedure that allows an appeal to be halted where it is conducted without the consent or against the wishes of its “beneficiary”. To provide such a procedure is the role of section 25.

General offence provision does not apply

26 *[General offence provision, if any, of the enacting jurisdiction]* does not apply to this Act. *[Source - New]*

Commentary: The legislation of some jurisdictions contains a provision creating a general offence for the contravention of an enactment. For example, the following formulation is found in the statutes of British Columbia, Manitoba and the Yukon: “A person who contravenes an enactment by doing an act that it forbids, or omitting to do an act that it requires to be done, commits an offence against the enactment.”

Frequently the application of a general offence provision is expressly omitted in enactments that have their own provisions concerning contraventions or where its application is otherwise inappropriate (as is the case with this Act). Enacting jurisdictions should review their statutes for general offence provisions and, if they exist, include section 26 to exclude its application. Section 26 would not have the effect of excluding the provisions of the *Criminal Code* if a purported appeal is used as a vehicle for fraud or other dishonest conduct.

Regulations

27 The Lieutenant Governor in Council **[or the equivalent regulation making authority in the jurisdiction]** may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act,
- (b) revising the form of the trust document set out in the Schedule or substituting a different form,
- (c) prescribing an amount for the purposes of subsections 10(6) and 11(1),
- (d) prescribing any forms required for the purposes of this Act in addition to the form set out in the Schedule,

(e) prescribing new or additional procedures respecting the administration of public appeals, trusts, trust documents and funds pursuant to this Act,

(f) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act. *[Source - Saskatchewan IPAA (in part) New]*

Commentary: This regulation-making power gives enacting jurisdictions some flexibility in adapting to a changing environment surrounding public appeals.

Schedule to the Uniform Benevolent and Community Crowdfunding 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] ¹ 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. ²

Governing Statute

1. This Trust Declaration is made pursuant to the *Benevolent and Community Crowdfunding Act* (the “Act”) ³

Name of Trust Fund

2. This Trust Declaration concerns a Fund called the _____⁴Trust Fund (the “Trust Fund”).
(name of fund)

How the Trust Fund Came into Being

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

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

- 3.(3) [If applicable] The appeal was conducted with the assistance of an online platform known as _____ and particulars of the appeal may be found

at the following internet address _____ [Insert link to appropriate area of the online platform]. *[Source - New]*

Objects of the Trust Fund

4. The objects of the Trust Fund are: ⁷

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. ⁸

SIGNED by the following persons as Trustees of the Trust Fund on

_____ ⁹

(date)

(Print name)
(Signature)

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

(Print name)
(Signature)

Uniform Benevolent and Community Crowdfunding Act (2020)

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

[Add additional names and particulars as required]

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

(Print name)
(Signature)

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

(Print name)
(Signature)

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

[Add additional names and particulars as required]

Uniform Benevolent and Community Crowdfunding Act (2020)

- 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 if 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 declaration 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 declaration for guidance.*
- 8_ *See examples in the Appendix to this declaration 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, 2020 John Doe was injured in a motor vehicle accident. His left arm was amputated.*
- (c) John Doe needs a state-of-the-art prosthetic 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 prosthetic 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, 2020 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 a prosthetic arm for John Doe and replace it when the Trustees agree a replacement is needed;*
- (b) to maintain the prosthetic 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:

Uniform Law Conference of Canada

the Town of XYZ Foodbank Society

the Town of XYZ Community Improvement Association