

# **BRITISH COLUMBIA**



# **LAW INSTITUTE**

**1822 East Mall  
University of British Columbia  
Vancouver, British Columbia,  
Canada V6T 1Z1  
Voice: (604) 822 0142  
Fax: (604) 822 0144  
E-mail: [bcli@bcli.org](mailto:bcli@bcli.org)  
Website: <http://www.bcli.org>**

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**Consultation Paper  
on**

# **A Legal Framework for Informal Public Appeal Funds**

**May 2003**

# British Columbia Law Institute

1822 East Mall, University of British Columbia, Vancouver, B.C., Canada V6T 1Z1

Voice: (604) 822-0142 Fax:(604) 822-0144 E-mail: [bcli@bcli.org](mailto:bcli@bcli.org) WWW: <http://www.bcli.org>

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The British Columbia Law Institute was created in 1997 by incorporation under the Provincial *Society Act*. Its mission is to:

- (a) promote the clarification and simplification of the law and its adaptation to modern social needs,
- (b) promote improvement of the administration of justice and respect for the rule of law, and
- (c) promote and carry out scholarly legal research.

The Institute is the effective successor to the Law Reform Commission of British Columbia which ceased operations in 1997.

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### I. Introduction

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 in a distant place 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 are 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 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,” 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.<sup>1</sup> In an emergency, 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

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If the purpose of the fund is not legally charitable, the surplus may have to be returned to the donors. Chances are, however, that the fundraisers will encounter 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.

What does the law say must be done with the unreturnable portion in a case where the donors are entitled to get their donations back? The 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>2</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 that was submitted in 1993.<sup>3</sup> The Report set out a lengthy analysis of the existing law concerning surpluses and public appeal funds. For those wishing to explore the legal issues in greater depth the full text of the Report is available through the Law Institute's internet website at:

<http://www.bcli.org/pages/publications/lrcreports/repsum129.html>

A second difficulty in relation to public appeal funds is that their creation is seldom well documented. As the Commission observed:<sup>4</sup>

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.

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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.

2. [1958] Ch. 300, *aff'd* [1959] Ch. 62 (C.A.).

<sup>3</sup>Report on Informal Public Appeal Funds (LRC 129 1993).

4. *Ibid* LRC 129 at page 29.

Both of these issues were addressed by recommendations contained in the Law Reform Commission's Report.

There were two aspects to these recommendations. The first was for the enactment of legislation that would provide a statutory framework for public appeal funds (other than those carried out by organized charities) and that provided specific guidance for the disposition of any unused balance in a public appeal fund. The second aspect was the development of a model trust document that would be available to persons creating a public appeal fund. The model document was to have been enacted as a schedule to the recommended legislation and would have been deemed to be the governing trust document of every informal public appeal fund where no other trust document had been adopted by the trustees.

It is now over ten years since the Law Reform Commission submitted its recommendations and during that period there has been no evidence of interest on the part of government. Nonetheless the problems identified by the Commission remain. While the approach recommended by the Law Reform Commission probably continues to be the optimal one we believe it is worth exploring an alternative strategy that has the potential to achieve most of the Commission's objectives but which does not require the intervention of the legislature.

### **II. An Alternative Strategy**

The approach that we envisage is to make the model trust document the centrepiece of reform. Using the BCLRC model document as a point of departure we would incorporate into it a number of the features that would have formed part of the recommended legislation. In particular, a revised model document would attempt to deal clearly and fully with the surplus issue by giving the trustees a number of options in this regard. The "governance" provisions of the model document would also be reinforced.

However, creating a model trust document with these characteristics is only half the task - and the easiest half at that. What remains is to ensure that the model document is widely used by trustees when setting up their appeal funds. Under the BCLRC recommendations use of the model document would have been mandated as a "default." Under the approach we propose the adoption of the model document by trustees must be voluntary. There are two factors that we believe will come into play to encourage its use.

First, most trustees should, themselves, recognize the need for a document that will guide them in the management of the trust. This requires that the existence of the document be widely known and that it be readily available when needed. It is at this stage that the second element comes into play.

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In almost every case where the appeal is addressed to a wide base of donors and substantial sums may be collected, the trustees of the fund will seek to establish a deposit account in a bank, credit union, or similar institution. This will normally be at a critical time in the creation of the trust and provides an important window of opportunity for trustees to adopt the model document. If banks and credit unions can be persuaded to take a leadership role in making the model document available and inform the trustees of the advantages of having a trust document it will be a significant accomplishment.

We have developed a tentative version of a model trust document which is set out in Part III of this paper. Instructions on its use are set out in Part IV. They form the basis on our consultations in relation to this project.

### III. Consultation

There are two aspects to our Consultation. The first is to solicit comment on the trust document itself and the accompanying draft instructions. We would welcome suggestions for their improvement. The second aspect is to explore with the chartered banks, credit unions, and other deposit taking institutions ways in which the kind of role we envisage for them can be realized with a minimum of dislocation to their own procedures and without exposing them to legal liability.

Our Consultations with the deposit institutions will proceed on an *ad hoc* basis. For those who wish to comment only on the trust document itself and the instructions we would be grateful if you would respond by October 31, 2003.

**IV. A Model Trust Document**

**TRUST FUND DECLARATION OF  
MONEY RAISED THROUGH A PUBLIC APPEAL**

**Part 1 - Creation of the Trust**

The persons who have signed this document as the Trustees declare as follows:

**Name of Trust Fund**

1. This document concerns a fund called the “\_\_\_\_\_ Trust Fund” (the Fund).

**How the Fund Came Into Being**

2. The Fund was created because:

- (a)
- (b)
- (c)
- (d)
- (e)
- ....

**Appeal to the Public**

3. An appeal to the public for donations to the Fund will be made.

*or*

An appeal to the public for donations to the Fund was made on \_\_\_\_\_ (*date*) and money and property of a total value of \$ \_\_\_\_\_ has been donated in response to the appeal.

**Purposes of the Fund**

4. (1) The purposes of the Fund are:

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

....

- (2) So long as the Fund is not a Registered Charity these purposes shall be deemed to be non-charitable.
- (3) Subparagraph (2) is without prejudice to any application that might be made by the Fund to become a Registered Charity.

### Part 2 - This Trust Document

#### Reason For Signing This Document

5. The Trustees wish to declare the terms on which they hold the Fund in trust and deal with it in order to achieve its purposes, and to declare how they will deal with any surplus in the Fund, and so they have signed this document.

#### Definitions

6. In this document the words set out below have the meanings given to them:
  - (a) “**Beneficiary**” means a person for whose benefit or on whose behalf the Trustees may make payments from the Fund.
  - (b) “**Fund**” means the trust fund named in paragraph 1, consisting of money and other property donated or otherwise received at any time for the purposes of the fund, and also any interest, dividends, or other income which is earned on the money and other property that is donated.
  - (c) “**Purposes of the Fund**” means the purposes described in subparagraph 4(1).
  - (d) “**Registered Charity**” means a body registered as a charitable organization with Canada Customs and Revenue Agency.
  - (e) “**Surplus**” means money or other property remaining in the Fund at the end of the Trust Period that is not needed or cannot be used for the Purposes of the Fund.
  - (f) “**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 or deposit institution in which the Fund or any part of the Fund is deposited or at whose request this document was created.
  - (g) “**Trust Period**” means the shorter of:

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- (i) the period of 80 years beginning on the day on which the first donation was received in response to the first appeal; or
- (ii) the period beginning on the day on which the first donation was received in response to the first appeal and ending on the earliest of
  - (A) the day on which the Trustees declare in writing under paragraph 16(2) that the Trust Period is at an end,
  - (B) the day on which no money or other property remains in the Fund.

### Part 3 - Administration of the Trust

#### Trustees' Duties

7. The Trustees are to
- (a) hold the Fund during the Trust Period and use the income and capital for the purposes of the Fund, and
  - (b) after the end of the Trust Period to dispose of any surplus as provided in Part 4 of this document.

#### Further Appeals and Donations

8. (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.
- (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 purposes of the Fund.

#### Payments from the Fund During the Trust Period

9. (1) During the Trust Period the Trustees may make payments from the Fund:
- (a) in the amounts and at the times they see fit for or on behalf of any Beneficiary, or otherwise for the purposes of the Fund, or
  - (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.
- (2) Payments made under subparagraph (1) do not need to distinguish between capital and income but this 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.

#### Investment

10. (1) The Trustees may invest any part of the Fund that is not needed immediately for payments under paragraph 9 in investments in which the *Trustee Act* allows trustees to invest.
- (2) With regard to any property forming part of the Fund the Trustees may
- (a) retain the property uninvested for any length of time;

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- (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.

### Accumulation of Income

11. 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.

### Professional Advice and Services

12. 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.

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

13. (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 purposes of the Fund, or into another fund having similar purposes, if, in their opinion, the purposes of the Fund will be better served by so doing.
- (2) The Trustees may form a corporation, society, foundation, or other incorporated organization for the purpose of transferring the Fund to it under subparagraph (1).
- (3) If the Fund is a registered charity, a transfer may be made under this paragraph only to another registered charity.

### Other Transactions, Elections and Consents

14. 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 purposes.

### Rules Governing Performance of Trustees' Duties

15. The Trustees may make rules that are consistent with this document to govern
- (a) their meetings;
  - (b) management of the Fund generally, including an investment plan or policy, and
  - (c) how to determine if and to what extent a person is entitled to benefit from the Fund.

### Part 4 - Termination of the Fund and Distribution of Surplus

#### Declaration by Trustees

16. (1) 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 purposes of the Fund.
- (2) If the Trustees decide that any money or other property remaining in the Fund is no longer needed or cannot be used for the purposes 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.
- (3) 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 as provided in this Part of this document.

#### Refund to Donor in Certain Cases

17. (1) Subject to this paragraph, a donor has no claim by way of trust or otherwise to a surplus.
- (2) A person who
- (a) has donated at least \$100 or personal property of equivalent value to the Fund without receiving or expecting any contractual or other benefit in return, and
  - (b) at the time the donation was made requested in writing a refund of the unused portion of the donation in the event that the entire Fund cannot be used for the purposes of the Fund
- is entitled to a return of the donation, or a *pro rata* portion of it, less a reasonable sum to meet the proper expenses of the Trustees in connection with the Fund.
- (3) If land that has been donated to the Fund
- (a) is no longer needed or cannot be used for the purposes of the Fund, and
  - (b) has not been converted into money or another form of property,
- the Trustees must return the land to the donor, unless the terms of the donation provide otherwise.
- (4) A refund or return of donated property under this paragraph has priority over a distribution under Paragraph 18 or 19 of this document.
- (5) No refund or return of donated property may be made under this paragraph if the Fund was at the time of the donation, a registered charity.

**Distribution of Surplus by Registered Charity**

18. If the Fund is a registered charity the trustees may distribute any surplus to one or more of the following:
- (a) A body or bodies that are also registered charities,
  - (b) The Hospitals Foundation of British Columbia,
  - (c) A university foundation named in the *University Foundations Act*,
  - (d) The Vancouver Foundation, or
  - (e) The Victoria Foundation.

**Distribution of Surplus where Fund is Not a Registered Charity**

19. Where the Fund is not a registered charity the trustees may distribute any surplus to
- (a) one or more bodies or funds having objects similar in spirit to the purposes of the Fund, or
  - (b) a body mentioned in paragraph 18.

**Application to Court**

20. Nothing in this Part affects the right of a trustee to apply to a court under any applicable law for directions concerning a return or refund of property or a distribution of surplus.

**Part 5 - Trustees**

**Trustees' Discretion**

21. (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.
- (2) Except as indicated in subparagraph (1) the Trustees may exercise a power under this document in their absolute discretion.
- (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.

**Trustees Act By Majority**

22. (1) A majority of the Trustees may validly do anything that the Trustees may lawfully do.
- (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.

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- (3) Trustees who state their disagreement with a decision or act of the majority in writing under subparagraph (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 subparagraph (2) in order to carry it out.

### Trustees' Liability

23. Nothing in this document affects or limits the power of the court to relieve a Trustee of liability for a loss to the Fund where the loss is not due to the Trustee's own dishonesty, or wilful conduct which the Trustee knows is inconsistent with this document.

### Retirement and Appointment of Trustees

24. (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.
- (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 except for anything which must be done in order to vest any property of the Fund in the remaining or new trustees.
- (3) After a Trustee retires the remaining trustees may appoint in writing a person to replace the trustee who retired.
- (4) The appointment of a person as a trustee under subparagraph (3) takes effect when that person signs this document.
- (5) The statutory provisions concerning removal, retirement, and appointment of Trustees apply to the Trustees of the Fund except as indicated in this paragraph

### Part 6

THIS DECLARATION OF TRUST was signed by the first Trustees on \_\_\_\_\_  
*date*

SIGNED by the first Trustees	)	_____
in the presence of:	)	<i>(Signature Trustee No. 1)</i>
	)	
_____	)	_____
<i>(Witness Signature)</i>	)	<i>(Print Name)</i>
	)	
_____	)	_____
<i>(Print Name)</i>	)	<i>(address)</i>
	)	
_____	)	_____
<i>(Address)</i>	)	<i>(Signature Trustee No. 2)</i>
	)	

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) \_\_\_\_\_  
) *(Print Name)*  
) \_\_\_\_\_  
) \_\_\_\_\_  
) *(address)*

THIS DECLARATION OF TRUST was signed by one or more additional or replacement Trustees on

\_\_\_\_\_  
*date*

SIGNED by the new Trustee(s) ) \_\_\_\_\_  
in the presence of: ) *(Signature New Trustee)*  
) \_\_\_\_\_  
) \_\_\_\_\_  
*(Witness Signature)* ) *(Print Name)*  
) \_\_\_\_\_  
*(Print Name)* ) *(address)*  
) \_\_\_\_\_  
*(Address)* ) *(Signature New Trustee)*  
) \_\_\_\_\_  
) \_\_\_\_\_  
) *(Print Name)*  
) \_\_\_\_\_  
) \_\_\_\_\_  
) *(address)*

#### IV. Instructions for Completing the Trust Document

**Introductory Note:** This model declaration of trust document was developed by the British Columbia Law Institute for use in relation to funds created by a public appeal. There are two main reasons why it should be adopted by the trustees of a public appeal fund.

First the document provides a legal framework for the Fund and ensures that the trustees have all the powers and authority they need to ensure that the purposes of the Fund are fully realized (see Part 3 and Part 5). Where no trust document has been adopted there is often considerable doubt as to these matters.

Second the document ensures that there is a clear procedure for dealing with any surplus left in the fund after its purposes have been satisfied or if, for some reason, they cannot be carried out fully. The current law is defective in the way it deals with such a surplus - it creates potential pitfalls for those involved and in many cases prevents the surplus from being put to equally good use for other purposes. This document remedies those defects.

***It must be remembered, however, that this document is mainly intended as a guide and may not meet the requirements of all funds. The circumstances in which a trust fund is created and nature of its purposes may raise special considerations or issues that are not addressed in this document. If there is any doubt on this score, the Trustees should seek independent legal advice, particularly if large sums of money will be raised.***

Once the document is signed, there should be a clear understanding among the trustees as to who will have possession of the document and where it is to be kept. If the document was created at the suggestion of a deposit or savings institution in which part or all of the fund is deposited and the institution is willing to do so it might act as custodian of the trust document.

Para 1        Insert the name of the fund here. Examples are *Jimmy Black Special Needs Trust Fund* or *Lodestone Heights Earthquake Relief Trust Fund*. Later in the document it will be referred to simply as “the Fund.”

Para 2        List the reasons why the fund was created. Mention any particular facts and events that led to a need for the fund.

*Example No. 1:*

*(a) Jimmy Black is a 5-year-old boy living in Lodestone Heights B.C.*

*(b) On July 1, 1990 Jimmy Black was injured in a motor vehicle accident. His left arm was amputated.*

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- (c) *Jimmy Black 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 Jimmy Black cannot afford an advanced electronic artificial arm.*
- (e) *Jimmy Black 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 Jimmy Black and his family.*

*Example No. 2:*

- (a) *On November 1 1991 an earthquake devastated the community of Lodestone Heights.*
- (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.*

Para 3 Two alternative paragraphs are provided. Strike out the one which does not apply

If the second alternative applies (ie the appeal has been made) insert the date the appeal was first made and the value of donations received to date.

- That value can be \$0 if no donations have yet been received
- The value can include donations made by the trustees as well as the public
- Where property other than money has been donated, the value assigned to it can be approximate.

Para 4 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. 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.

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*Example No. 1:*

*The purposes of the Jimmy Black Special Needs Trust Fund are:*

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

*Example No. 2:*

*The purposes of the Lodestone Heights 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.*

Para 4(2) This paragraph is included for technical legal reasons to protect the trustees in relation to a distribution under para.19.

### **A note on Charities and Charitable Status**

The term “charity” has both an everyday meaning and a technical legal meaning. The everyday meaning embraces larger notions of benevolent purposes. The technical legal meaning is much narrower and it is the one that is relevant to this document. Not every benevolent purpose is “charitable” in this technical sense. To be charitable, the purpose must benefit a sufficiently large segment of the public - although how large that must be is problematic.

The purpose in Example no. 1, while clearly benevolent, is to benefit only one individual or family and therefore it is not charitable. Example no. 2 is more difficult. The answer will

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turn on the number of individuals who have suffered loss or damage from the earthquake. If the number is small and they are easily identifiable the purpose is probably not charitable.

Registration as a charitable organization takes place through the Canada Customs and Revenue Authority (CCRA). While most funds would not be eligible for registration, if the trustees of a particular fund believe that it is charitable and would benefit from registration they should seek legal advice.

The “default” position under this document is that the purposes of the fund are not charitable (para. 4(2)) but preserves the position if the trustees wish to seek registration (para. 4(3)) and provides guidance as to transfers (para. 13(3)) and the distribution of any surplus by a fund that has become a registered charity (para. 18.)

Para 6(g)(i) The period of 80 years was selected in clause (i) for technical legal reasons. It should not be changed without legal advice. A situation in which the 80 year outside limit might be relevant is Example 2 which contemplates retaining any surplus as a fund to provide relief in the case of future earthquakes.

Para 15(c) Subparagraph (c) might be used where the Fund is for the benefit of a class of persons such as victims of a particular disaster.

Para 23 The power of the court referred to is set out in section 96 of the *Trustee Act* which provides:

If it appears to the court that a trustee, however appointed, is or may be personally liable for a breach of trust, whenever the transaction alleged to be a breach of trust occurred, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which the trustee committed the breach, then the court may relieve the trustee either wholly or partly from that personal liability

Part 6 The original trustee or trustees should sign the document in the presence of a witness who should also sign. The document also provides for the designation of additional or substitute trustees.

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