

INFORMAL PUBLIC APPEALS - Report

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

The working group was established in the Fall of 2009 pursuant to direction from the ULCC Advisory Committee on Program Development. Arthur Close presented the report of the working group, which outlined the approach taken to address spontaneous public appeals for donations, either for a charitable or non-charitable purpose.

Informal public appeals often seek donations in response to a natural disaster or to a news story of an individual or family in distress. Ultimately, however, the fundraisers may be left with surplus funds, without a clear idea of how those funds may be handled. Differences exist between funds that, according to law, have a charitable purpose and those without. Ultimately, the working group recommended that a stand-alone *Uniform Informal Public Appeals Act* (UIPAA), based on the extensive work of the BC Law Reform Commission, be created.

The legislation would not apply to a fund raised by a body that is registered as a charitable organization, as there already is legislation in place governing charitable fundraising. For other fundraising, however, the working group has identified a number of key features of possible uniform legislation. Those who direct the public appeal are trustees of the donated money, although the savings institution where the funds are collected is not. A model trust document would be included in a Schedule to the UIPAA and its provisions would be deemed to apply, as long as they do not conflict with other governing documents of the trust.

UIPAA would authorize a court to approve a scheme to distribute the surplus, and in certain circumstances an application could be made to court to have the surplus of a non-charitable trust distributed *pro rata* amongst those who donated over a certain threshold amount.

UIPAA legislation would be primarily recommended for implementation in the common law jurisdictions of Canada. While the principles would be suitable for adoption in Quebec, the working group recommends that a Quebec-specific statute would be more appropriate than a French language translation of the UIPAA.

The working group is currently conducting a consultation and anticipates presenting a final draft UIPAA to the Conference at its 2011 meeting.

Some discussion was generated regarding whether the provisions relating to public appeal funds could be incorporated into existing trustee legislation. Mr. Close indicated that the necessary provisions are too detailed and specific to be a good fit with our *Uniform Trustee Act*. However, the two pieces of legislation wouldn't operate in isolation from each other.

Some concerns were voiced regarding section 5(8) of the draft UIPAA, which states that a surplus of less than \$10,000 may be distributed amongst bodies that are identified by regulation. This would require the government to pick and choose amongst charities, which could be politically unpalatable. Mr. Close indicated that the working group would welcome alternative suggestions on this point.

RESOLVED: That the working group be directed to continue to consider the issues raised in the Status Report and the comments which will be received on the Consultation Paper, and prepare a *Uniform Informal Public Appeals Act* and commentaries for consideration at the 2011 meeting.