

UNIFORM INFORMAL PUBLIC APPEALS ACT – Final Report with draft Act and commentaries

Presenter: Arthur Close, Q.C., British Columbia

The members of the Working Group are:

- Arthur L. Close, Q.C., B.C. (Chair);
- Gregory G. Blue, Q.C., B.C. Law Institute;
- Professor Michelle Cumin, Université de Laval, Québec;
- Vera Mesenzew, Counsel, Royal Bank of Canada; and
- Professor Albert Oosterhoff, Professor Emeritus, Faculty of Law, University of Western Ontario.

Appeals to the public for donations in response to an emergency – for example, fire, flood, etc. – are usually locally based and are led by persons with limited experience in fundraising and in the administration of funds. Existing law is complex, often obsolete, and not very satisfactory in areas such as: how to deal with a surplus; documentation; rights, powers and duties; etc. The purpose of the proposed *Uniform Informal Public Appeals Act* is to provide an appropriate legal framework to assist in the creation and administration of informal public appeals.

The proposed *Uniform Act* includes commentaries, and is drafted as a stand-alone Act as the level of detail required in relation to public appeals makes this a “bad fit” with legislation applicable to trusts generally. The Working Group has taken into account the work being done on the *Uniform Trustee Act*, and the two Acts have been developed to operate in harmony.

The main features of the proposed *Uniform Informal Public Appeals Act* are as follows.

Part 1: Scope – Definitions and Applications. “Public appeals” dealt with under the *Uniform Act* are confined to sporadic, informal appeals for donations. The *Uniform Act* does not apply to funds raised by a body registered as a charity with the Canada Revenue Agency. The draft legislation establishes a “default” scheme that applies only to the extent a public appeal fund is not regulated by other legislation or a formally created trust. There are a few provisions that cannot be overridden, such as “who is a trustee of a public appeal fund”.

Part 2: The Trust. A public appeal fund is subject to a trust for the benefit of the object for which it is raised and is enforceable whether or not the object is charitable. The persons who direct the management and disbursement of a public appeal fund are its trustees; a savings institution in which the fund is deposited is not a trustee. The trust can be enforced by a trustee, donor, beneficiary, the Attorney General and any person having a “sufficient interest”.

Part 3: Surpluses and Refunds. The *Uniform Act* sets out rules respecting the distribution of a surplus. Any person entitled to enforce the trust may apply to a court for a distribution of a surplus. If the appeal was for a charitable object, the donor has no claim to a refund should there be a surplus. If, however, the appeal was for a non-charitable object, other considerations may apply – for example, a person who has made a substantial donation; a donation of real property that is no longer needed or cannot be used for the object of the appeal.

Part 4: Trustee Powers. Part 4 of the *Uniform Act* sets out an array of provisions that would most likely be found in a well drafted trust instrument, such as powers in relation to further

appeals and donations, payments from the fund, investing and otherwise dealing with the fund, etc. These powers can be displaced by express provisions contained in a trust document or other governing authority. The wording of the provisions makes the trust discretionary.

Part 5: Trustee Duties. Part 5 places a duty on trustees to diligently monitor the operation of the trust and the objects for which it is established. A periodic review at least once each year is required. The duties are in addition to duties imposed by the *Trustee Act* of the enacting jurisdiction and the general law of trusts, and may not be excluded by a trust document.

The Model Trust Document: Schedule to the Act. The *Uniform Act* includes, as a schedule, a model trust document – short, in simple language and with helpful examples – that trustees may wish to adopt. The Model Trust Document deals with the background and objects of the appeal. The powers of the trustees have been relocated into the Act itself. This is a change from the Model Trust Document discussed at the 2010 meeting of the ULCC.

With respect to Québec law, Mr. Close noted that Justice Canada and Québec representatives have been discussing possible approaches to an alternative version for Québec – for example, specific provisions reflecting the principles of the draft *Uniform Act*.

DISCUSSION:

The decision to not ‘merge’ this Act with the *Trustee Act* was discussed. It was noted that the two matters are best dealt with separately, particularly as the *Trustee Act* is general while this Act must be drafted quite specifically. The *Uniform Informal Public Appeals Act* was drafted in close collaboration with the Working Group developing the *Uniform Trustee Act* – indeed, two individuals were members of both Working Groups to ensure consistency.

Some technical drafting matters were also discussed.

RESOLVED:

That the final report of the Working Group be accepted;

That the *Uniform Informal Public Appeals Act* and commentaries be approved and recommended to the jurisdictions for enactment; and

That the Working Group look into the feasibility of developing an alternative version of the *Uniform Act* suitable for the *Civil Code of Québec* and present a report at the 2012 meeting.