

MINUTES OF THE CIVIL SECTION, 2020

UNIFORM BENEVOLENT AND COMMUNITY CROWDFUNDING ACT Final Report and Uniform Act

Presenter: Arthur L. Close, QC, British Columbia

Mr. Close, presented the report of the working group on a *Uniform Benevolent and Community Crowdfunding Act* (UBCCA). The project updates the *Uniform Informal Public Appeals Act (2011)* (UIPAA) to take account of the growth of internet crowdfunding. It was placed on the Conference's agenda in 2018 and subject to an interim report in 2019. The UIPAA exists in two versions, one recommended for the common law provinces and territories, and the other intended to work in harmony with the Civil Code of Québec. The current project updates the common law version of the UIPAA. An updated version of the UIPAA for Québec will be drafted in 2020-2021.

Mr. Close indicated that the working group issued a consultation paper in 2019 following the ULCC Annual Meeting and prepared English and French versions of a draft Act. The consultation paper and draft Act were distributed in both official languages, including by means of a website created for the purpose. The response, while not large, was helpful in sharpening the working group's views on a variety of issues. It included a submission by the Canadian Bar Association Charity Law Section. The working group held a meeting with GoFundMe representatives. Mr. Close indicated that his impression was that GoFundMe's goals were aligned with those of the working group, namely protection of donors and maintenance of a high level of trust that donations will be used for the purposes of the public appeal.

Mr. Close summarized the working group's final report by describing the problem addressed by the UIPAA, the changes since the UIPAA was adopted in 2011, and the proposed revisions to the UIPAA. He noted that the structure of the UBCCA was dictated by the working group's mandate, which was to update the UIPAA rather than to create an entirely new uniform statute. Section numbering of the UIPAA was preserved as much as possible in the UBCCA.

The most difficult questions facing the working group concerned appeals that are geographically diffuse. The object of the appeal, the organizer(s), and the donors may all be located in different jurisdictions. The conventional common law rule is that a trust is located at the ordinary residence of the trustee. The rule is preserved in the draft UBCCA, but with modification. Where there is more than one trustee and they reside in different jurisdictions, the residence of one trustee in the enacting jurisdiction would be sufficient under the UBCCA to trigger the application of the Act. The rules in the *Uniform Court Jurisdiction and Proceedings Transfer Act* (UCJPTA) are adopted for the purpose of determining the ordinary residence of an appeal organizer-trustee that is an entity rather than an individual. A delegate suggested that s. 3(6) of the UBCCA might need to be amended if the UCJPTA is revised. Mr. Close acknowledged this might be the case in the future.

The working group concluded, that the ordinary residence of a trustee should not be the sole basis for application of the Act. In the Humboldt Broncos case, the Saskatchewan IPAA would

not have applied if the appeal organizer had been resident elsewhere, yet it is obvious that there was an overriding interest in having the Saskatchewan statute apply to the fund. It was clearly the jurisdiction with the closest connection to the objects of the appeal, namely the players' families and the surviving players. The working group concluded that the primary ground for application of the UBCCA should be the closest connection to the object of the appeal. This is reflected in ss. 2(1)(b) and 3(7)(a) of the UBCCA.

A delegate commented on the benefits of amendments dealing with the current reality of fundraising. He noted that in the Humboldt case, there had been a clear jurisdictional nexus with Saskatchewan, but if some factors had been different, the Saskatchewan version of the UIPAA might not have been usable.

The UBCCA provides that if an appeal has been launched without the consent of an identifiable individual or a qualified donee who is the intended beneficiary, the individual or qualified donee may require the appeal to be halted. The intermediary and organizer would have to comply with this request, and funds raised up to that point would constitute surplus that is subject to the Act.

Mr. Close concluded his presentation by quoting from an article in the Estates, Trusts and Pensions Journal commending the usefulness of Saskatchewan's *Informal Public Appeals Act* in the Humboldt case.

A delegate commented on the need for revisions to the French version of the UBCCA.

Mr. Carl Lisman, president of the U.S. Uniform Law Commission (ULC) provided an update on the status of the counterpart ULC project. Mr. Lisman said that the ULC project focused on default rules for dealing with unneeded or unused funds rather than on pursuing a solution based on a trust. As it was discovered that all crowdfunding platforms now require appeal organizers to specify how they propose to deal with surplus funds, the project has been placed on hold to await further developments.

RESOLVED:

THAT the report of the working group on a *Uniform Benevolent and Community Crowdfunding Act* (formerly a *Revised Uniform Informal Public Appeals Act*) be accepted;

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; and

AND THAT the working group prepare a Quebec specific statute drafted in a style that is more closely aligned with civil law concepts and the *Civil Code of Québec* to be presented at the 2021 Meeting.