

INFORMAL PUBLIC APPEALS – CIVIL LAW VERSION – Report

Presenter: Michelle Cumyn, Université Laval, Law Faculty

Michelle Cumyn presented the report of the working group and the civil law version of the Uniform Informal Public Appeals Act.

At its annual meeting in Winnipeg in 2011, the Conference adopted the Uniform Informal Public Appeals Act. The Act is designed so that it may be enacted in the common law provinces and territories of Canada, excluding Québec. In Winnipeg, the Conference also adopted a resolution, pursuant to the working group's recommendation, that a civil law version of the Uniform Act be prepared in time for its next annual meeting.

The forms of the common law and the civil law versions of the Act are quite different, but the solutions they adopt are virtually the same, with a few exceptions.

The working group reached the following conclusions as regards the civil law version:

- The trust is the most appropriate vehicle for governing an informal public appeal in Québec, just as it is in the rest of Canada.
- Under present circumstances, Québec courts are unlikely to characterize an appeal as a trust in the absence of a trust Act clearly stating that the property received is subject to a trust. The situation appears to be different in the common law provinces and territories, where applying a trust appears to be possible even in the absence of a formal document.
- The Uniform Act, civil law version, should ensure that the creation of a trust arises by operation of law, thus setting aside the requirements for constituting a trust by contract. Such requirements are usually not met in the case of an informal public appeal.
- The Uniform Act, common law version, contains several provisions which concern the disposal of the surplus of an appeal. Equivalent provisions are required in the civil law version, as the solutions derived from the *Civil Code of Québec* are inadequate.
- The Uniform Act, civil law version, should adapt or complete some of the rules governing trusts and administration of the property of others in the *Civil Code of Québec*. The appropriate solutions to problems arising out of an informal public appeal are the same in Québec as in the rest of Canada. However, the rules that need to be adopted in Québec differ in some respects from those of the common law version of the Act, since the underlying law is different.
- The Uniform Act, civil law version, should use concepts and adopt a structure that is in harmony with the *Civil Code of Québec*, which will continue to apply to an informal public appeal. It should also adopt the legislative drafting style typical of Québec civil law.

RESOLVED:

THAT the Report of the working group be accepted; and

THAT the civil law version of the Uniform Informal Public Appeals Act be adopted by the Conference and recommended for enactment.