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Backgrounder

LRC 129—Report on Informal Public Appeal Funds

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Issuing an appeal to the public for donations for a particular purpose generally gives rise to a trust. A trust is a relationship that exists when someone (known as a “trustee”) holds money or property but is under a duty to use it for the benefit of another person or persons for a legally permissible purpose.

The trust may be charitable or non-charitable, depending on the purpose of the appeal. Funds are usually non-charitable if they are raised for the benefit of specific persons, as many informal appeals are. If part of a non-charitable fund is surplus, either because the appeal has achieved its aims, or because the surplus cannot be used for the original purpose and no alternative use is provided for in the appeal, the surplus may in some cases belong to persons for whom the appeal was made. In others, usually where the appeal is for a specific purpose, it has to be dealt with according to the principles that apply to failed trusts. These principles may require that a surplus in a non-charitable fund be paid back to the donors. If part of the fund cannot be paid back because the contribution was made anonymously, this portion cannot be used for any other purpose and has to be paid into court, where effectively it remains idle. This is a most unsatisfactory outcome and deprives the trustees of the opportunity of perhaps passing the surplus to a local charity or it being used for general civic purposes.

With a charitable fund, the surplus may sometimes be applied for a similar charitable purpose but the court must approve the proposal. This is known as the *cy-près* doctrine. This is a complex doctrine and many of the judicial decisions dealing with this area are difficult to reconcile. The doctrine is not available in all cases and where it does not apply the general principles discussed above governing failed trusts apply. The possibility exists again, therefore, that the surplus may have to be paid into court rather than being put to good use.

Most of the problems associated with surpluses in public appeal funds could be avoided if those issuing the appeal received professional advice at the outset. The report recognizes that this is unrealistic and instead recommends that the law be reformed to remove the uncertainties that currently exist. In broad terms the report makes the following recommendations:

1. Surpluses in non-charitable appeals should be available to meet other valid needs unless a declaration is made by the donor requesting the return of the donation.
2. Trustees of both charitable and non-charitable funds should be able to distribute surpluses of less than \$10 000.00 among designated charities without the need for court approval. Larger surpluses should require court approval.
3. The legal principles relating to public appeal funds should be restated in legislative form for the purpose of clarity.
4. The proposed legislation should include provisions allowing for the enforcement of trusts by donors and beneficiaries.
5. In order to clarify the rights, powers and duties of trustees of a public appeal fund trust, they should be encouraged to enter into a trust document. A model trust document is provided in the draft legislation.

It should be emphasized that the recommendations in the report only concern informal, spontaneous appeals for funds. They do not apply to continuous or periodic campaigns by organized charities and other bodies raising money for their normal or authorized purposes as part of their usual activities.

Further Developments

This report's recommendations have not been implemented.