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Consultative Document no. 10—Consultation Paper on a Legal Framework for Informal Public Appeal Funds

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When disaster strikes or when funds are needed for a cause that excites public sympathy, spontaneous appeals to the community for donations are very common. Unlike fundraising campaigns by organized charities, these informal public appeals are often carried out with little planning. Sometimes quite large amounts of money are collected, but it is not always possible to use the entire fund raised by the appeal for the original purpose. More money may be raised than is needed, or the need may be met in other ways, or the need may simply disappear.

If the purpose for which the fund was raised is legally “charitable,” the law of trusts allows for the surplus to be used for related charitable purposes, although a court application is required to authorize this. Many causes that the public generally thinks of as charitable are not classified as charitable in law, however. If the purpose of the appeal was not legally charitable, the law requires that the surplus be returned to the donors. Many donations are made anonymously, however, such as by dropping money in a collection box. It is not feasible to return these donations. Amazingly, the present law does not allow an unreturnable surplus in a non-charitable appeal fund to be put to an alternate, socially useful purpose. The surplus belongs beneficially to the unknown donors under a resulting trust. As the notorious case *Re Gillingham Bus Disaster Fund* illustrated, the surplus merely has to sit accumulating interest, *forever*.

Recommendations by the former Law Reform Commission of British Columbia to deal with this incomprehensible gap in the law of trusts were never implemented by the legislature. The BCLI’s project on informal public appeal funds therefore focuses on an alternative strategy that does not require legislative intervention. It is possible to avoid the *Re Gillingham Bus Disaster Fund* problem by some initial planning before the appeal goes out. If the use of a potential surplus is specified in advance of contributions being made, and donors contribute on that basis, the problem does not arise. The BCLI has issued the *Consultation Paper on a Legal Framework for Informal Public Appeal Funds*, which contains a template trust document for use by those intending to issue an appeal to the public to raise money. The trust document provides for distribution of a potential surplus to a registered charity or to another body or fund having purposes similar to the appeal in question.