

UNIFORM INFORMAL PUBLIC APPEALS ACT

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Commentary/Introduction: Informal public appeals arise frequently. Often their object is to provide relief in relation to a misfortune that has struck an individual, family or community. They are usually locally based and are led by persons with limited experience in fundraising and in the administration of funds that are the proceeds of the appeal.

Although the leaders may not be aware of it, their public appeal is at the centre of a complex web of trust and charity law, much of which is obscure and inaccessible. So long as nothing unexpected arises in the course of the appeal or the administration of the fund this may not pose a problem. However, unforeseen questions can arise. Often these questions can be answered if the leaders have appropriately documented the circumstances that led to the appeal and its objects but, in reality, this is seldom done. Nor does the general law provide a clear legal framework to guide the leaders. This gap may subject them to legal liability or cause the appeal to fail to fulfill its objects.

A recurring issue concerns informal public appeals that result in a surplus where more money is raised than is needed to satisfy the objects of the appeal. The law governing the proper way to distribute a surplus is

particularly unsatisfactory. This is a reflection of a distinction the law draws between objects of an appeal that are “charitable” and those that are not. This distinction can be highly technical and elusive with the result that some objects that might reasonably be described as “philanthropic” or “benevolent” fail to satisfy the strict legal definition of “charitable”. An example would be an appeal to send an ailing child to an out-of-province hospital for necessary surgery – not “charitable”.

The purpose of the Uniform Informal Public Appeals Act is to provide an appropriate legal framework to assist in their creation and administration. It reforms some aspects of the general law to ensure that trust law applies evenly to all appeals; it provides special guidance in relation to surpluses; it contains a list of powers available to the fundraisers to properly administer the fund raised by the appeal. Finally, set out as a Schedule to the Act is a simple model trust document that can be adapted to properly document most informal public appeals.

PART 1

DEFINITIONS AND APPLICATION

Definitions

1(1) The following definitions apply in this Act.

"court" means the [insert the name of superior court of the enacting province or territory], except in the definition "governing authority" and in clause 6(a).

Commentary: Matters involving trusts are dealt with by the superior trial court of the enacting jurisdiction.

"fund" means a fund of money or other property raised through a public appeal.

Commentary: The definition of “fund” covers funds raised in any of the ways covered by the definition of “public appeal,” e.g. simple gift, purchase of a nominal benefit, buying a raffle ticket, or sponsoring an entrant in a competition. It also covers a fund consisting in whole or in part of donations in kind as well as in money.

"governing authority", in relation to a trust referred to in subsection 3(1), means

(a) the constitution, charter, incorporating document or bylaws of an incorporated body or foundation;

(b) a contract;

(c) an order of a court; or

(d) a trust document;

that governs or regulates the trust or the public appeal associated with it.

Commentary: The definition of “governing authority” covers various sources of authority that may constitute the basis of a public appeal and which, in conjunction with this Act, stipulates the characteristics and purposes of the appeal.

"public appeal" means a message directed at the public generally, or at a section of the public,

(a) requesting donations to; or

(b) indicating that the proceeds of any sale, competition, lottery, raffle, entertainment, service or event will be applied towards;

a fund that is intended to be used for a specified object, whether charitable or non-charitable, but does not include a message communicated as part of a fundraising effort carried out on a permanent or continuing basis.

Commentary: At some stage in a fundraising effort a request for donations must go out to the public. The request is commonly called a “public appeal.” It invariably mentions the reason why the fund is being raised. That reason need not be charitable in the technical sense of that term. The definition of “public appeal” in this Act is restricted to sporadic, informal appeals.

"surplus" means assets remaining in a fund that are no longer needed or that cannot be used for the object of the public appeal.

Commentary: This definition is relevant to sections 2, 7, 9, 10, 11, 12 and 24.

"terms of the public appeal" means the information given to the public on which a decision to donate to the appeal may be based.

Commentary: This definition is relevant to sections 2, 5, 6 and 10.

"trust document" means a trust document executed or deemed to be executed under section 5.

"trustee" means a trustee of a fund.

1(2) Unless the context requires otherwise, a reference in this Act to a "public appeal" includes a reference to a fund raised through a public appeal and the trust associated with the fund.

Application of this Act

2(1) This Act does not apply to a public appeal conducted by a body that is a qualified donee within the meaning of the Income Tax Act (Canada).

Commentary: Subsection (1) makes it clear that fundraising campaigns by registered charities and similar organizations recognized by the Canada Revenue Agency are unaffected by this Act.

2(2) The following provisions of this Act apply to a public appeal to which this Act applies regardless of the terms of the public appeal or its governing authority:

- (a) subsection 4(1) (trustees);
- (b) section 7, to the extent that it sets a fund's maximum duration;
- (c) subsection 10(2) (distributing a surplus).

Commentary: Despite the default role of this Act (see commentary to subsection (3)) there are a handful of provisions that should not be capable of being overridden by an otherwise applicable authority or the terms of the appeal. See also section 24(6).

2(3) The remaining provisions of this Act apply to a public appeal only to the extent that they do not conflict with the terms of the public appeal or its governing authority.

Commentary: Many appeals are issued informally with little planning, especially at the local level. Usually, the rights and obligations that attach to them are poorly understood by fundraisers and donors alike. This draft legislation is intended to establish a “default” scheme to apply only to the extent that a public appeal fund is not regulated under some other legal structure, such as other legislation or a formally created trust. When money is raised by an incorporated society or foundation for its normal purposes, its use will generally be governed by the organization's constitution.

2(4) This Act does not apply to a public appeal initiated before this section comes into force.

Commentary: Self-explanatory.

PART 2

THE TRUST

Trust of public appeal fund

3(1) A fund is subject to a trust for the benefit of the object for which the public appeal was conducted.

Commentary: Subsection (1) confirms that a public appeal fund is subject to a trust. It restates the effect of case law, but in so doing it highlights the nature of the rights and obligations surrounding the fund. A trust is a relationship in which a person or entity (the trustee) has legal ownership of certain property, but also has a duty to administer the property for the benefit of another person (the beneficiary) or so that a legally permissible purpose is served.

3(2) The trust is enforceable regardless of whether a trust with the same object would be enforceable under the general law. .

Commentary: Subsection (2) allows a public appeal fund to be protected by a trust even if a valid, enforceable trust with the same object would be legally impossible in another context. (The persons whom or the purposes which a trust is intended to benefit or sustain are called its “objects.”) Generally speaking, an enforceable trust must have as its object specific persons or an identifiable class of persons, or else the furtherance of a purpose the law regards as charitable. Formerly, trusts for non-charitable purposes were invalid apart from a few exceptions. Combinations of charitable and non-charitable objects were not permitted. The present law still affords them only limited recognition such as where a jurisdiction has enacted legislation comparable to section 20 of the *Uniform Perpetuity Act*.

Subsection (2) recognizes that appeals are often launched spontaneously, without prior legal advice on their wording. For example, an appeal might be launched for “the relief of the X and Y families, left homeless after a flood. Any excess will go for other local causes.” Apart from statutory validation, this combination of objects could not give rise to a valid trust for a number of technical reasons. The effect of subsection (2) would be to permit this appeal to take effect as a valid trust..

3(3) The trust is governed by the law of the jurisdiction stipulated in the governing authority.

3(4) However, if the governing authority does not stipulate a jurisdiction, the trust is governed

(a) by the law of the jurisdiction in which a deposit account to hold the fund has been opened in a bank, credit union, trust company or similar savings institution; or

(b) if clause (a) does not apply, by the law as determined without reference to this Act.

Commentary: Subsections (3) and (4) provide guidance as to the law that governs the trust. It will be relevant where a public appeal spans two or more provinces.

3(5) [A provision similar to section 20 of the Uniform Perpetuity Act] does not apply to a trust referred to in subsection (1).

Commentary: Section 20 of the *Uniform Perpetuity Act* provides that “[A] trust for a specific non-charitable purpose that creates no enforceable equitable interest in a specific person shall be construed as a power to appoint the income or the capital” for a period no longer than 21 years. Subsection (5) was included out of an abundance of caution to ensure that, as a matter of statutory interpretation, the policy of subsection (2) and section 7(1) is not overridden by a section 20 type of provision. In those jurisdictions that do not have such a provision, subsection (5) can safely be omitted.

Trustees

4(1) A person who directs the management and disbursement of a fund, or who has the authority to do so, is a trustee of the fund.

Commentary: Subsection (3) states who is a trustee of a public appeal fund.

4(2) A bank, credit union, trust company or similar savings institution in which a fund is held is not, for that reason only, a trustee of the fund.

Commentary: A bank or other savings institution which merely holds the public appeal fund on deposit is not treated as a trustee. Section 437 (3) of the *Bank Act* (Canada) exempts chartered banks from having to ensure that a trust attaching to a deposit is carried out. Legislation governing provincially regulated bodies such as credit unions and trust companies may also provide a similar exemption. The interpretation legislation of the enacting jurisdiction should also be consulted for a definition that includes “near banks”.

Trust document

5(1) A trustee of a fund, or a person intending to become a trustee, may execute a trust document for the administration of the trust.

5(2) A trust document may be in the form of the Schedule, adapted to meet the circumstances.

Commentary: Normally the source of trustees' powers over the trust property, and their duties in respect of it, is a formal trust document. When a trust comes into being through creation of a fund by means of an appeal, the persons in charge of the fund should enter into a trust document, so that the rights and obligations surrounding the fund are made clear. While present law allows fundraisers to sign a document of this kind, it is rarely done. The

Schedule to the Act contains a Model Trust Document which could be adapted to most situations.

5(3) If a trust document has not been executed in respect of a fund, every trustee of the fund is deemed to have executed a trust document containing as much of the Schedule as does not conflict with

- (a) the terms of the public appeal; or
- (b) the governing authority of the trust;

and the terms of the public appeal and the circumstances in which it is made form the contents of paragraphs 2, 3 and 4 of the Schedule.

Commentary: In order to clarify the rights and duties surrounding the fund, subsection (3) makes the terms of the Model Trust Document apply to every public appeal fund, except to the extent that they are inconsistent with any express provision of a governing authority or the terms of the public appeal. Such express provisions will prevail over any inconsistent terms in the Model Trust Document. Because the Model Trust Document is specific to the appeal, its provisions are to be inferred from the terms of the appeal and the surrounding circumstances.

5(4) A trustee who has custody of a trust document must allow it to be inspected by any person who establishes to the trustee's satisfaction that he or she has made a donation to the fund of an amount provided for in subsection 11(1).

Commentary: Major donors are permitted to inspect the trust document.

If conflict about governing authority

6 If there is a conflict or incompatibility among governing authorities applicable to a public appeal, or between a governing authority or authorities and the terms of the public appeal, the conflict or incompatibility must be resolved in favour of the earliest listed item that gives rise to the conflict or incompatibility:

- (a) a governing authority that is a court order;
- (b) the terms of the public appeal;
- (c) a governing authority that is a trust document;
- (d) a governing authority that is a contract;
- (e) a governing authority that is the constitution, charter, incorporating document or bylaws of an incorporated body or foundation.

Commentary: Occasionally there may be a conflict between or among the terms of the appeal and a governing authority. Section 6 sets out a hierarchy that stipulates which is to prevail in case of a conflict.

Duration of the fund — accumulations

7(1) If a fund is held in trust for a non-charitable object, the maximum permitted duration of the fund is 80 years, beginning on the day the first donation was received in response to the first public appeal. But if a shorter period is set out in the trust document, that shorter period is the maximum permitted duration.

Commentary: While a fund for charitable objects has always been permitted to endure for an unlimited period, some limitation in relation to non-charitable objects is appropriate. In subsection (1) the outside limit is set at 80 years which is consistent with perpetuity legislation.

7(2) If a fund is held in trust for a non-charitable object, any property remaining in the fund when the maximum permitted duration expires is deemed to be a surplus, which the trustee must distribute in accordance with Part 3.

Commentary: Self-explanatory.

7(3) Subsection (1) applies despite any other law to the contrary.

Commentary: In some provinces legislation is in force that limits the time during which a fund is permitted to accumulate. This “rule against accumulations” is based on an English Act of 1800. The permitted accumulation period under this legislation may be too short to allow the objects of the public appeal fund to be fully realized so the application of the rule against accumulations is abrogated for public appeal funds.. In those provinces that have legislated to abrogate the rule against accumulations, subsection (2) may be omitted.

Enforcement of the trust

8 Any of the following persons may commence a proceeding in court to enforce a trust to which a fund is subject or to enforce a duty imposed by this Act:

(a) a trustee;

(b) a donor;

(c) a person or a member of a class of persons for whose benefit a public appeal is conducted, in whole or in part, or their legal representative;

(d) the Attorney General;

(e) any person the court considers to have a sufficient interest in the enforcement of the trust;

and the court may make any order in respect of the trust that it considers just in the circumstances.

Commentary: Section 8 allows for the enforcement of the trust affecting a public appeal fund. Allowing a donor to enforce the trust is a departure from existing law, which generally does not give the right to enforce the trust to the person who creates it by providing the trust property. Instead, the right to do so belongs to the beneficiary. Since a public appeal fund is created by many different donors and the trustee of such a fund is not necessarily under the same degree of scrutiny by a beneficiary as those of a trust created under a will, for example, a donor should be able to seek the court's aid to ensure that the fund is used properly. The section also confirms that anyone for whose specific benefit a public appeal fund is raised has the same right of access to the court to ensure that the trust is carried out as other trust beneficiaries do. In this respect, it restates what probably is the present law regarding the ability of a person named in an appeal to enforce the trust attaching to the appeal fund, but confirms that ability expressly. It also extends it to the legal representative of a person under disability, such as a minor, and the Attorney General. The Attorney General is included because there is a public interest in the proper administration of a fund that is created by public donation. Finally, provision is made for any other sufficiently interested party to act where no other person otherwise entitled to do so is able or willing to enforce the trust.

PART 3

SURPLUSES AND REFUNDS

No trust in relation to a surplus

9 Subject to the requirement to refund or return an unused donation under section 11 or 12, a trust does not arise in favour of a donor in relation to a surplus.

Commentary: Trustees may be left with surplus funds on their hands for a number of reasons. More may have been collected than was needed to achieve the purpose of the appeal, or perhaps the need was satisfied from some other source. The trust of the fund is said to fail with respect to the remaining balance, since the balance cannot be used for the original purpose of the fund. The trustees cannot act unilaterally to re-allocate it, nor can they give the donors their money back. Under a power known as *cy-pres* the court, in some cases, may order the re-allocation of charitable funds. If the purpose of the fund was non-charitable (such as assistance to specific persons) and the purpose cannot be fulfilled, the balance is said to be held on a resulting

trust in favour of the donors. This requires the balance to be returned *pro rata* to the donors. Often it is impossible to return the money, because the donors may have given anonymously or money may have been collected in a way which does not allow one donation to be distinguished from another. Both of these problems may be present when funds are raised informally. This subsection reverses the rule that a resulting trust arises on the failure of a non-charitable trust, insofar as public appeal funds are concerned. Section 11 provides for refunds to donors who formally request them with respect to a donation over a stipulated threshold amount.

Scheme to distribute a surplus

10(1) A trust document may provide for a scheme to distribute a surplus.

10(2) A scheme to distribute a surplus that is provided for in a trust document is effective without court approval only if that scheme

- (a) formed part of the terms of the public appeal when donations were made; and
- (b) complies with subsections (4) and (5).

Commentary: The trustees of a public appeal fund may contemplate the possibility of a surplus and expressly provide a scheme for its distribution in the trust document. Subsection (1) confirms that they may do so. There are, however, limits on the schemes that are permissible. First, the scheme must comply to subsections (4) and (5). See the commentary to those subsections.

Second, the distribution scheme must have been made known to potential donors as part of the “terms of the appeal” (see definition of that expression). It would be unfair to donors if money given for a specified purpose was, in case of a surplus, diverted to a different and unpublicized purpose of which the donor may disapprove.

Where a distribution scheme in a trust document fails to meet these requirements or where no such scheme is provided any distribution scheme proposed by the trustees must be approved by the court. The requirement for court approval of reallocation of surplus balances is subject to the trustees' powers in relation to small surpluses under subsection (6) and to a donor's rights under section 11.

10(3) When court approval is required to distribute a surplus, it is required whether the object of the appeal that resulted in the surplus was charitable or non-charitable.

Commentary: Subsection. (3) extends the principle of *cy-pres* to non-charitable public appeal funds.

10(4) A scheme to distribute a surplus in a fund with a charitable object must require the surplus to be used only for a charitable object.

Commentary: Usually, once money or other property has been given to charity, it must be used only for charitable purposes. Subsection (4) restates this principle in relation to public appeal funds raised for purposes that are legally charitable.

10(5) A scheme to distribute a surplus in a fund with a non-charitable object may allow the surplus to be used for

(a) a charitable object; or

(b) a non-charitable object consistent with the spirit of the public appeal.

Commentary: Many worthwhile purposes fall outside the legal concept of charity. Subsection (5) indicates that a distribution scheme may provide for a re-allocation of a balance in a non-charitable public appeal fund to a purpose that may not be legally charitable. It must, however, be used in a way that is in keeping with the underlying spirit leading to the appeal. This gives donors some assurance that their gifts will not be used in ways they would not have intended. The term “object” is used here in the sense in which it is used in trust law. It refers to the person for whom or the purpose for which the trust is created and must not allow for any benefit to a trustee or a donor from the money or other property.

10(6) Despite subsection (2), court approval is not required to distribute a surplus of \$20,000 or less, or another amount prescribed by regulation, if the trustee distributes the surplus to one or more qualified donees within the meaning of the Income Tax Act (Canada) whose objects are consistent with the spirit of the public appeal.

Commentary: If the surplus is small, an application to the court for approval of a *cy-pres* scheme would be uneconomical. But if the trustees are given free rein to donate it to whatever cause they wish, donors may be dissatisfied with the way their money is being used. Subsection (6) creates a compromise by allowing trustees to donate a surplus under \$20,000 (or other prescribed amount) to a charity or other qualified donee without having to apply to the court for approval. The charity selected must be one whose objects are consistent with the spirit of the public appeal. If no such charity can be identified, the trustees remain free to devise an alternative distribution scheme and seek court approval under subsection (7).

10(7) Any person who can commence proceedings to enforce a trust under section 8 may

(a) apply to the court to approve a scheme to distribute a surplus, whether court approval is otherwise required under this section or not; and

(b) appear, make submissions or propose an alternative or amended scheme in an application for approval made by another person.

Commentary: It is desirable for donors and others connected with a public appeal fund to be able to express their views before a decision is made on how to distribute the unused balance.

10(8) In distributing a surplus in a fund with a charitable object or under subsection (6), it is not necessary to demonstrate that any donor had a general charitable intent.

Commentary: It is a condition of the court's exercise of its *cy-pres* powers (see commentary to section 9) in relation to funds with a charitable object that the donor be shown to have had a "general charitable intent." This is an elusive concept which has the potential to cause an otherwise appropriate disposition of a surplus to fail. Subsection (8) ensures that this limitation has no application to a distribution under this Act whether the object of the fund was charitable or non-charitable.

10(9) This section does not apply if the object of a public appeal was for the relief of a specified person or persons who would be regarded as a beneficial owner of the surplus under general trust law.

Commentary: If the surplus belongs beneficially to the person for whose benefit the fund was raised under general trust law, the court will not have the power to approve a scheme to re-allocate it without that person's consent.

Refund of unused donation

11(1) A person who donates at least \$500 to a fund with a non-charitable object, or such other amount as may be prescribed by regulation — or personal property of equivalent value — may request the trustee, in the event of a surplus,

(a) to refund an amount calculated in accordance with subsection (3); or

(b) to apply that amount as the donor may direct.

Commentary: Since donors are often motivated to give only for the specific purpose of the campaign, a person who has made a substantial donation should be able to obtain a refund if the donation will not be used for that purpose. Subsection 11(1) allows such a donor to claim a refund or call for a reapplication of a *pro rated* share of the surplus. It applies only to non-charitable public appeal funds, since charitable ones are subject to the doctrine of *cy-pres*. See the commentary to subsection 10(4).

11(2) A request must be made in writing at the time the donation is made.

Commentary: The possibility that a belated demand might be made for refunds would be a major administrative problem for trustees. It would prevent them from knowing the extent of the balance available for other worthwhile purposes. For this reason, subsection (2) requires that a donor declare an intention to claim a refund at the time the donation is made..

11(3) If a donor has made a request and there is a surplus, the trustee must refund an amount calculated in accordance with the following formula, or apply that amount in any way the donor directs:

$$\text{amount} = \frac{(\text{value of the donation})}{(\text{value of the total of all donations to the fund})} \times (\text{value of the surplus})$$

Commentary: The refund is simply a *pro rata* share of the surplus.

11(4) If, after making all reasonable efforts, the trustee cannot locate a donor who has made a request, the trustee may deal with the amount as if it were surplus for which no request was made.

Commentary: Self-explanatory.

11(5) The trustee's obligation to refund or direct an amount under this section applies notwithstanding any scheme to distribute a surplus under section 10.

Commentary: Where a surplus exists, a donor's right to a refund under this section prevails over a distribution scheme.

Return of unused real property

12(1) If real property forming part of a fund with a non-charitable object

- (a) is no longer needed or cannot be used for the object of the public appeal; and
- (b) has not been converted into money or another form of property;

the trustee must return the real property to the donor, or dispose of it as the donor may direct, unless the terms of the donation provide otherwise.

Commentary: Section 12 provides that if land has been donated and will not be used for the purposes of a non-charitable public appeal fund, it must be returned to the donor rather than become subject to reallocation for other purposes, unless the donor has stipulated otherwise. The reason for this is that land is unique and generally of much greater value than other kinds of property, and it would be reasonable to assume that the donor would want it

back if it is not to be used as the donor intended. Because of land registration, it is most unlikely that return of a non-charitable gift of land would be frustrated by the anonymity of the donor. Section 12 would apply in very few cases, since land would seldom be donated and if it were, special conditions would likely be imposed on the gift to protect the donor's interests.

12(2) If, after making all reasonable efforts, the trustee cannot locate a donor to whom real property must be returned, the trustee may dispose of the property and deal with the proceeds as if it were surplus for which a return or refund was not required under this section.

Commentary: Self-explanatory.

12(3) The trustee's obligation to return real property under this section applies notwithstanding any scheme to distribute a surplus under section 10.

Commentary: A donor's right to a return of real property under this section prevails over a distribution scheme.

PART 4

TRUSTEE'S POWERS

Commentary: The trustee's powers set out in Part 4 cover a variety of matters that one would expect to find in any well-drafted trust document that has been created expressly for most informal public appeals. A majority of the provisions are self-explanatory and require no further comment.

The powers in Part 4 play a default role and will be displaced by express provisions contained in a trust document or other governing authority that address the same issues in a different fashion..

Payments from the fund while the trust continues

13(1) A trustee may make payments from a fund, without having to distinguish between capital and income,

- (a) in the amounts and at the times the trustee considers appropriate for an object of the fund;
- (b) to pay expenses, taxes or charges for an object of the fund or arising in respect of the fund; or
- (c) to make a refund to a donor or return donated property if required by section 11 or 12.

Commentary: Subsection (1) exempts the Trustees from having to apportion many kinds of receipts and expenses between capital and income for the purpose of making disbursements. The wording of paragraph (a) when read together with section 20, makes the trust discretionary.

13(2) Subsection (1) does not affect the jurisdiction of the court to determine the receipts and disbursements that relate to capital or income.

Commentary: Subsection (2) reflects case law indicating that a discretionary power to adjust between capital and income accounts which purports to oust entirely the jurisdiction of the court to categorize receipts and disbursements as “capital” or “income” will be unenforceable: *Re Bronson*, [1958] O.R. 367 (H.C.).

Investment

14(1) A trustee may invest any part of a fund that is not needed immediately for payments under subsection 13(1) as permitted by [the Trustee Act of the enacting jurisdiction].

14(2) With regard to any property forming part of the fund, a trustee may

- (a) keep the property uninvested for a reasonable length of time;
- (b) leave the property in a particular form for any length of time;
- (c) convert the property or any part of it to money;
- (d) convert one form of investment into another; or
- (e) authorize securities belonging to the fund to be commingled with other securities in order to facilitate investment and reinvestment, as long as the share of the fund in the commingled pool of securities is accounted for separately.

14(3) A trustee may allow any investments or other property forming part of the fund to be held by or in the names of nominees.

14(4) A trustee may accumulate and add to the capital of the fund any income arising from the fund that is not otherwise used in a manner allowed by this Act or a governing authority, subject to the maximum duration on accumulations set out in section 7.

Further public appeals and donations

15(1) A trustee may issue further public appeals for donations to the fund and raise money for the fund by any other lawful means whenever the trustee believes it necessary or advisable to do so.

15(2) A trustee may accept any donations to the fund as long as the donations are not made on conditions that are inconsistent with the object of the fund.

Professional advice and services

16(1) In relation to any matter concerning a fund, a trustee may arrange for a person, firm, organization or corporation engaged in any profession, trade or business to give advice or perform services (including the receipt and payment of money) on the trustee’s behalf.

16(2) A trustee is not liable for any loss arising from the trustee's reliance in good faith on advice or services obtained under subsection (1).

Transfer of fund to another body

17(1) A trustee may transfer all or part of a fund to a corporation, society, foundation or other entity that has objects similar to the object of the fund, or into another fund with similar objects, if the trustee considers that the object of the fund will be better served by doing so.

17(2) The trustee may form a corporation, society, foundation or other entity for the purpose of transferring a fund.

Other transactions, elections and consents

18 A trustee may enter into any transaction, execute any document, make any election or give any consent concerning the fund or property forming part of a fund if the trustee considers it will better enable the fund to serve its object.

Trustee may make rules

19 A trustee may make rules to govern

- (a) management of a fund generally, including an investment plan or policy;
- (b) criteria for determining if, to what extent and to whom a payment from the fund is to be made to serve its object; and
- (c) meetings of trustees if there is more than one trustee.

Commentary: Paragraph (b) will be relevant if the Fund is for the benefit of a class of persons such as victims of a particular disaster.

Trustee's discretion

20(1) A trustee's powers must be used to administer the fund effectively in the service of its object and to comply with any relevant law, but not for any other purpose.

20(2) In using the trustee's powers under subsection (1), the trustee has absolute discretion.

20(3) A trustee may seek the opinion of

- (a) a person whose welfare is an object of the fund; or
- (b) a parent, guardian or legal representative of a person referred to in clause (a);

on a matter affecting the administration of the fund or the exercise of the trustee's powers, but the trustee is not bound by the opinion.

Trustees may act by majority

21(1) If there is more than one trustee, a majority of the trustees may validly do anything that the trustees may lawfully do if acting unanimously.

21(2) A trustee who disagrees with a decision or action of the majority may state the disagreement in writing but, unless the decision or action is unlawful, that trustee must join with the majority in doing anything necessary to carry out the decision or action if it cannot otherwise be carried out.

21(3) A trustee who has stated a disagreement with a decision or action is not liable for any breach of trust or any loss resulting from the decision or action even if he or she joined with the majority to carry it out.

Trustee protected from liability

22 A trustee is not liable for any loss incurred in respect of a fund unless the loss is due to that trustee's own

(a) dishonesty; or

(b) willful conduct, which the trustee knows to be inconsistent with this Act or a governing authority.

Retirement and appointment of trustees

23(1) If there are at least two trustees of a fund, a trustee may retire by delivering a signed notice of retirement to the remaining trustees, either personally or by registered mail.

23(2) On the personal delivery or mailing of a notice of retirement, the retiring trustee ceases to be a trustee for all purposes except for any action required to vest any property of the fund in the remaining or new trustees.

23(3) After a trustee retires, the remaining trustee or trustees may appoint, in writing, a person to replace the retiring trustee.

23(4) The appointment of a replacement trustee takes effect when he or she signs a written acceptance of the appointment.

23(5) The provisions of [the Trustee Act of the enacting jurisdiction] concerning the appointment, retirement and removal of trustees apply to the fund, except as otherwise provided in this section.

PART 5

TRUSTEE'S DUTIES

Commentary: Part 5 places a duty on trustees to diligently monitor the operation of the trust and the objects for which it was established. Funds should not be allowed to fall into desuetude and to require a periodic review as called for by this Part goes some way to ensure that money collected through a public appeal continues to serve a useful purpose.

Trustee's duties

24(1) A trustee must hold the fund for the duration of the trust and use the income and capital for the object of the fund.

24(2) At least once in each year in which money or other property remains in the fund, the trustee must consider whether the remaining money or property is still needed or can be used for the object of the fund.

24(3) If the trustee decides that money or other property remaining in the fund is no longer needed or cannot be used for the object of the fund, the trustee must set out in writing the reasons that led to that decision and declare the trust at an end.

Commentary: Subsection (3) empowers Trustees to wind up the trust without having to make an application to the court, if they determine the Fund is no longer needed or usable for its stated purposes. Since the Trustees actually administer the Fund, they are better situated to determine if it continues to perform a useful function.

24(4) After the trust is declared at an end, the money or other property remaining in the fund is surplus and the trustee must distribute it in accordance with section 10 (distributing a surplus) or section 11 or 12 (refund or return of unused donations).

Commentary: While the Trustees may have to apply to the court for the approval of a scheme to distribute any surplus (*see* section 10 of the Act), application for approval of a scheme would normally be much more straightforward and less costly than one in which the continued usefulness of the Fund was in issue. An application that would force the court to make determinations of fact regarding the continued usefulness of the Fund could be expensive and time-consuming.

24(5) The duties imposed by this section are in addition to any other duty imposed by [the *Trustee Act* of the enacting jurisdiction] and the general law of trusts.

24(6) The duties imposed by this section may not be excluded by a trust document.

Schedule to the Uniform Informal Public Appeals Act

[Important Information for Trustees - Included with this trust declaration are some examples and notes that will explain some of its features and assist trustees in completing the declaration. They do not form part of the declaration itself.]

TRUST DECLARATION

The persons who have signed this document as Trustees wish to declare the terms on which they [hold] [will hold] ¹ the Fund in trust and will deal with it in order to achieve its objects, and to declare how they will deal with any surplus in the Fund. ²

Governing Statute

1. This Trust Declaration is made pursuant to the *Informal Public Appeals Act* (the "Act") ³

Name of Trust Fund

2. This Trust Declaration concerns a Fund called the _____⁴Trust Fund (the "Trust Fund").
(name of fund)

How the Trust Fund Came into Being

3.(1) The Trust Fund was created because: ⁵

3.(2) An appeal to the public for donations to the Trust Fund [was made on _____] [will be made]. ⁶
(date)

Objects of the Trust Fund

4. The objects of the Trust Fund are: ⁷

Surplus Money

5. If any money remains after the purposes of the Trust Fund have been fulfilled as far as possible, that money will be donated to one or more of the following organizations, all of which are registered Canadian charities or qualified donees under the *Income Tax Act* ,(Canada) or are bodies that have purposes similar in spirit to the objects of this Trust Fund. ⁸

SIGNED by the following persons as Trustees of the Trust Fund on _____⁹
(date)

(Print name)

(Signature)

(Address)

(Telephone)

(Email [if any])

(Print name)

(Signature)

(Address)

(Telephone)

(Email [if any])

(Print name)

(Signature)

(Address)

(Telephone)

(Email [if any])

(Print name)

(Signature)

(Address)

(Telephone)

(Email [if any])

SIGNED by the following persons as new Trustees appointed to replace Trustees of the _____
Trust Fund on _____: ¹⁰
(date)

(Print name) _____ (Signature)

(Address) _____ (Telephone) _____ (Email [if any])

(Print name) _____ (Signature)

(Address) _____ (Telephone) _____ (Email [if any])

(Print name) _____ (Signature)

(Address) _____ (Telephone) _____ (Email [if any])

- _____
1 Strike out and initial inapplicable text in square brackets.
2 It is advisable to have at least two, but not more than four trustees.
3 Trustees have a number of powers and duties that are set out in the Act. It should be consulted when any question arises concerning the administration of the Trust.
4 Insert information in blanks where indicated. Examples of Trust Fund names are : "Doe Family Disaster Relief" Trust Fund, and "Town of XYZ Hurricane Relief" Trust Fund.
5 List the reasons for the creation of the Trust Fund, including particular facts and events that led to a need for the Trust Fund. See examples set out in Appendix 1 to this forms for guidance.
6 Strike out and initial inapplicable text in square brackets.

- 7 *Set out the purpose for which the Trustees are able to make payments from the Fund.. These purposes must be in keeping with the terms of the appeal for donations. See examples set out in the Appendix to this form for guidance.*
- 8 *See examples in the Appendix to this form for guidance about how to dispose of surplus funds. It is important to note that if the objects of the Trust fund are charitable, surplus moneys **must** be given to registered Canadian charities or other bodies that are "qualified donees" under the Income Tax Act. Trustees should be aware that whether an object is charitable is a highly technical legal question since not all benevolent objects are charitable. If a trustee is in any doubt as to whether the objects of the trust are charitable legal advice should be sought. The safest course for a trustee is, in every case, to stipulate that any surplus should go to a registered charity.*
- 9 *Each trustee must print his or her name, address, telephone number, and e-mail address, and sign here. See note 2 concerning the number of trustees.*
- 10 *Any new or replacement trustees should become parties to the declaration. Each should print his or her name, address, telephone number, and e-mail address, and sign here.*

APPENDIX TO SCHEDULED TRUST DECLARATION - EXAMPLES

A. Examples of reasons for creating the Fund

Example No. 1:

The John Doe Special Needs Trust Fund was created because:

- (a) John Doe is a 5-year old boy living in [city or town and province].
- (b) On July 1, 2010 John Doe was injured in a motor vehicle accident. His left arm was amputated.
- (c) John Doe needs a state-of-the-art artificial arm to enable him to carry out day-to-day tasks. The arm will have to be replaced several times as John grows. It will also have to be serviced regularly to keep it in good working order.
- (d) The parents of John Doe cannot afford an advanced electronic artificial arm.
- (e) John Doe and his parents will need other special equipment to meet his needs.
- (f) Many members of the community have offered to help John Doe and his family.

Example No. 2:

The XYZ Earthquake Relief Fund was created because:

- (a) On August 1, 2010 an earthquake devastated the community of XYZ.
- (b) The earthquake destroyed many homes in XYZ, damaged roads, and disrupted communications.
- (c) Many residents of XYZ were injured and many lost all their belongings.

- (d) A fund is needed to supplement efforts by government and private agencies to relieve the community of XYZ.

B. Examples of the Objects of a Trust Fund

Example No. 1:

The objects of the John Doe Special Needs Trust Fund are:

- (a) to purchase an artificial arm for John Doe and replace it when the Trustees agree a replacement is needed;
- (b) to maintain the artificial arm and its replacements in good functioning order;
- (c) to purchase, maintain, and replace other technological aids, which the Trustees think are necessary or desirable to meet the special needs of John Doe;
- (d) to assist the parents of John Doe to equip their home to accommodate his special needs.

Example No. 2:

The objects of the Town of XYZ Earthquake Relief Fund are:

- (a) to provide medical treatment, food, clothing, and temporary shelter to victims of the earthquake;
- (b) to provide supplies and equipment to assist in the effort to rescue and evacuate victims of the earthquake;
- (c) to assist persons who are in financial need as a result of losses suffered in the earthquake.

C. Examples of how to dispose of surplus funds

Surplus moneys may be paid, in equal or unequal portions, to one or more charities or other organizations with objects similar in spirit to the objects of the appeal.

Example No. 1:

paid to the XYZ Hospital for Sick Children.

Example No. 2:

distributed equally among the following charities:

the Town of XYZ Foodbank Society
the Town of XYZ Community Improvement Association

