

BILL

No. 105

An Act respecting Informal Public Appeals

(Assented to)

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

PART I Preliminary Matters

Short title

1 This Act may be cited as *The Informal Public Appeals Act*.

Interpretation

2(1) In this Act:

(a) “**court**” means the Court of Queen’s Bench, unless the context requires otherwise;

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- (b) **“fund”** means a fund of money or other property raised through a public appeal;
- (c) **“governing authority”**, in relation to a trust mentioned in subsection 4(1), means any of the following that governs or regulates the trust or the public appeal associated with it:
 - (i) the constitution, charter, incorporating document or bylaws of an incorporated body or foundation;
 - (ii) a contract;
 - (iii) a court order;
 - (iv) a trust document;
- (d) **“prescribed”** means prescribed in the regulations;
- (e) **“public appeal”** means an informal public appeal message directed at the public generally, or at a section of the public, requesting donations to or 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;
- (f) **“surplus”** means money or property remaining in a fund that is no longer needed or that cannot be used for the object of the public appeal;
- (g) **“terms of the public appeal”** means the information given to the public on which a decision to donate to a fund may be based;
- (h) **“trust document”** means a trust document executed or deemed to be executed pursuant to section 6;
- (i) **“trustee”** means a person who directs the management and disbursement of a fund, or who has the authority to do so.

(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 Act

3(1) Subject to subsections (2) and (3), this Act applies to a public appeal only to the extent that it does not conflict with the terms of the public appeal or the governing authority of the public appeal.

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

- (a) section 8, to the extent that it sets a fund’s maximum duration;
- (b) subsection 11(2).

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- (3) This Act does not apply to:
- (a) a public appeal conducted by a body that is a qualified donee within the meaning of the *Income Tax Act* (Canada); or
 - (b) a public appeal initiated before this section comes into force.

PART II The Trust

Trust of public appeal fund

- 4(1) A fund is subject to a trust for the benefit of the object for which the public appeal was conducted.
- (2) The trust is enforceable regardless of whether a trust with the same object would be enforceable pursuant to the general law of trusts.
- (3) Subject to subsection (4), the trust is governed by the law of the jurisdiction stipulated in the governing authority.
- (4) If the governing authority does not stipulate a jurisdiction for the trust, 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 financial institution; or
 - (b) if no deposit account exists, by the law as determined without reference to this Act.

Institution not trustee

- 5 A bank, credit union, trust company or similar financial institution in which a fund is held is not, for that reason only, a trustee of the fund.

Trust document

- 6(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.
- (2) A trust document must be in the prescribed form, but may be adapted to meet the circumstances.
- (3) If a trust document has not been executed with respect to a fund:
- (a) every trustee of the fund is deemed to have executed a trust document containing as much of the prescribed form as does not conflict with:
 - (i) the terms of the public appeal; or
 - (ii) the governing authority of the trust; and
 - (b) the terms of the public appeal and the circumstances in which the public appeal is made form the contents of the prescribed form.
- (4) A trustee who has custody of a trust document shall 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 12(1) or of personal property of equivalent value.

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If conflict about governing authority

7 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 first 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.

Duration of the fund

8(1) Subject to subsection (2) but notwithstanding any other Act or law, the maximum permitted duration of a fund held in trust for a non-charitable object is 80 years, beginning on the day the first donation was received in response to the public appeal.

(2) If a period of less than 80 years is set out in the trust document of a fund held in trust for a non-charitable object, that shorter period is the maximum permitted duration of the fund.

(3) Any property remaining in a fund held in trust for a non-charitable object when the maximum permitted duration expires is deemed to be a surplus.

(4) A trustee shall distribute any property deemed to be a surplus pursuant to this section in accordance with Part III.

Enforcement of the trust

9(1) Any of the following persons may commence a proceeding in the 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.

(2) In a proceeding commenced pursuant to subsection (1), the court may make any order with respect to the trust that it considers just in the circumstances.

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**PART III
Surpluses and Refunds****No trust in relation to a surplus**

10 Subject to the requirement to refund or return an unused donation pursuant to section 12 or 13, a trust does not arise in favour of a donor in relation to a surplus.

Scheme to distribute a surplus

11(1) Subject to subsections 12(5) and 13(3), a trust document may provide for a scheme to distribute a surplus.

(2) A scheme to distribute a surplus that is provided for in a trust document is effective without approval of the court 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).

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

(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.

(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 that is, in the opinion of the trustee, consistent with the spirit of the public appeal.

(6) Notwithstanding subsection (2) but subject to the regulations, approval of the court is not required to distribute a surplus that is less than the prescribed amount if the trustee distributes the surplus to one or more qualified donees within the meaning of the *Income Tax Act* (Canada) whose objects are, in the opinion of the trustee, consistent with the spirit of the public appeal.

(7) Any person who can commence proceedings to enforce a trust pursuant to section 9 may:

(a) apply to the court to approve a scheme to distribute a surplus, whether approval of the court is otherwise required pursuant to 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.

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

(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 pursuant to the general law of trusts.

Refund of unused donation

12(1) A person who donates an amount that meets or exceeds the prescribed amount to a fund with a non-charitable object, 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.

(2) The person making the request pursuant to subsection (1) shall make the request in writing at the time the donation is made.

(3) If a donor has made a request pursuant to subsection (1) and there is a surplus, the trustee shall refund an amount calculated in the prescribed manner, or apply that amount in any way the donor directs.

(4) If, after making all reasonable efforts, the trustee cannot locate a donor who has made a request pursuant to subsection (1), the trustee may deal with the amount as if it were surplus for which no request was made.

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

Return of unused real property

13(1) Unless the terms of the donation provide otherwise, the trustee shall return real property to the donor, or dispose of it as the donor may direct, if the 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.

(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 is not required.

(3) The trustee's obligation to return real property pursuant to this section applies notwithstanding any scheme to distribute a surplus pursuant to section 11.

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PART IV Trustee's Powers and Duties

Payments from the fund while the trust continues

14(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 with respect to the fund; or
- (c) to make a refund to a donor or return donated property if required by section 12 or 13.

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

Investment

15(1) A trustee may invest any part of a fund that is not needed immediately for payments pursuant to subsection 14(1) as permitted by *The Trustee Act, 2009*.

(2) With regard to any property forming part of the fund, a trustee may do any or all of the following:

- (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;
- (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.

(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.

(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 of a fund set out in section 8.

Further public appeals and donations

16(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.

(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.

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Professional advice and services

17(1) In relation to any matter concerning a fund, a trustee may arrange for a person, firm or organization 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.

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

Transfer of fund to another body

18(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.

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

Other transactions, elections and consents

19 A trustee may enter into any transaction, execute any document, make any election or give any consent concerning a fund or any part of a fund if the trustee considers that the object of the fund will be better served by doing so.

Trustee may make rules

20 A trustee may make rules to govern the following:

- (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;
- (c) meetings of trustees if there is more than one trustee.

Trustee's discretion

21(1) A trustee shall use the powers provided pursuant to this Act to administer the fund effectively in the service of its object and to comply with any relevant law, but not for any other purpose.

(2) In using the powers mentioned in subsection (1), the trustee has absolute discretion.

(3) A trustee may seek the opinion of the following on a matter affecting the administration of the fund or the exercise of the trustee's powers:

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

(4) A trustee is not bound by any opinion provided pursuant to subsection (3).

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Trustees may act by majority

22(1) If there is more than one trustee, a majority of the trustees may validly do anything that the trustees may lawfully do.

(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 shall join with the majority in doing anything necessary to carry out the decision or action if it cannot otherwise be carried out.

(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

23 A trustee is not liable for any loss incurred with respect to a fund unless the loss is due to that trustee's own:

- (a) dishonesty; or
- (b) wilful conduct that the trustee knows to be inconsistent with this Act or a governing authority.

Resignation and appointment of trustees

24(1) If there are at least two trustees of a fund, a trustee may resign by delivering a signed notice of resignation to the remaining trustees, either personally or by registered mail.

(2) On the personal delivery or mailing of a notice of resignation, the resigning 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.

(3) After a trustee resigns, the remaining trustee or trustees may appoint, in writing, a person to replace the resigning trustee.

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

(5) The provisions of *The Trustee Act, 2009* concerning the appointment, resignation and removal of trustees apply to the fund, except as otherwise provided in this section.

Trustee's duties

25(1) A trustee shall:

- (a) hold the fund for the duration of the trust; and
- (b) use the income and capital for the object of the fund.

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

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- (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 shall:
- (a) set out in writing the reasons that led to that decision; and
 - (b) declare the trust at an end.
- (4) After the trust is declared at an end, the money or other property remaining in the fund is surplus and the trustee shall distribute it in accordance with section 11, 12 or 13.
- (5) The duties imposed by this section are in addition to any other duty imposed by *The Trustee Act, 2009* and the general law of trusts.
- (6) The duties imposed by this section may not be excluded by a trust document.

PART V Regulations

Regulations

- 26** The Lieutenant Governor in Council may make regulations:
- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
 - (b) prescribing the form of a trust document for the purposes of section 6;
 - (c) prescribing an amount for the purposes of subsections 11(6) and 12(1);
 - (d) respecting the calculation of refunds for the purposes of section 12;
 - (e) prescribing any forms required for the purposes of this Act;
 - (f) prescribing new or additional procedures respecting the administration of public appeals, trusts, trust documents and funds pursuant to this Act;
 - (g) prescribing any other matter or thing that is required or authorized by this Act to be prescribed in the regulations;
 - (h) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

PART VI Coming into Force

Coming into force

- 27** This Act comes into force on proclamation.