



**UNIFORM LAW CONFERENCE OF CANADA**

**CIVIL SECTION**

**Consultation Paper**  
**on a**  
**Uniform Informal Public**  
**Appeals Act**

**Please submit your  
Comments and Response  
No later than  
September 7, 2010**

**Response by Email  
Is preferred  
Send to  
aclose@shaw.ca**

**A copy of this Consultation Paper can be downloaded at:**

**<http://ulcc.weebly.com/>**

## **Part I - The Background to a Proposed Uniform Act**

### **Informal Public Appeals - Some Issues**

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 this kind of fundraising.

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. The fundraisers simply issue a message asking for donations and, possibly, open a bank account to hold the fund. The help of the press and the electronic media may be enlisted to publicize the appeal. The emergency that gives rise to the appeal may have substantial emotional impact, and the generosity of the public's response is sometimes 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. Substantial amounts may already have been collected, however. Occasionally the opposite situation arises. Too little may be raised to be of any use at all.

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.

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.

If the purpose of the fund falls within the legal definition of "charity,"<sup>1</sup> 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. Where the need is immediate, there is little or no time to get legal advice on the subject.

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<sup>1</sup> 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.

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If the purpose of the fund is not legally charitable,<sup>2</sup> the surplus may have to be returned to the donors. Chances are, however, that the fundraisers will encounter difficulty with this. Many of the donations are likely to be anonymous, since collections are often made door-to-door or on the street. In this setting, donors' names and amounts given are not usually recorded. Some portion of a non-charitable fund is almost sure to be unreturnable for reasons like these. 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.

What does the law say must be done with the unreturnable portion in a case where unidentified donors are entitled to get their donations back? The answer would shock anyone. *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*.<sup>3</sup> The law is clearly unsatisfactory with regard to surpluses or unusable balances in informally created public appeal funds.

The preceding paragraphs were drawn from a Report of the British Columbia Law Reform Commission [BCLRC] that was submitted in 1993.<sup>4</sup> Thus the Commission identified the first difficulty in relation to public appeals – its inability to deal rationally with surpluses. Little has happened to specifically address this issue in the intervening years.<sup>5</sup>

A second difficulty in relation to public appeal funds is that their creation is seldom well-documented. As the Commission observed:<sup>6</sup>

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<sup>2</sup> As will be the case with many appeals such as those made for the relief of a particular individual or family.

<sup>3</sup> [1958] Ch. 300, *aff'd* [1959] Ch. 62 (C.A.). In 1951, a large bus ploughed into more than 50 marine cadets, aged 10 to 13 years, who were marching along the street. Twenty-four cadets were killed and the rest seriously injured. A fund was launched to defray the funeral expenses of the boys who were killed, to assist the injured boys, and to support worthy causes connected with boy cadets. More than £10,000 was raised but not all was needed because the bus company's insurers settled the case against them. On an application to court by the trustees, Harman J. held that the surplus was money that had been collected for a non-charitable purpose and that the donors were entitled to the money under a resulting trust. Consequently, he directed that the money – some £7,300 -- be paid into court and an inquiry should be made as to the persons entitled to the surplus. The donors were not found and the money languished in court for 42 years. See A.H. Oosterhoff, Robert Chambers, Mitchell McInnes, and Lionel Smith, *Oosterhoff on Trusts: Text, Commentary and Materials*, 7<sup>th</sup> ed. (Toronto: Thomson Reuters /Carswell, 2009), at 599; Donovan W.M. Waters, Mark R. Gillen, and Lionel Smith, *Waters Law of Trusts in Canada*, 3<sup>rd</sup> ed. (Toronto: Thomson/Carswell, 2005), at 441, note 357.

<sup>4</sup> Report on Informal Public Appeal Funds (LRC 129 1993). Hereafter "BCLRC Report." See [http://www.bcli.org/sites/default/files/LRC129-Informal\\_Public\\_Appeal\\_Funds.pdf](http://www.bcli.org/sites/default/files/LRC129-Informal_Public_Appeal_Funds.pdf)

<sup>5</sup> An administrative solution for distributing the *Gillingham* fund itself emerged many years later. In 1992 some of the survivors of the injured cadets brought the existence of the fund to the attention of the Treasury Solicitor, who applied to the court to have the funds declared *bona vacantia* (ownerless). The court granted the application in 1993, thus the funds became available to the Treasury Solicitor for distribution, under legislation applicable to ownerless property, among the survivors as a discretionary grant. The survivors submitted claims in relation to the fund which was subsequently distributed among 17 survivors of the disaster, each of whom received slightly more than £400. See Treasury Solicitor, Press Release, 1 September, 1993; *The Guardian*, 4 December, 1993.]

<sup>6</sup> *Supra* note 4 LRC 129 at page 29.

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As with most other legal relationships, there is less room for disputes and misunderstandings in connection with a trust if the rights, powers, and duties involved are spelled out clearly in a written document. Trustees of a public appeal fund should be encouraged to enter into such a document. It is to their benefit to assume administrative powers that other trustees normally have, and to establish procedures for retirement and the appointment of new trustees. It is also to their benefit to put in place the kinds of limitations on trustee liability that are commonly found in modern trust documents. The fact that the trustees of a public appeal fund may have little or no background in trust administration makes an explicit trust document all the more important. A trust document is more likely to be signed by trustees of public appeal funds if a workable standard form in plain language is available.

Both of these difficulties were addressed by recommendations contained in the BCLRC Report.

### **The Uniform Law Conference of Canada and this Project**

The Uniform Law Conference of Canada [ULCC] has operated continuously since its formation in 1918. It is best known for the work of its Civil Section. The Section brings together government policy lawyers and analysts, lawyers in private practice, law teachers and representatives of Canada's law reform bodies, all of whom serve on a volunteer basis. They consider areas in which provincial and territorial laws would benefit from harmonization. The main work of the Section is reflected in "uniform statutes", which the Section develops and recommends for enactment by all relevant governments in Canada. Further information about the ULCC and its work can be found at its website: [www.ulcc.ca](http://www.ulcc.ca)

A project to develop a *Uniform Informal Public Appeals Act* was added to the ULCC's program in 2009 in recognition of the problems created by the current law and the substantial body of work already done on this topic by the BCLRC and its successor, the BC Law Institute. Carriage of the project was placed in the hands of a small Working Group.<sup>7</sup>

The Working Group is now circulating this Consultation Paper seeking input from interested persons and groups. The proposals set out are solely those of the Working Group members and have not been adopted by the ULCC. Those proposals are tentative only and will be reviewed by the Working Group before submitting its recommendation to the Conference.

Please let us have your views.

### **The Approach of the Working Group**

Using the British Columbia work as a point of departure, the Working Group identified a strategy for developing, and a number of features that should be reflected, in uniform legislation. They would guide the more specific and detailed contents of the Act.

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<sup>7</sup> The members of the Working Group are Gregory G. Blue, Q.C., Senior Staff Lawyer with the BC Law Institute and principal author of the BCLRC Report, *supra* n. 4; Arthur L. Close, Q.C., (project leader) a Past President of the Conference; Prof. Michelle Cumyn, Faculté de droit de l'université Laval; Vera Mesenzew, Counsel with RBC and a member of both the Ontario and Quebec bars. Prof. Albert Oosterhoff, Professor Emeritus, Faculty of Law, University of Western Ontario.

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The strategy reflected the following principles:

- Reform should be pursued through a stand-alone Act dedicated to public appeal funds rather than as an amendment to existing trustee legislation.<sup>8</sup>
- The application of the proposed Act should be narrow in scope so as to exclude the fund-raising activities of established bodies for their usual purposes.
- The proposed Act should confirm that money raised through a public appeal is held in trust for the objects of the appeal.
- The proposed Act should be largely default in character and capable of being displaced by more specific documents and rules created to govern the appeal.
- The proposed Act should create a power in the court to direct the application of surplus funds raised for non-charitable objects.
- The proposed Act should provide a mechanism for the disposition of small surpluses.
- The proposed Act should provide a mechanism for refunds to identifiable donors of larger amounts where an appeal for non-charitable objects results in a surplus.
- The proposed Act should include, as a schedule, a model trust document that would provide a default governance structure for the trust created by the appeal. Where a governance structure otherwise exists, the model trust document would apply only to the extent that it did not conflict with the existing structure.

These principles formed the basis of the Working Group's preliminary draft of an English language version of a *Uniform Informal Public Appeals Act* [hereafter *UIPAA*] with a draft commentary. This draft Act is set out in Part II of this Consultation Paper.

### **Some Features of the Current Draft of the *UIAPP***

#### ***Scope***

A starting point in assessing the scope of the Act is its core concept - the “appeal” which is broadly defined to include a variety of communications for the purpose of soliciting donations. The definition is immediately narrowed by excluding “a message communicated as part of a permanent

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<sup>8</sup> Most common law provinces have a *Trustee Act* that is basically a re-enactment of trustee legislation enacted at various times during the 19<sup>th</sup> century in the UK.

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or continuing fundraising effort.” Thus, for the purposes of the Act “appeal” is confined to sporadic, informal appeals.

The application of the Act is further narrowed by two additional provisions. One states that the Act does not apply to a fund raised by a body that is registered with the Canada Revenue Agency as a charitable organization, or by any other incorporated body for the advancement of its usual objects.<sup>9</sup> The reference to CRA registration constitutes a bright line test that will clarify the applicability of the Act in many otherwise problematic cases.

The other provision that limits the application of the Act states that it is displaced by more specific features of the governing documents or the terms of the appeal that may conflict with the Act.<sup>10</sup>

#### ***The Trust***

The Act confirms that a public appeal fund is subject to a trust for the benefit of the person(s) for whom, or the object for which, it is raised and is enforceable whether or not the object is charitable. The persons who direct the management and disbursement of a public appeal fund are its trustees and a savings institution in which the fund is deposited is not a trustee. Persons entitled to enforce the trust include a trustee, donor, beneficiary, the Attorney General and any person having a “sufficient interest” in enforcement.<sup>11</sup>

#### ***Terms of the Trust***

The Act confirms the role of a formal trust document and refers to the model trust document [MTD] in Schedule A as one that trustees may wish to adopt. A trust document created for the purposes of the appeal is deemed to include as much of the model trust document as does not conflict with its other provisions, the terms of the appeal or other governing documents. This may include the entire model trust document where there is no other governing document.<sup>12</sup>

#### ***Surplus Funds***

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<sup>9</sup> Section 2(2).

<sup>10</sup> Section 2(1). In this Consultation Paper the expression “governing document” is used to refer to anything mentioned in paragraphs (a), (b), (c) or (d) of that section:

2 (1) Subject to subsection (2), sections 1 to 6 of this Act apply to a public appeal fund only to the extent that they do not conflict with the terms of the appeal or with

- (a) another enactment,
- (b) the constitution, charter, incorporating document, or bylaws, of an incorporated body or foundation,
- (c) a contract, or
- (d) a trust document referred to in section 4 (1)

that governs or regulates the public appeal fund

<sup>11</sup> Section 3.

<sup>12</sup> Section 4.

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“Surplus” is defined to mean money or other property remaining in a public appeal fund that ceases to be needed or cannot be used for the object described in the appeal. To avoid a *Gillingham* outcome the Act sets out several measures.<sup>13</sup> First, it stipulates that where a surplus occurs there is no resulting trust in favour of a donor.<sup>14</sup> Second the principle of *cypres* is extended to trusts for non-charitable objects. The court is authorized to approve a scheme to distribute a surplus. A distribution may be made for a charitable object whether or not the appeal that led to the surplus was charitable. If that appeal was for a non-charitable object the court may authorize a distribution to another non-charitable object that is consistent with the spirit of the appeal.

Any person entitled to enforce the trust may apply to the court for a distribution of a surplus. But an application to court may be unnecessarily expensive and cumbersome if the surplus is small. For this reason, if the surplus is below some threshold amount, the Act permits the trustees to distribute it among one or more charities designated in a schedule to the Act. The value of the threshold suggested in the Act is \$10,000.

#### ***Refunds***

If the appeal was for a charitable object the donor has no claim to a refund if there should be a surplus. If, however, the appeal was for a non-charitable object other considerations may apply. 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. The Act allows such a donor to claim a refund, or call for a reapplication, of a *pro-rated* share of the surplus. The right to a refund arises only with a donation valued at \$100 or more and only where the donor had, at the time of the donation, made a written request for a refund in the event there should be a surplus. In the rare case of a donation of real property that is no longer needed or can not be used for the object of the appeal the donor may be entitled to its return.

#### ***Accumulations***

In some provinces the law, based on an English statute of 1800, limits the time during which a fund is permitted to accumulate (the “rule against accumulations”).<sup>15</sup> While the rule against accumulations has no application to charitable trusts, in those provinces where the rule is in force the applicable permitted accumulation period (in most cases, 21 years) may be too short to allow the objects of the public appeal fund that is made for non-charitable objects to be fully realized. For this reason, the draft Act stipulates a much longer permitted period of duration for non-charitable funds

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<sup>13</sup> Section 5.

<sup>14</sup> Section 6 sets out the circumstances in which a donor may be entitled to a refund when there is a surplus.

<sup>15</sup> *Accumulations Act, 1800*, 39 and 40 George III, c. 98 commonly known as the *Thellusson Act*.

(80 years)<sup>16</sup> and the application of the old rule against accumulations is abrogated with respect to them.<sup>17</sup>

### ***The Model Trust Document***

The model trust document set out as Schedule A to the Act incorporates most of the features that the members of the Working Group believe would be found in a trust instrument created expressly for most informal public appeals. The objects of the appeal and the reasons for its creation are left sufficiently open-ended to permit the model to be adapted to the circumstances of the particular case. The MTD provides examples of these to assist fundraisers in adapting it to their appeal without legal assistance.

Some specific issues addressed by the MTD are:

- A statement of the trustees duties including a requirement that at least once each year the trustees must consider whether any money remaining in the fund is needed or can be used for its objects. If not, it is surplus and must be dealt with accordingly.
- The powers of the trustees in relation to
  - further appeals and donations,
  - payments from the fund,
  - investing and otherwise dealing with the fund
  - the use of nominees and professional advisors
  - transfer of the fund to another body with similar objects including one formed by the trustees
- The discretion of the trustees in administering the fund
- The ability of the trustees to act by majority
- The retirement and appointment of trustees.

As far as possible the MTD avoids technical legal language to encourage its adoption by non-lawyer trustees.

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<sup>16</sup> Section 7(1).

<sup>17</sup> Section 7(2). In those provinces that have legislated to abrogate the rule against accumulations section 7(2) may be omitted.

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#### **Bilingual and Bijural Issues**

The *draft UIPAA* has been developed primarily for implementation in the common law provinces of Canada. While a French language version of the Act will be developed at a later stage in this project, it will be most helpful to those common law provinces that operate in both official languages. Consideration is, therefor, being given to the creating of 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.

#### **Response**

The Working Group is interested in receiving your response to the draft Uniform *Informal Public Appeals Act* and the policies that it embodies. The contents of the draft legislation are tentative only and are subject to revision following consideration of the responses received. The draft Act represents the views of the Working Group only and have not been formally adopted by the Civil Section of the Uniform Law Conference of Canada.

Responses should be submitted no later than September 7, 2010.

The preferred method for response is by email directed to the project leader at:

[aclose@shaw.ca](mailto:aclose@shaw.ca)

A lengthy submission can be sent as an email attachment in one of the standard text formats. Responses can also be sent by ordinary mail to:

Uniform Law Conference of Canada

c/o Rue 622 Hochelaga St.

Ottawa, ON, K1K 2E9

## **Part II - The Draft Uniform Act and Model Trust Document**

### **Definitions**

1 The following definitions apply in this Act.

“appeal” means an oral, written or electronically disseminated 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, other than a message communicated as part of a permanent or continuing fundraising effort;

**Commentary:** At some stage in a fundraising effort a request for donations must go out to the public. The request is commonly called an “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 “appeal” in this draft legislation is restricted to sporadic, informal appeals.

“court” means the [insert the name of superior court of the enacting province or territory];

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

“public appeal fund” means a fund of money or other property, raised through an appeal;

**Commentary:** The definition of “public appeal fund” covers funds raised in any of the ways covered by the definition of “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.

“surplus” means money or other property remaining in a public appeal fund that ceases to be needed or cannot be used for the object described in the appeal;

**Commentary:** This definition is used in sections 5 and 6.

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

**Commentary:** This definition is relevant to sections 2 and 4.

### **Application**

2 (1) Subject to subsection (2), sections 1 to 6 of this Act apply to a public appeal fund only to the extent that they do not conflict with the terms of the appeal or with

- (a) another enactment,
- (b) the constitution, charter, incorporating document, or bylaws, of an incorporated body or foundation,
- (c) a contract, or
- (d) a trust document referred to in section 4 (1)

that governs or regulates the public appeal fund.

**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) This Act does not apply to a public appeal fund raised by

- (a) a body that is registered with the Canada Revenue Agency as a charitable organization, or
- (b) any other incorporated or unincorporated body for the advancement of its usual objects.,

**Commentary:** Subsection (2) makes it clear that fundraising campaigns by registered charities and by other organizations that raise funds from the public for their usual objects are unaffected by this draft legislation. A special appeal unconnected with a non-charitable organization's usual objects would be affected, however.

### **Trust of Public Appeal Fund**

3.(1) A public appeal fund is subject to a trust for the benefit of the person for whom or the object for which it is raised.

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**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.

(2) A trust under subsection (1) is enforceable whether or not a trust having 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* or comparable to sections 69, 70 and 71 of the *Uniform Trustee 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 Uniform Trustee Act contains provisions that would validate certain non-charitable purpose trusts. Subsection (2) would allow this Act to coexist with those provisions, but would also allow it to be enacted independently of them.

(3) A person who directs the management and disbursement of a public appeal fund is a trustee of the public appeal fund.

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

(4) A bank, credit union, trust company or similar savings institution in which the public appeal fund is deposited, 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”.

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(5) In a proceeding commenced by

- (a) a trustee,
- (b) a donor,
- (c) a person or a member of a class of persons for whose benefit a public appeal fund is raised in whole or in part, or the legal representative of that person or member of a class,
- (d) the Attorney General, or
- (e) any person appearing to the Court to have a sufficient interest in the enforcement of the trust,

the court may make an order that it considers just in the circumstances for the enforcement of a trust to which a public appeal fund is subject.

**Commentary:** Subsection (5) 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. Subsection (5) 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 .

(6) Subsection (5) does not affect the authority of the Attorney General to commence a proceeding to enforce a trust to which a charitable public appeal fund is subject.

**Commentary:** A public appeal fund could be either charitable or non-charitable. The distinction depends on many factors. Charitable trusts are considered public in nature. They are enforceable by the Attorney General under existing law. Subsection (5) is not intended to prevent the Attorney General from exercising that power.

(7) [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 (7) was included out of an abundance of caution to ensure that, as a matter of statutory

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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 (7) can safely be omitted.

#### **Trust Terms**

4.(1) A trustee of a public appeal fund, or a person intending to become such a trustee, may execute a formal trust document for the better administration of the trust

(2) A trust document referred to in subsection (1) may be in the form of Schedule A, 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 document referred to as the instrument. 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 similar 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. Schedule A to the draft legislation contains a Model Trust Document which could be adapted to most situations.

(3) A trust document referred to in subsection (1) is deemed to include provisions containing as much of Part 2 of Schedule A as does not conflict with

- (a) other provisions of the trust document,
- (b) the terms of the appeal, or
- (c) anything mentioned in paragraphs 2(1) (a), (b) or (c) that governs or regulates the trust.

**Commentary:** In order to clarify the rights and duties surrounding the fund, subsection (3) makes the terms of Part 2 of the Model Trust Document apply to every public appeal fund, except to the extent that they are inconsistent with any express trust terms contained in another enactment, the constitution or other fundamental documents of an organization, or contract. Such express terms will prevail over any inconsistent terms in the Model Trust Document.

(4) If the terms of an appeal conflict, or are incompatible, with anything mentioned in paragraphs 2(1) (b), (c) or (d) that governs or regulates the trust, the terms of the appeal prevail.

**Commentary:** Subsection (4) gives primacy to the terms of the appeal since that is the information on which the donor's decision is made. The terms will not prevail, however, where the governing document is an enactment.

(5) If

- (a) no trust document has been executed under subsection (1), and
- (b) nothing mentioned in paragraphs 2(1) (a), (b) or (c) governs or regulates the trust

every trustee of a public appeal fund is deemed to have executed a formal trust document in the form of Schedule A with the contents of Part 1 to be inferred from the terms of the appeal and the circumstances in which it is made.

**Commentary:** By default, when no trust document has been executed, the Model Trust Document is deemed to be the trust document. Because part 1 of 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

### **Unusable Balance in a Public Appeal Fund**

5.(1) Subject to section 6, no trust arises 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 6 still provides for refunds to donors who formally request them, however.

(2) Subject to subsection (8) and section 6, the court may approve a scheme to distribute a surplus

**Commentary:** Subsection (2) extends the principle of *cy-pres* to non-charitable public appeal funds. A similar, but much less detailed, power will likely form part of the *Uniform Trustee Act*. The requirement for reallocation of surplus balances is subject to the trustees' powers in relation to small surpluses under subsection (8) and to a donor's rights under section 6.

(3) A person mentioned in section 3(5) may apply to the court for approval of a scheme to distribute a surplus.

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**Commentary:** Subsection (3) enables a scheme to be proposed by a trustee, a donor, a person whom the fund was intended to benefit or by another “sufficiently interested” person.

(4) A person mentioned in section 3(4) may appear, make submissions, or propose an alternative or amended scheme, in an application made by another person under subsection (4).

**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.

(5) A scheme for distribution of a surplus in a public appeal fund with a charitable object must allow the money or other property 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 (5) restates this principle in relation to public appeal funds raised for purposes that are legally charitable.

(6) Subject to subsection (5), a scheme for distribution of a surplus may allow the money or other property to be used for either:

- (a) a charitable object, or
- (b) a non-charitable object consistent with the spirit of the appeal,

**Commentary:** Many worthwhile purposes fall outside the legal concept of charity. Subsection (6) indicates that a court may approve 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.

(7) A trustee of a public appeal fund is bound by a scheme approved under subsection (2) to distribute the surplus.

**Commentary:** Self-explanatory.

(8) If the surplus amounts to \$10,000 or less in value, the trustee may distribute it among the bodies [listed in Schedule B] or [prescribed by regulation of the Lieutenant Governor in Council], instead of applying to the court for approval of a scheme under subsection (2).

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**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 (9) creates a compromise by allowing trustees to donate a surplus under \$10,000 to charity without having to apply to the court for approval, but restricts their choice to a list of charities enjoying very wide support among the donating public. The list might be enacted as a schedule to the Act containing this legislation, or be prescribed by regulation.

(9) Subsections (2) to (8) do not apply if

- (a) the object of a public appeal was for the relief of specified person or persons, and
- (b) under general trust law the specified person or persons would be regarded as a beneficial owner of the surplus

**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.

(10) In a distribution of a surplus:

- (a) to which subsection (5) applies or
- (b) under subsection (8)

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 subsection (1)) 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 (10) ensures that this limitation has no application to a distribution under this Act. The Uniform Trustee Act [currently under development]} will alter this aspect of the law in relation to all charitable gifts and jurisdictions that adopt it can safely omit subsection (10).

### **Refund if Donation Unused**

6 (1) A person who donates at least \$100, or personal property of equivalent value, to a public appeal fund having a non-charitable object may request that the trustee, in the event that there is a surplus, an amount calculated under subsection (3) be refunded to donor or applied 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 6(1) allows such a donor to claim a refund or call for a

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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 5(1).

(2) A request under subsection (1) must be made in writing at the time of the donation.

**Commentary:** A 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.

(3) If there is a surplus the trustee must refund to a donor, or apply as directed by a donor who has made a request under subsection (1), an amount calculated according to the following formula:

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

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

(4) If real property that has been donated to a non-charitable public appeal fund

- (a) is no longer needed or cannot be used for the object described in the terms of the appeal,
- (b) has not been converted into money or another form of property, and
- (c) but for this subsection, sections 5(1) to (7) would apply to the real 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:** Subsection (4) 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. Subsection (4) 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

(5) An order under section 5(2) approving a scheme for distribution of money or other property remaining in a public appeal fund does not affect money or other property which the trustee must refund or apply under subsections (3) or (4).

**Commentary:** Subsection (5) indicates that a refund must be made to a donor who has complied with subsections (1) and (2), regardless of the fact that a scheme for re-allocation of the surplus may have been approved by the court.

## **Accumulations**

7. (1) If a public appeal fund is held in trust for non-charitable objects:

- (a) the maximum permitted duration of the fund is
  - (i) 80 years beginning on the day on which the first donation was received in response to the first appeal, or
  - (ii) a shorter period set out in a trust document referred to in section 4 (1), and
- (b) any property remaining in the fund on the expiration of its maximum permitted duration is deemed to be a surplus and the trustees must distribute it as provided in section 5.

**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.

(2) Subject to subsection (1) any rule of law or enactment that limits the time for which a fund is permitted to accumulate does not apply and shall be deemed never to have applied to a public appeal fund.

**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.

## **Schedule A**

### **STATUTORY FORM OF TRUST DOCUMENT**

(Note: Users should include the clauses that appear in square brackets only if they apply to the fund being created. Otherwise they should be omitted. The text in italics is only for explanation and should not be included in the document.)

#### **THE TRUST FUND**

##### **Part 1**

The persons who have signed this document as the Trustees of the *(name of Fund)* Trust Fund declare as follows:

###### **1.0 Name of Trust Fund**

1.1 This document concerns a fund called the “*(name of Fund)* Trust Fund.”

###### **2.0 How the *(name of Fund)* Trust Fund Came Into Being**

2.1 The *(name of Fund)* was created because:

- (a)
- (b)
- (c)
- (d)

....

*(List the reasons for the creation of the Fund including particular facts and events that led to a need for the Fund. See the examples set out in the Appendix to this form for guidance.)*

2. 2 An appeal to the public for donations to the *(name of Fund)* Trust Fund [was made on *(date)*][will be made].

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#### **3.0 Objects of the (*name of Fund*) Trust Fund**

3.1 The objects of the (*name of Fund*) Trust Fund are:

- (a)
- (b)
- (c)
- (d)

....

*(Set out the purposes for which the Trustees are to be able to make payments from the Fund. These purposes must be in keeping with the terms of the appeal for donations. They must show clearly who is to benefit from the Fund or the purposes of the Fund. They should also state what is to happen to any money that is left over after the Fund's purposes have been fulfilled as far as possible. See the examples set out in the Appendix to this form for guidance.)*

## **Part 2**

#### **4.0 Reason For Signing This Document**

4.1 The persons who [will issue][have issued][the appeal] [now direct the management and disbursement of the (*name of Fund*) Trust Fund] wish to declare the terms on which they [hold][will hold] the Fund in trust and deal with it in order to achieve its objects, and to declare how they will deal with any surplus in the Fund, and so they have signed this document.

#### **5.0 Definitions**

5.1 In this document the defined words have the meanings set out below:

5.2 “**Act**” means the *Informal Public Appeals Act*.

5.3 “**Beneficiary**” means a person for whose benefit or on whose behalf the Trustees may make payments from the Fund.

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5.4     **“Fund”** means the *(name of Fund)* Trust Fund, consisting of money and other property donated or otherwise received at any time for the objects of that Fund, and also any interest, dividends, or other income which is earned on the money and other property that is donated.

5.5     **“Trustee”** means a person who has signed this document in order to assume the duties of managing and disbursing the Fund and who has not retired or been removed, but does not include a bank, credit union, trust company, or other savings institution in which the Fund or any part of the Fund is deposited.

5.6     **“Trust Period”** means:

- (a) the period of 80 years beginning on the day on which the first donation was received in response to the first appeal; or
- (b) a shorter period beginning on the day on which the first donation was received in response to the first appeal and ending on the earliest of
  - (i) the day on which the Trustees declare in writing under clause 6.3 that the Trust Period is at an end,
  - (ii) the day on which the court approves a scheme to distribute the money or other property remaining in the Fund,
  - (iii) the day on which no money or other property remains in the Fund.

### **6.0     Trustees' Duties**

6.1 The Trustees are to hold the Fund during the Trust Period and use the income and capital for the objects of the Fund as set out in clause 3.1.

6.2 The Trustees must consider, at least once in each year while any money or other property remains in the Fund, whether the remaining money or other property is still needed or can be used for the objects of the Fund.

6.3 If the Trustees decide that any money or other property remaining in the Fund is no longer needed or cannot be used for the objects of the Fund, they must set out in writing the reasons that led them to make that decision and declare the Trust Period to be at an end.

6.4 After the end of the Trust Period the Trustees continue to be Trustees of any money or other property that remains in the Fund for the purpose of distributing it according to a scheme approved by the court, or in a manner otherwise required or permitted by sections 5 and 6 of the Act or any other applicable Act or law.

### **7.0     Powers of Trustees**

**7.1 Further Appeals and Donations**

- 7.1.1 The Trustees may issue further appeals for donations to the Fund and raise money for the Fund by any other lawful means whenever they believe it is necessary or advisable to do so.
- 7.1.2 The Trustees may accept any donations to the Fund as long as the donations are not made on conditions that are inconsistent with the objects of the Fund.

**7.2 Payments from the Fund During the Trust Period**

- 7.2.1 During the Trust Period the Trustees may make payments from the Fund without having to distinguish between capital and income
  - (a) in the amounts and at the times they see fit for or on behalf of any beneficiary, or otherwise for the objects of the Fund,
  - (b) to pay expenses, income taxes and other taxes, or charges, for or on behalf of any beneficiary, or arising in respect of the Fund; or
  - (c) to make a refund to a donor or return donated property if a refund or return is required by section 6 of the Act.
- 7.2.2 Clause 7.2.1 is not intended to affect the jurisdiction of the court to determine the receipts and disbursements that relate to capital and those that relate to income.

**7.3 Investment**

- 7.3.1 The Trustees may invest any part of the Fund that is not needed immediately for payments under clause 7.2.1 as permitted by *[the Trustee Act of the enacting jurisdiction]*.
- 7.3.2 With regard to any property forming part of the Fund the Trustees may
  - (a) retain the property uninvested for any length of time;
  - (b) leave it in a particular form for any length of time;
  - (c) sell or 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, provided that the share of the Fund in the commingled pool of securities is accounted for separately.

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7.3.3 During the Trust Period the Trustees may accumulate and add to the capital of the Fund any income arising from the Fund that they do not use otherwise in a manner allowed by this document.

#### **7.4 Nominees**

7.4.1 The Trustees may allow any investments or other property forming part of the Fund to be held by or in the names of nominees.

#### **7.5 Professional Advice and Services**

7.5.1 In relation to anything concerning the Fund the Trustees 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 their behalf.

7.5.2 The Trustees are not liable for any loss arising from their reliance in good faith on advice or services obtained under clause 7.5.1.

#### **7.6 Transfer of Fund to Incorporated Body, Etc.**

7.6.1 The Trustees may transfer all or part of the Fund to a corporation, society, foundation, or other incorporated organization having objects similar to the objects of the Fund, or into another fund having similar objects, if, in their opinion, the objects of the Fund will be better served by so doing.

7.6.2 The Trustees may form a corporation, society, foundation, or other incorporated organization for the purpose of transferring the Fund to it under clause 7.6.1.

#### **7.7 Other Transactions, Elections and Consents**

7.7.1 The Trustees may enter into any transaction, execute any document, make any election, or give any consent concerning the Fund or property forming part of the Fund if they think it will better enable the Fund to serve its objects.

#### **7.8 Rules Governing Performance of Trustees' Duties**

7.8.1 The Trustees may make rules that are consistent with this document to govern

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- (a) their meetings;
- (b) management of the Fund generally, including an investment plan or policy;
- [© how to determine if and to what extent a person is entitled to benefit from the Fund.]

*(use paragraph (c) if the Fund is for the benefit of a class of persons such as victims of a particular disaster)*

#### **8.0 Trustees' Discretion**

- 8.1 The Trustees may use the powers which this document gives to them to enable them to administer the Fund effectively and to comply with any relevant Act or law, but not for any other reason.
- 8.2 Except as indicated in clause 8.1 the Trustees may exercise a power under this document in their absolute discretion.
- 8.3 The Trustees may ask for the opinion of a beneficiary on a matter affecting the administration of the Fund or the exercise of their powers, but they are not bound by the beneficiary's opinion.

#### **9.0 Trustees Act By Majority**

- 9.1 A majority of the Trustees may validly do anything that the Trustees may lawfully do.
- 9.2 If any Trustees disagree with a decision or act of the majority, those Trustees may state their disagreement in writing but unless the decision or act is unlawful they are to join with the majority in doing anything necessary to carry out the decision or act if it cannot be carried out otherwise.
- 9.3 Trustees who state their disagreement with a decision or act of the majority in writing under clause 9.2 are not liable for any breach of trust or any loss resulting from that decision or act even if they have joined with the majority in compliance with clause 9.2 in order to carry it out.

#### **10.0 Trustees' Liability**

- 10.1 A Trustee is not liable for any loss to the Fund unless the loss is due to that Trustee's own

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- (a) dishonesty, or
- (b) wilful conduct which the Trustee knows is inconsistent with this document.

10.2 Clause 10.1 is not restricted by clause 7.5.2.

#### **11.0 Retirement and Appointment of Trustees**

- 11.1 Whenever there are at least 2 Trustees of the Fund a Trustee may retire by signing a written notice of retirement and delivering it to the remaining Trustees either personally or by registered mail.
- 11.2 On personal delivery or mailing of the notice of retirement to the other Trustees the Trustee sending the notice ceases to be a Trustee for all purposes except for anything which must be done in order to vest any property of the Fund in the remaining or new Trustees.
- 11.3 After a Trustee retires the remaining Trustees may appoint in writing a person to replace the Trustee who retired.
- 11.4 The appointment of a person as a Trustee under clause 11.3 takes effect when that person signs this document.
- 11.5 Subject to clauses 11.1 to 11.4, the provisions of [the *Trustee Act* of the enacting jurisdiction] concerning removal, retirement, and appointment of trustees apply to the Trustees of the Fund.

### **Part 3**

SIGNED by the following persons as Trustees of the (*name of Fund*) Trust Fund on (date):

*Signatures of the first persons to act as Trustees)*

WITNESS:

(Signature and address of witness to signatures of first Trustees)

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SIGNED by the following persons as new Trustees appointed to replace a Trustee of the *(name of Fund)* Trust Fund:

*(Signatures of new Trustees)*

WITNESS:

*(Signature and address of witness to signature of each new Trustee)*

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### **APPENDIX TO SCHEDULE A - STATUTORY FORM OF TRUST DOCUMENT**

**Examples setting out the reasons for creating the Fund:**

*Example No. 1:*

*The Robert Charles Special Needs Trust Fund was created because*

- (a) Robert Charles is a 5-year-old boy living in Lodestone Heights B.C.*
- (b) On July 1, 2010 Robert Charles was injured in a motor vehicle accident. His left arm was amputated.*
- (c) Robert Charles 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 Jimmy grows. It will also have to be serviced regularly to keep it in good working order.*
- (d) The parents of Robert Charles cannot afford an advanced electronic artificial arm.*
- (e) Robert Charles and his parents will need other special equipment to meet his needs.*
- (f) Many members of the community of Lodestone Heights have offered to help Robert Charles and his family.*

*Example No. 2:*

*The Lodestone Heights Earthquake Relief Fund was created because*

- (a) On August 1, 2010 an earthquake devastated the community of Lodestone Heights.*

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- (b) *The earthquake destroyed many homes in Lodestone Heights, damaged roads, and disrupted communications.*
- (c) *Many residents of Lodestone Heights were injured and many lost all their belongings also.*
- (d) *A fund is needed to supplement efforts by government and various private agencies to relieve the community of Lodestone Heights.*

#### **Examples of the Objects of a Trust Fund**

*Example No. 1:*

*The objects of the Robert Charles Special Needs Trust Fund are:*

- (a) *to purchase an artificial arm for Robert Charles 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 Robert Charles;*
- (d) *to assist the parents of Robert Charles to equip their dwelling to accommodate his special needs;*
- (e) *if and when the Fund is no longer needed for the objects set out above, to pay any surplus then remaining to an organization caring for child amputees.*

*Example No. 2:*

*The objects of the Lodestone Heights Earthquake Relief Fund 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.*
- (d) *to maintain any surplus as a special fund to provide similar relief to the victims of future earthquakes for the duration of the Trust Period.*

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Notes on the Trust Document.

These notes do not form part of Schedule A.

Clause 6.3 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. 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. While the Trustees may have to apply to the court for the approval of a scheme to distribute any surplus (see s. 5 of the Act and clause 6.4 of the trust document), 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.

Clause 7.2.1 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 clause 8.0, makes the trust discretionary. Since this is a “default” scheme, only a wide power would fit a variety of circumstances.

Clause 7.2.2 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.).

**Schedule B**

**Designated Bodies (Section 5(8))**

The following bodies are eligible to receive a distribution of a surplus under section 5(8):

- (a)
- (b)
- (c)
- (d)

....

*(Each enacting jurisdiction should develop its own list of designated bodies. The core of such a list should be charities that enjoy wide public support in the enacting jurisdiction. The list might also include bodies such as hospital foundations that exist in some provinces that are emanations of the Crown rather than conventional charitable organizations)*