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UNIFORM LAW CONFERENCE OF CANADA

FINAL REPORT OF THE WORKING GROUP

on a

***UNIFORM BENEVOLENT AND COMMUNITY
CROWDFUNDING ACT***

BACKGROUND AND DISCUSSION

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1. BACKGROUND

The Origins of the Project and the Working Group

[1] This project was added to the program of the Uniform Law Conference of Canada [ULCC] by the Advisory Committee on Program Development and Management [ACPDM] in 2018. Briefly stated, the aim of the project was to revisit the *Uniform Informal Public Appeals Act [UIPAA]* promulgated by the ULCC in 2011. Since 2011 there have been major changes in the way that informal *ad hoc* public appeals are conducted. These changes mainly reflect the growth of internet- based fundraising – usually referred to as “crowdfunding”.

[2] Early in 2019 a Working Group was assembled to carry this project forward. The members of the Working Group are:¹

Arthur L. Close, Q.C. (Chair)
Prof. Michelle Cumyn
Gregory G. Blue, Q.C.
Prof. Albert Oosterhoff
Cynthia (Tia) Spencer
Julie McDonald
Laura Buckingham
Jordyn Allan
Jane Chapco
Clark Dalton (ULCC Project Coordinator)

[3] Members Close, Cumyn, Blue and Oosterhoff were also members of the 2011 Working Group that developed the *Uniform Informal Public Appeals Act*.

About the *Uniform Informal Public Appeals Act*

[4] To appreciate what is involved in reviewing the *Uniform Informal Public Appeals Act [UIPAA]* it is necessary to discuss public appeals generally, the legal problems associated with them and how the *UIPAA* addressed them.

Informal Ad Hoc Appeals Generally in 2011

[5] Appeals to the public for donations are a feature of everyday life. Appeals that occur on a regular basis are usually conducted by registered charities and other organizations having the benefit of experienced fundraisers and professional advice. But spontaneous appeals occur frequently as well, especially after a disaster like a fire or a flood. They may follow publication of a news item about a family or individual in some sort of distress. Campaigns on behalf of individual children requiring specialized medical treatment elsewhere have also become familiar examples of such fundraising.

[6] Unlike the regular campaigns of established fundraising organizations,

spontaneous appeals are often begun by a single person or a small group. Rarely is an organization or foundation created at the beginning to manage the fund. Until recently, the fundraisers would simply issue a message asking for donations, open a bank account to hold the fund and enlist the help of the press and the electronic media to publicize the appeal. This pattern of *ad hoc* fundraising carries with it two potential problems:

Surpluses

[7] The first concerns the possibility of a surplus and how to deal with it. Some appeals carry substantial emotional impact, and the generosity of donors can be astonishing. The amount donated may go well beyond what is required to meet the original need. Sometimes the appeal turns out to have been unnecessary because the need is met through governmental or other sources but substantial amounts may already have been collected. Occasionally the opposite situation arises – too little may be raised to be of any use at all.

[8] In either case, the fundraisers may be left with money on their hands. This does not cause any difficulty if the terms of the appeal indicate clearly how any surplus or unused funds will be handled, and if donations are made with that understanding. But in the heat of the moment, the fundraisers may not have thought of the possibility of a surplus or unusable donations.

[9] At first glance, the courses of action open to the fundraisers appear to be straightforward. Either give the money back, turn it over to an equally worthy cause or retain it for similar emergencies in the future. But all of these seemingly self-evident alternatives are rife with legal pitfalls.

[10] If the purpose of the fund falls within the legal definition of “charity,”² returning the contributions would probably amount to a breach of trust. It would also be legally incorrect for the fundraisers to turn over the unused funds to an equally worthy cause without the permission of the court. People who issue spontaneous appeals for donations out of public-spiritedness or humanitarianism rarely appreciate the complexities of the law of charity. In an emergency there is little or no time to get legal advice on the subject.

[11] If the purpose of the fund is not legally charitable, the surplus may have to be returned to the donors. Chances are, however, that the fundraisers will encounter difficulties in doing so. Many donations will be anonymous or otherwise be void of contact information. Some portion of a non-charitable fund is almost sure to be unreturnable for this reason. Moreover, even if the donors can be identified, if the amounts of the individual donations are small the cost of processing refunds may well exceed the amount available for distribution.

[12] What does the law say must be done with the unreturnable portion in a case where the donors are entitled to get their donations back? The shocking answer is that nothing can be done with it except to let it accumulate interest indefinitely or else pay it into court. This was confirmed in 1958 in the notorious English case *Re Gillingham Bus*

Disaster Fund.³

Inadequate Documentation

[13] The unsatisfactory state of the law was the subject of a report of the British Columbia Law Reform Commission that was submitted in 1993. This Report also identified a second difficulty in relation to public appeal funds – their creation is seldom well documented. As the Commission observed, this leads to disputes and misunderstandings in connection with a trust if the rights, powers and duties involved are not spelled out clearly in a written document.⁴

[14] Both the difficulties in relation to surpluses and documentation were addressed by recommendations included in the BCLRC Report.

The Approach of the 2011 Working Group

[15] The 2011 Working Group took the work of the BCLRC as an appropriate point of departure for its own deliberations. In particular, it adopted the overall strategy to reform taken in the BCLRC Report as suitable for the development of uniform law. The resulting *Uniform Informal Public Appeals Act* embodied the following basic features:

- Its application is narrow in scope so as to exclude the fund-raising activities of established bodies for their usual purposes.
- It confirmed that money raised through a public appeal is held in trust for the object of the appeal.
- It is largely default in character and capable of being displaced by more specific documents and rules created to govern a particular appeal.
- It confirms a power in the court to direct the application of surplus funds raised for non-charitable objects.
- It provides a mechanism for the disposition of small surpluses.
- It includes, as a schedule, a model trust document that would provide a default governance structure for the trust created by the appeal.

[16] It is important to note that the 2011 project also developed a version of the Act framed with Quebec law in mind using concepts and terminology to ensure that it operated harmoniously with the *Civil Code*.

[17] A more detailed description of the *UIPAA* and the 2011 work can be found at the ULCC website. Links to the relevant documents are set out in the Appendix to this report.

Why Revisit the *Uniform Informal Public Appeals Act*?

Developments Since 2011 - The Growth of Crowdfunding

[18] The paradigm that drove the creation of the *UIPAA* was the locally based appeal, usually in aid of benevolent or humanitarian assistance to an identifiable person or group or other community “cause”.

[19] While the paradigm of the local appeal still exists, the machinery available to appeal organizers has changed dramatically. The Internet has brought new ways of amassing public support for objects that had typically been the focus of local appeals and objects for which mass funding or participation was not previously possible. “Crowdfunding” has become the catchword. Of particular significance is the emergence of a number of internet platforms devoted to fund-raising for a variety of objects and purposes. Much of the fundraising now facilitated by these internet platforms has replaced appeals that formerly would have been locally-focused.

Developments Since 2011 - The Humboldt Broncos Disaster

[20] After its promulgation, the *UIPAA* did not gain much traction. Only the province of Saskatchewan implemented it. As it turns out, its *IPAA* was in place where and when it was most needed. The disastrous highway accident involving a bus carrying the Humboldt Broncos junior hockey team resulted in significant loss of life and injuries. An appeal, with extremely general objects, carried out through an internet platform (GoFundMe), raised approximately \$15 million. How it should be distributed constituted a major test of Saskatchewan’s *IPAA*. Fortunately, the provisions of the Act gave the organizers and the court all the tools they needed to craft a distribution scheme that commanded almost unanimous support of the victims and their families. The existence of the Act averted what had the potential to be an extremely divisive issue within the community.

[21] Although the Act in its original form proved its worth in the *Humboldt* case, it cannot be safely assumed that its application will be equally straightforward in other cases involving appeals conducted using an internet platform. On slightly different facts the application of the Act might well have been in doubt.

Developments Since 2011 - Quickening of Interest in the United States

[22] The National Conference of Commissioners on Uniform State Laws known informally as the Uniform Law Commission (ULC), is the American counterpart of the Uniform Law Conference of Canada. In 2018 the ULC initiated a project to develop a uniform act that addresses crowdfunding. This project continues to be a work in progress and a draft Act received “first reading” in July 2019 when the ULC met in Anchorage, Alaska.⁵ Arrangements have been in place between our Working Group and the ULC drafting committee and we have kept each other up-to-date with the progress of our respective projects.

Conclusion - Why Revisit This Topic?

[23] The growth of internet-based crowdfunding has added a significant new dimension to fundraising that takes place outside the usual channels of campaigns by established bodies and charities. The reach of the Internet means that the appeal is directed to a world-wide body of potential donors rather than a mainly local community. The amount of money that can be raised can far outstrip what might be raised in a purely local appeal. The *Humboldt* appeal demonstrates this. It is increasingly important that the fundraisers and the courts have the tools necessary to deal with and oversee funds raised in this new environment.

[24] Moreover, the development of the *UIPAA* in 2011 was very much a pioneering effort with little to draw on other than work carried out by B.C. law reform bodies. This has changed and there is now a wider range of thought and analysis available that concerns crowdfunding.

[25] The evolving fundraising environment and the experience to date with the *UIPAA* and internet-based fundraising prompted the initiation of this new project. The Working Group has not been given specific terms of reference for the project; the discussion surrounding its initiation, however, makes it clear that the starting point should be the *UIPAA*. To employ a somewhat tired metaphor, the aim is not to re-invent the wheel. Rather, it is to take a wheel designed a generation ago for local roads and local conditions and ensure that it runs smoothly on the new superhighway.

Carrying out the Project

[26] The Working Group carried out the project through a series of teleconferences, the first of which was held in mid-March 2019. Its initial focus was to identify new issues raised by the emergence of internet-based fundraising, if a legislative response is called for and how it might be expressed. The issues identified were outlined in a Status Report submitted to the Conference at its 2019 Annual Meeting in St. John's. A link to the Status Report at the ULCC website is set out in the Appendix to this Report.

[27] Following the St. John's meeting the preliminary draft of a new Act was finalized. It formed part of a consultation document which was completed in September. The vehicle for the consultation was a website created expressly for the purposes of this project – www.unilaw.ca. At this website the Consultation Paper and draft Act were posted in both a PDF format (for downloading) and HTML (for reading on line). Also posted were a number of supporting documents including the 2019 Status Report and the 2011 project documents. All documents were made available in both official languages. The consultation was publicized through a number of channels with a request that responses and comments be submitted by mid-January 2020. The response, while not large, was helpful in sharpening the Working Group's views on a variety of issues.

[28] Following consultation, the Working Group reviewed its draft in the light of the comments received and proceeded to settle its recommendations for revised legislation to be submitted to the Civil Section for adoption at the Annual Meeting in August

2020.

DISCUSSION AND OVERVIEW – A NEW UNIFORM ACT

[29] The second part of this Report sets out a new uniform act, with a commentary, designed to replace the current *UIPAA*. It incorporates the recommendations of the Working Group concerning revisions to the *UIPAA* that will permit it to function effectively and harmoniously in the present fundraising environment. It will be noted that approximately 90% of the Act consists of provisions and commentary carried forward from the 2011 *UIPAA* with little or no change. The discussion below highlights the 10% of the Act that is significantly changed from its predecessor. The changes are discussed on an issue-by-issue basis and tied to specific provisions in the recommended uniform act.

The Language of the Act

[30] Clarifying the application of the *UIPAA* to fundraising conducted through the internet requires a reconsideration of some of the language and vocabulary used to describe the participants and circumstances.

Title of the Act

[31] The existing title of the Act ceases to convey its content and purpose. A new title that contains the word “crowdfunding” would do so more clearly. The Working Group has adopted the *Uniform Benevolent and Community Crowdfunding Act* [hereafter *UBCCA*] as its title.

New and Revised Definitions

[32] Definitions of terms and expressions found in the *UBCCA* are set out in section 1. Many are carried forward from the 2011 Act either unchanged or with slight modifications. Some newly defined terms simply provide greater clarity to concepts already implicit in the Act while others are expressly included to reflect the way in which the Act embraces internet fundraising.

[33] In most cases the definitions are self-explanatory and the reader is referred to the definitions themselves. There are, however, a handful that departs from previous usage and calls for special comment:

“appeal organizer”

This expression is neither defined nor used in the *UIPAA*. Given the local character of appeals in 2011, in most cases the word “trustee” embraced the organizer for the purposes of the Act. The growth of internet appeals has raised the need for a more specific definition. It is used in a number of places in the Act. Its greatest significance is, perhaps, in section 3 where the location of the appeal organizer may be important in determining jurisdiction and the application of the Act.

“beneficiary”

This word is neither defined nor used in the *UIPAA* which adopts, from trust law the word “objects” when referring to the purposes of an appeal and what and who it is intended to benefit. The principal online crowdfunding platforms, however, do not frame the relationships within an appeal in terms of trust law. Most commonly they use “beneficiary” in a wider non-trust-law sense to capture the concept of purpose. Our *UBCCA* definition targets a subset of objects where harmony with internet usage raises special issues. “Vulnerable beneficiary” identifies a particular group of beneficiaries in need of special protection.

“governing authority”

The “terms of the appeal” have been added to the list of items that constitute a governing authority. “Contract” has been extended to include a user agreement (a defined term that references online platforms) to the extent that it embodies the terms of an appeal.

“intermediary”

This definition is most relevant to section 4(2) which relieves most intermediaries from being characterized as trustees under the Act. In the 2011 Act it applied only to banks and “near banks”. This new definition would extend the section to online platforms that facilitate fundraising and hold funds in that capacity.

Internet specific terms

Two new terms are mainly applicable to internet based public appeals. “Online platform” refers to an internet site that facilitates a public appeal. It is included in the definition of “intermediary”. “User agreement” refers to an agreement between an appeal organizer and an intermediary.

“public appeal”

The definition of this term has been narrowed. Unlike the 2011 definition it no longer includes proceeds of rummage sales, benefit concerts and similar fundraising initiatives. This is consistent with section 2(2)(e) which excludes from the Act appeals that provide an economic benefit to the donor.

Funding Objects Covered by the Act

[34] In 2011, *ad hoc* appeals were almost entirely limited to objects with a benevolent, philanthropic or humanitarian flavour or objects that were primarily local or community “causes”. Today internet fundraising embraces a much wider variety of objects that were not previously possible – things like investment opportunities or backing a particular project (often linked to a merchandising initiative). Thus the potential reach of a revised Act is much greater.

[35] The Working Group has concluded that the focus of the legislation should continue to be appeals for a humanitarian or public purpose. But an attempt to define the scope of the *UBCCA* in those terms would be an overwhelming task. Its approach to achieving that focus is to identify certain fundraising activities that should be expressly excluded from the Act. These include fundraising as an investment opportunity (see

section 2(2)(c)) and fundraising for partisan political purposes (see section 2(2)(d)) which, in any event, are usually regulated by other legislation. Also excluded are appeals that provide a benefit to donors other than a reward of token value or public recognition of the donation (see section 2(2)(e)).

[36] The Act would continue to exclude appeals conducted by registered charities and other qualified donees⁶ that are subject to oversight by the Canada Revenue Agency (see section 2(2)(a)). This exclusion would also extend to appeals conducted through an intermediary if the proceeds are to be paid directly to a qualified donee (see section 2(2)(b)).

[37] Many appeals launched through online platforms are for the sole benefit of the appeal organizer which raises a difficult issue. It is a feature of general trust law 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.

[38] Nonetheless some appeals will raise expectations on the part of donors that the fund will be used in a certain way. For example, a person [A] has a serious medical condition not covered by a provincial medical plan and treatment is available only at great expense. An appeal is organized with the stated purpose of using the proceeds for the necessary treatment. Donations are received but before they can be used some event (perhaps A's death) occurs and the fund cannot be used for its intended purpose. If A is the appeal organizer, the donations take effect as a gift with the result of enriching A or A's estate and frustrating donor expectations.⁷

[39] But attempting to protect donor expectations raises the huge challenge of developing a set of meta-rules to distinguish between those gifts that call for donor protection and those that do not. The ultimate conclusion of the Working Group was that, with one modification, the common law rule should prevail. Section 2(2)(b)(ii) confirms that for competent adult beneficiaries the donation is to be treated as a gift to which the Act does not apply.⁸

[40] However, where the appeal is linked to a vulnerable beneficiary the application of the principle is 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. A special concern was the appeal framed formally as being for the sole benefit of the organizer but the background information contains a reference to a vulnerable beneficiary with special needs. The combined effect of the exception for vulnerable beneficiaries in section 2(2)(b)(ii) and the definition of "beneficiary"⁹ leaves the door open to the application of the Act open although whether a trust arises in any particular case may well be fact-driven.

[41] In most cases it will be clear whether or not a particular appeal is excluded from the Act.

Jurisdiction and Choice of Law

[42] These concepts essentially define the application of the *UBCCA* and are among the most challenging issues to be confronted. In 2011, in most cases, the appeal would be local with the object of the appeal, the organizers and the donors all located in the same jurisdiction. The application of the *UIPAA* was relatively straightforward. Today, internet based appeals can be much more geographically diffuse:

- An appeal may have two or more organizers all located in different jurisdictions.
- The object of the appeal may not be located in a single jurisdiction and, even if it is, that jurisdiction may not be where any appeal organizer is located.
- Donors to the appeal may be located any place worldwide.

[43] The *UBCCA* provides detailed guidance on its application in the age of internet-based appeals?¹⁰

Residence of the Appeal Organizer

[44] One basis for its application is implicit in the *UIPAA* - the residence of the trustee/organizer. The *UBCCA* carries this forward in explicit terms through the combined effect of sections 2(1)(a) and 3(6)(b). Section 3(6) provides guidance if the organizer is an entity that is not an individual and section 3(7)(c) provides guidance if the organizers are two or more individuals or entities.

Closest Connection

[45] While the *UIPAA* worked well in fashioning an outcome in relation to the fund generated by the *Humboldt* appeal, the case also illustrated a potential limitation of the legislation. If the appeal organizer had been located in a province other than Saskatchewan the application of the Act would have been problematic unless the organizer took active steps to bring the fund within the Act.

[46] The view of the Working Group is that in a case like this, where the enacting jurisdiction has the closest connection to the object of an appeal, that jurisdiction has an overriding interest in the application of its legislation to the resulting fund and this should be the primary basis on which a revised Act should apply. This principle is reflected in the *UBCCA* in sections 2(1)(b) and 3(7)(a).

Revision of the Terms of the Appeal

[47] A significant issue concerns actions by the appeal organizer to revise the terms of the appeal. In the Act, “terms of the appeal” is defined to mean the information made available to the public on which a decision to donate will be based. Today, this is usually the information posted on an fundraising internet platform setting out, often in very

general language, the background to the appeal and how the funds raised are to be dealt with.

[48] Changing the terms of a public appeal was not a significant issue in 2011. Once an appeal had been publicized through the usual channels it was difficult to revise. Today, many internet platforms permit appeal organizers to revise the terms of an appeal while it is in progress. This may take the form of an express modification to the purpose of an appeal or, simply, providing additional information that can constitute an indirect revision. Many examples of such revisions are reasonable and well-intentioned attempts to cope with a change in circumstances.

[49] The *UIPAA* currently prohibits altering the terms of the appeal once donations have been received. The underlying reason for the prohibition is to protect expectations of the original donors that may be thwarted by changes in the object of the appeal, resulting in their donations being used for purposes which they do not support. But later donors will also have expectations based on purported revisions to the terms of the appeal that may later be held to be ineffective if the prohibition is carried forward into the *UBCCA*. The challenge is to identify an appropriate balance.

[50] To retain the prohibition would be to ignore the reality that most appeal organizers will not be aware of the Act or its provisions. To the extent that an internet platform permits revisions to the appeal, organizers will do so when it seems appropriate. One should be slow to stigmatize, as being in breach of the Act, organizers who, in good faith, attempt to implement reasonable and supportable changes to the terms of an appeal. On the other hand, organizers should not be given a blank cheque to revise the terms of the appeal in any way they see fit.

[51] The *UBCCA* adopts a compromise solution, guided by the kinds of revisions that are actually occurring and which deserve the support of the Act. These revisions tend to focus on two things. The first is to respond to shifting circumstances which are likely to result in a surplus where none was foreseen at the time the appeal was launched. In these cases the alteration takes the form of providing for the disposition of a surplus if one occurs. The second is where the terms of the appeal expressly or implicitly set out a fundraising goal that proves to be unrealistic and a new goal is provided either directly or through the provision of additional information. Section 6(1) permits modifications of this kind but some important limitations must be noted.

[52] First, a scheme for the disposition of a surplus must conform to the rules set out in section 10 which applies to surplus schemes generally and the specific scheme set out in relation to a surplus must be consistent with the spirit of the original appeal.¹¹

[53] Second, section 6(1) may function as providing a minimum standard in relation to revisions. Individual online platforms may, in their user agreements, impose much more stringent requirements in relation to revision of the terms of an appeal or the provision of additional information. Where this occurs, the more stringent requirements apply. See section 6(3).

Other Features of the *UBCCA*

Clarification

[54] A few of the provisions carried forward from the current Act have been slightly revised to achieve greater clarity in their application or operation. No change in substance is intended. In some cases the marginal notes and the commentary to the Act have been modified for the same reason.

Segregated Account

[55] Section 24(1) places a duty on a trustee/organizer that has custody or control of a fund to hold it in a separate trust account to ensure that the fund is not vulnerable to attachment by creditors of the appeal organizer or a successor trustee.

Charitable Characterization – a Safe Harbour

[56] 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. Section 1(3) creates a “safe harbour” if an appeal is based on a qualified donee as the object of the appeal, or as a conduit for delivering a benefit to an object. It deems this to be a disposition for a charitable object whether or not it would satisfy the common law analysis.

General Offence Provision

[57] The legislation of some jurisdictions contains a provision creating a general offence for the contravention of an enactment. For example is the following formulation: “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.” It would be inappropriate to invoke penal sanctions for technical breaches of the Act and section 26 would make the general offence provisions (in those jurisdictions that have them) inapplicable. 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

[58] The UIPAA contained no provision for regulations nor was there any evident need in 2011. Our Working Group concluded that the robust regulation-making power provided in section 27 was desirable to supplement the Act. It gives enacting jurisdictions flexibility in adapting to a changing environment surrounding public appeals. It is based on the regulation-making power contained in the Province of Saskatchewan’s implementation of the *UIPAA*.

Model Trust Document

[59] Paragraph 3(3) has been added to the Model Trust Document. It calls for the identification the internet platform (if any) that assisted with the conduct of the appeal.

CONCLUSION

Bilingual and Bijural Issues

[60] This version of the *UBCCA* has been developed, in both official languages primarily for implementation in the common law provinces of Canada. The French language version of the Act will be most helpful to those common law provinces that operate in both official languages. It is also planned to create, in a format yet to be determined, a Quebec-specific statute drafted in the style normally used there and more closely aligned with civil law concepts and the *Civil Code* of Quebec. This was done in 2012 after the promulgation of the common law version of the *UIPAA*.¹²

Appendix

The links below are to addresses within the ULCC website that access particular documents that form part of the *Uniform Informal Public Appeals Act* “package”.

https://www.ulcc.ca/images/stories/2011_pdf_en/2011ulcc0011.pdf (Report and Act – English Language Version)

<https://www.ulcc.ca/fr/reunions-annuelles/589-2011-winnipeg-mb-reunion-annuelle/documents-de-la-section-civile-2011/1003-rapport-du-groupe-de-travail-sur-la-loi-uniforme-sur-les-appels-informels-aux-dons-du-public-avec-loi-uniforme-sur-les-appels-informels-aux-dons-du-public> (Report and Act – French Language Version)

Earlier this report referred to a further version of the *Uniform Informal Public Appeals Act*, promulgated in 2012, and framed using concepts and terminology to ensure that it operated harmoniously with the *Civil Code* of Quebec. This version may be found here:

<https://www.ulcc.ca/fr/reunions-annuelles/605-2012-whitehorse-yk-reunion-annuelle/documents-de-la-section-civile-2012/1268-loi-uniforme-sur-les-appels-informels-aux-dons-du-public-deuxieme-rapport-du-groupe-de-travail> (Report [Quebec] - French Language Version)

<https://www.ulcc.ca/fr/reunions-annuelles/605-2012-whitehorse-yk-reunion-annuelle/documents-de-la-section-civile-2012/1269-loi-uniforme-sur-les-appels-informels-aux-dons-du-public-version-droit-civil-powerpoint-en-pdf> (Uniform Act [Quebec] French Language Version)

https://www.ulcc.ca/images/stories/2012_pdfs_eng/2012ulcc0016.pdf (Uniform Act [Quebec] English Language Version)

https://www.ulcc.ca/images/stories/2012_pdfs_eng/2012ulcc0017.pdf (Report [Quebec] Slide Presentation - Bilingual)

¹ Mr. Close is a Past President of the ULCC and participated in the development of many uniform acts. Mr. Blue is the Senior Staff Lawyer with the BC Law Institute and was the principal author of the BC Law Reform Commission’s 1993 Report on Informal Public Appeal Funds. He also participated in the development of the *Uniform Trustee Act*. Prof. Cumyn teaches at Laval and has assisted the ULCC with its projects on Unincorporated Associations, Illegal Contracts and Commercial Tenancies. Prof. Oosterhoff is Professor Emeritus at the Faculty of Law, the University of Western Ontario and was project leader of the ULCC project on Charitable Fundraising. Ms. Spencer is with the office of the Ontario Public Guardian and Trustee, Ms. Buckingham is Counsel with the Alberta Law Reform Institute, Ms. Allan is in practice with the Saskatoon office of Miller Thompson, Ms. Chapco is with Saskatchewan Justice and Mr. Dalton is ULCC Project Coordinator.

² In its popular sense, “charity” means virtually the same thing as “benevolence.” In law, however, “charity” has a narrower meaning. Essentially, the legal idea of charity is that of a private gift for a public purpose. A “public purpose,” in this context, means a benefit to the community as a whole, or to a significant segment of it. In addition, the purpose of the fund must fit within a limited category of purposes

³ [1958] Ch. 300, *aff'd* [1959] Ch. 62 (C.A.). For details see document at https://www.ulcc.ca/images/stories/2011_pdf_en/2011ulcc0011.pdf note 5.

⁴ Report on Informal Public Appeal Funds (LRC 129 1993) at page 29. Hereafter “BCLRC Report.” See http://www.bcli.org/sites/default/files/LRC129-Informal_Public_Appeal_Funds.pdf

⁵ At the time of writing plans for the 2020 annual meeting of the ULC and its crowdfunding project had not been settled.

⁶ “Qualified donee” is now a defined term.

⁷ In contrast, if the organizer is a friend of A the unused funds would be a surplus to be dealt with as provided in section 10 thus protecting donor expectations to a degree.

⁸ 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.

⁹ See the commentary to that definition.

¹⁰ If a governing authority, such as a trust document created expressly for the appeal, sets out a choice-of-law rule that rule would ordinarily determine the application of the Act. *See* section 3(4) but note the exception in section 3(5).

¹¹ Also note section 6(2) and its commentary. It limits the ability of an organizer of an all or nothing appeal to revise a fundraising goal.

¹² In Quebec, the issues currently raised by public appeals and crowdfunding are somewhat different from those addressed in the *UBCCA*, because an appeal is unlikely to be characterized as a trust. The Québec version of the UIPAA was designed to apply the law of trusts to a public appeal conducted in Québec. The working group considers that the most appropriate vehicle for an informal public appeal or crowdfunding campaign in Québec continues to be the trust. It is expected that the modifications set out in this consultation paper may appropriately be carried over to the Québec version of the UIPAA.

Au Québec, les enjeux que soulèvent les appels aux dons et le sociofinancement diffèrent en partie de ceux qui sont identifiés dans la *UBCCA*. En effet, il est peu probable qu'un appel réalisé au Québec soit qualifié de fiducie, en droit actuel. La version québécoise de la LAIDP a d'ailleurs été conçue pour que l'appel informel réalisé au Québec soit qualifié de fiducie. Le groupe de travail considère que la fiducie demeure le véhicule approprié pour encadrer un appel informel ou une campagne de sociofinancement au Québec. Il s'attend à ce que les modifications envisagées dans le présent document puissent être transposées de manière opportune dans la version québécoise de la LAIDP.