

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

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**A JOINT PROJECT OF THE UNIFORM LAW COMMISSION,
THE UNIFORM LAW CONFERENCE OF CANADA, AND
THE MEXICAN CENTER OF UNIFORM LAW**

**TO CREATE A HARMONIZED LEGAL FRAMEWORK
FOR UNINCORPORATED NONPROFIT ASSOCIATIONS
IN NORTH AMERICA**

UNIFORM UNINCORPORATED NONPROFIT ASSOCIATIONS ACT

Readers are cautioned that the ideas or conclusions set forth in this paper, including any proposed statutory language and any comments or recommendations, have not been adopted by the Uniform Law Conference of Canada. They do not necessarily reflect the views of the Conference or its Delegates.

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INTRODUCTION

[1] There are three primary modes of collective nonprofit activity: the nonprofit corporation; the charitable trust; and the unincorporated nonprofit association (UNA). The residual, or default, mode is the UNA. Whenever people join together and agree to pursue common nonprofit purposes and they do not take the steps required by law to incorporate their group or to form a charitable trust, then, in the eyes of the law, they form a UNA. As a result of this default status, a large number of types of organizations can be classified as UNAs—everything from small-scale charities, clubs, and athletic teams and associations to larger bodies such as political parties, trade unions, and religious organizations.

[2] In 2005, the Uniform Law Conference of Canada (ULCC) entered into a joint project with the Uniform Law Commission (ULC) (formerly known as the National Conference of Commissioners on Uniform State Laws), and the Mexican Center of Uniform Law (MCUL) to create a harmonized legal framework for UNAs in North America. In 2007, the Joint Drafting Committee agreed on a Statement of Principles¹ that each country has used as the basis for its draft legislation. The Uniform Unincorporated Nonprofit Associations Act (the Uniform Act) that follows this introduction is one part of the ULCC contribution to this joint project. The ULCC Team has also drafted amendments to the Québec Civil Code, which are contained in a separate document. This approach reflects the fact that the law of Québec already has a legislative framework for UNAs² and is, in all respects, considerably more advanced than the law that prevails in common law Canada in connection with UNAs.

[3] A good summary of the basic elements of a UNA at common law is found in a judgment of Lawton L.J. of the English Court of Appeal, who described a UNA as “. . . two or more persons bound together for one or more common purposes, not being business purposes, by mutual undertakings, each having mutual duties and obligations, in an organization which has rules which identify in whom control of it and its funds rests and upon what terms and which can be joined or left at will.”³ This summary must be supplemented by an important point for understanding the legal nature of a UNA. At common

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law, a UNA is not a legal entity that is separate from its members. This position is largely responsible for the arrested development of the law of UNAs in common law Canada.

[4] In fact, it is something of a misstatement to say that there is a law of UNAs in the same sense that there is a law of corporations or a law of trusts. Instead of a coherent legal framework for UNAs, there is merely a series of rules drawn mainly from the law of contracts, agency, and trusts that the courts have applied to UNAs. Most of these rules were developed by the English courts in the nineteenth century. They tend to reflect both the social conditions of that time and a lingering judicial distaste for unincorporated bodies that were, until the late eighteenth century, actively suppressed by the government.

[5] The common law rules governing UNAs have come into conflict with modern policy goals, particularly in the area of labour relations, and they have been overridden by the legislature for certain types of UNAs in certain specific circumstances.⁴ More recently, the courts have begun to reform some of the basic assumptions about UNAs. The leading case is the 1996 decision of the Supreme Court of Canada in *Berry v. Pulley*.⁵ In *Berry*, the court began the process of unraveling the central thread of UNA jurisprudence: the conclusion that UNAs are not legal entities separate from their members. The court decided that, since trade unions are given legal entity status for certain purposes spelled out in labour relations statutes, this status could be extended to apply to an issue that is not addressed in the governing legislation.⁶

[6] The Supreme Court of Canada was careful to limit the scope of its reasoning in *Berry*. It concluded that the courts should follow the lead of the legislature in reforming the law of UNAs.⁷ While this is a reasonable conclusion, it has the potential to cause further fragmentation and incoherence in the law. On the one hand, certain UNAs such as trade unions and political parties may be accorded entity status while, on the other hand, small-scale UNAs such as clubs, sports teams, and neighbourhood associations continue to be saddled with an out of date and confusing legal regime.

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[7] The Uniform Act is intended to remedy these deficiencies in the common law by establishing a coherent legal framework for UNAs. It was drafted with the concerns of small-scale informal UNAs uppermost in mind. Many of the provisions of the Uniform Act are framed as default rules that are intended to give some basic structure to these informal bodies. All UNAs would be able to modify these default rules.

[8] The Uniform Act addresses the following issues: (1) definition and types of organizations covered; (2) the application of the Act and its relationship to other laws; (3) the legal status, capacity, and powers of a UNA; (4) claims and liabilities; (5) governance—including the rights of members and the powers and duties of managers; (6) dissolution and winding up; and (7) mergers. The basic approach of the Uniform Act is to treat a UNA as a legal entity in addressing these issues. In addition, the Uniform Act is intended to supplement, rather than displace, existing laws that may apply to specific types of UNAs (such as trade unions). Finally, many of the provisions of the Uniform Act are geared to the nonprofit corporations statute of the enacting jurisdiction. This approach is intended to ensure that the enactment of the Uniform Act does not create an artificial disincentive to incorporation.

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of [enacting jurisdiction], enacts as follows:

DEFINITIONS AND INTERPRETATION

Definitions

1 The following definitions apply in this Act.

“governing principle” of an association means a rule of the association that governs its purpose or operation or the rights or responsibilities of its members or managers.

“majority vote” in relation to any matter means a majority of the votes cast at a properly called meeting of the persons entitled to vote on that matter.

“manager” means

(a) a natural person who, under an association’s governing principles, alone or together with others, is responsible for managing, or supervising the management of, the association’s undertaking and affairs; and

(b) a member who becomes a manager by default under subsection 18(2).

“member” means a person who, under an association’s governing principles, is entitled to participate in

(a) the selection of persons to manage, or supervise the management of, the association’s undertaking and affairs; or

(b) the development of the association’s governing principles or policies.

“nonprofit association” means an unincorporated body of persons joined by mutual consent for one or more common purposes other than profit.

“person” includes an unincorporated organization, a government and a department or branch of a government.

Comment: A UNA’s “governing principles” are the equivalent of a nonprofit corporation’s constitutions, articles of incorporation, or bylaws. They are the foundational rules that govern the UNA’s purposes and internal affairs. The governing principles of a UNA do not have to be in writing.

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A definition of “majority vote” is included for the sake of clarity. This expression crops up a number of times in the default organizational rules that appear later in the Uniform Act.

A “manager” of a UNA is an individual who, under the UNA’s governing principles, actively manages or supervises the management of the UNA’s undertaking and affairs. The word “manager” was selected as a neutral term to express this concept. The individuals on governing boards of UNAs are often in practice styled “directors,” “governors,” or “trustees.” The definition of “manager” turns on the substance of an individual’s role within the UNA and not on the individual’s formal designation.

A person is considered a member of a UNA for the purposes of the Uniform Act if that person is entitled to participate either in the selection of the UNA’s managers or in the development of the UNA’s governing principles or policies. The definition is framed in these broad terms in order to ensure that the benefits of the Uniform Act, such as the insulation from liability, will flow to persons who may find themselves liable or otherwise disadvantaged under the archaic common law rules.

“Nonprofit association” is defined in simple, broad terms. The phrase “mutual consent” refers to the contractual basis of the formation of a UNA. This specific phrase has been used because most agreements to form a UNA do not rise to the level of formality that is common among, for example, commercial contracts.

“Person” is given a broad definition in the *Interpretation Acts* of most provinces and territories. The intent of this definition is to extend further the definition of “person” to embrace unincorporated organizations, governments, and departments or branches of governments. In some cases, these bodies may be members of UNAs. There is no reason to deny them the benefits that flow from the Uniform Act.

The derivation of the definitions in section 1 from the Joint Drafting Committee’s Statement of Principles is as follows: “governing principle”—Principle (2); “manager”—Principle (4); member—Principle (3); “nonprofit association”—Principle (1).

Evidence of governing principles

2 An association’s governing principles may be oral, in writing or inferred from the practices of the association used by it consistently for the most recent five years or, if it has existed for less than five years, throughout its existence.

Comment: Many UNAs operate on an informal basis. Often, UNAs only have rudimentary written bylaws, or other organizational documents, to govern their internal practices and procedures. Many UNAs lack written bylaws or organizational documents entirely. This section is intended to accommodate these UNAs and to provide them with statutory support for their basic organizational structure.

Derivation: Principle (2).

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Interpretation of “nonprofit association”

3(1) An association does not cease to be a nonprofit association merely because it engages in a profit-making activity or earns a profit, if the profit is used only for its nonprofit purposes or set aside for those purposes.

Effect of joint ownership

3(2) Joint ownership of property, whether as joint tenants or tenants-in-common, is not by itself sufficient to establish a nonprofit association, even if the owners use the property for a nonprofit purpose.

Comment: This section contains two interpretive statements that may be used in defining a UNA for the purpose of the Uniform Act. Subsection (1) clarifies the meaning of “nonprofit” as it is used in the Uniform Act. This term may be easily misunderstood, as it implies that “nonprofit” bodies must forswear all activities that could produce a profit. In fact, many UNAs do engage in profit-making activities, as a means to support and advance their purposes. Subsection (1) makes it clear that profit-making activities, as such, are not the issue. Subsection (2) clarifies that two or more people holding property in common do not by that fact alone constitute a UNA.

Derivation: Subsection (1)—Principle (5); Subsection (2)—Principle (1).

APPLICATION OF THIS ACT AND OTHER LAWS

Application of Act

4(1) This Act applies to every nonprofit association formed or operating in [enacting jurisdiction], whether formed before or after the coming into force of this Act, other than

- (a) a marriage, common-law relationship or other domestic living arrangement;**
- (b) a trust;**
- (c) an association that is formed under an Act or regulation or under the prerogative of the Crown; and**
- (d) an association or type of association exempted by regulation.**

Exception — application of foreign law

4(2) Despite subsection (1), the law of the jurisdiction

- (a) stipulated in an association’s governing principles; or**
- (b) in the absence of applicable governing principles, in which an association has its main place of activities;**

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governs the relations among its members and managers and between the association and its members and managers.

Regulations

4(3) The Lieutenant Governor in Council may make regulations exempting an association or class of associations from the application of this Act.

Comment: This section preserves the residual or default character of the UNA form by stating that the Uniform Act applies to every UNA, whether it was formed before or after the coming into force of the Uniform Act. Given the informal character of most UNAs, it is not practical to expect the members or managers of UNAs to take positive steps to opt into this statutory regime.

Subsection (2) contains an exception to subsection (1) with respect to the application of foreign law. The general conflicts rules governing UNAs are in a state of confusion and arrested development which is similar to the poorly developed state of the law that generally relates to UNAs. The Uniform Act departs to a degree from the common law conflicts rules. Under subsection (1), the Uniform Act applies to every UNA formed *or operating* in the enacting jurisdiction. This means that questions of entity status, capacity, and liability should be decided by applying the law of the host jurisdiction, if that host jurisdiction has enacted the Uniform Act. The one exception is spelled out in subsection (2). The law of the UNA's home jurisdiction continues to govern its internal affairs. The Uniform Act adopted this conflicts rule for the sake of consistency with the rule adopted by the ULC.

Derivation: Principle (1) and Principle (6).

General principles of law and equity

5 The general principles of the common law and equity supplement this Act and continue to apply, except to the extent that they are inconsistent with this Act.

Comment: This section confirms the basic rule of statutory interpretation that principles of the common law and equity continue to apply, unless they are expressly displaced by a provision of the Uniform Act. Examples of these common law and equitable principles are the general principles of contract, agency, fraud, and estoppel.

Derivation: Principle (9).

Conflict with other Act or regulation

6 This Act supplements other laws that relate or apply to nonprofit associations. In the event of a conflict between a provision of this Act and a provision of any other Act or a regulation

(a) that governs a specific type of nonprofit association; or

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(b) that regulates nonprofit associations operating in [enacting jurisdiction];

the provision of that other Act or regulation prevails to the extent of the conflict.

Comment: Many jurisdictions have legislation that affects certain types of UNAs, such as trade unions, political parties, and churches. Clause (a) of this section establishes the rule that, in the event of an inconsistency between the Uniform Act and any of these statutes, the latter prevails.

Clause (b) establishes the same inconsistency rule for a different class of statutes—those statutes that regulate the activities of the nonprofit or voluntary sector generally. In comparison with the types of statutes covered by clause (a), there are few of these types of statutes in Canada, but they are not unknown.

Enacting jurisdictions should undertake a thorough review of all these other laws that may apply to UNAs to be certain that they do not need to be amended in order to continue to apply to UNAs after the Uniform Act comes into force.

Derivation: Principle (10).

LEGAL STATUS, CAPACITY AND POWERS

Separate legal entity

7 A nonprofit association is a legal entity separate and apart from its members and managers.

Comment: This section sets out a fundamental statement of principle for the Uniform Act. The separate legal status of a UNA is a concept that undergirds later provisions in the Uniform Act allowing a UNA to hold and dispose of property in its own name and to sue and be sued in its own name. It is also the key underpinning of the liability rules in the Uniform Act, which insulate the assets of members from claims against the UNA. This section reverses traditional common law principles that treat UNAs and other unincorporated bodies such as partnerships as aggregates of their members (or partners) and not as legal entities in their own right.

Derivation: Principle (7).

Continuing existence

8 A nonprofit association continues to exist, despite changes in its membership, until it is dissolved and wound up as provided for in sections 25 and 26.

Comment: This section contains an important corollary to the general principle set out in section 7. It declares that a UNA continues in existence until it is dissolved and wound up under the Uniform Act. This is one of the key aspects of legal entity status.

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Derivation: Principle (8).

Legal capacity and powers

9 A nonprofit association has the legal capacity and powers of a natural person, including the capacity and power

(a) to acquire, hold, encumber or transfer property in its own name;

(b) to enter into contracts in its own name;

(c) to be a beneficiary; and

(d) to sue and be sued in its own name, and to commence, defend, or intervene or participate in, any judicial, administrative or other proceeding.

Comment: This section contains an orthodox statement of the capacity and powers of a UNA in language that is familiar from Canadian for-profit and nonprofit corporate statutes. The section is included in the Uniform Act as a corollary of the general principle set out in section 7. The list of specific powers set out in clauses (a) to (d) are included for further clarity.

Transitional — transferred property

10 An estate or interest in real or personal property that

(a) by terms of a transfer was purportedly transferred to a nonprofit association before this Act came into force; and

(b) under the laws of [enacting jurisdiction], did not vest in the association or in one or more persons on behalf of the association;

vests in the association on the day this Act comes into force, unless the parties have treated the transfer as ineffective.

Comment: The rule at common law is that a gift to a UNA is void. This conclusion follows from the UNA's lack of legal entity status. This section is intended to give effect to a transfer of property that would have been frustrated by the common law rule. It is not a retroactive rule. It only applies to facts that are in existence when the Uniform Act comes into force.

Derivation: no specific principle.

CLAIMS AND LIABILITIES

No effect on earlier claims

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11 **Nothing in this Act affects an action or proceeding that was commenced, or a right or liability that accrued, before this Act came into force.**

Comment: This section contains a transitional rule. This transitional rule is consistent with a basic rule of statutory interpretation, which is that a statute presumptively should not be interpreted to interfere with vested rights. Vested rights include both rights that have vested at common law and acquired, accrued, or accruing statutory rights.

Derivation: Principle (15).

Liability of association

12 **A nonprofit association is liable for its own acts and omissions and for the acts and omissions of its managers, employees and agents to the same extent that a nonprofit corporation is liable for the acts and omissions of its directors, officers, employees and agents.**

Comment: The purpose of this section is to clarify two issues. First, a UNA is liable for its own acts and omissions. Under existing common law rules, a UNA cannot be liable for its acts and omissions because the UNA is not a separate entity. Second, a UNA is vicariously liable for the acts and omissions of its managers, employees, and agents to the same extent as a corporation is vicariously liable for the acts and omissions of its directors, employees, and agents. The principles of vicarious liability in common law Canada are primarily judge-made law. They are currently in a phase of transition and development. A number of the leading cases involved nonprofit corporations. By virtue of this section, this developing jurisprudence will be applicable to UNAs.

Derivation: Principle (18).

Limited liability of member or manager

13(1) **Except as otherwise provided in this section, a member or manager of a nonprofit association is not liable for any of the following merely by reason of being a member or manager:**

- (a) a debt or other obligation of the association;**
- (b) an act or omission for which the association is liable.**

Member or manager liable for own conduct

13(2) **Subject to any other applicable law, a member or manager of a nonprofit association is liable for his or her own tortious acts and omissions.**

Member or manager liable under contract

13(3) **A member or manager of a nonprofit association is liable for an obligation under a contract entered into by or on behalf of the association if the member or manager**

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- (a) assumed personal liability for the obligation; or**
- (b) executed the contract on behalf of the association without the authority to do so or without disclosing that he or she was acting on behalf of the association.**

Comment: The main liability rules applicable to UNAs under the Uniform Act are set out in this section. The Uniform Act represents a significant departure from the common law liability rules for UNAs. These common law rules are somewhat obscure and not always well understood, even by lawyers.

The effect of subsection (1) is to provide the members and managers of a UNA with the same protection against personal liability that is afforded to the directors, officers, and members of a nonprofit corporation. This protection applies both to contractual liability and tortious liability. Subsection (2) makes it clear that nothing in the Uniform Act relieves a member or a manager from liability for a tort committed by that member or manager. The purpose of subsection (3) is to confirm that a member or a manager of a UNA continues to be liable under a contract if that member or manager has (a) agreed to assume liability under the contract, either as a party to it or as a guarantor or (b) has signed the contract as an agent with an undisclosed principal.

Derivation: Principles (16), (19)–(24)

GOVERNANCE

Members

Becoming or ceasing to be a member

14(1) Except as otherwise provided in the governing principles of a nonprofit association,

- (a) a person may be admitted, suspended or expelled as a member of the association only by a majority vote of the members; and**
- (b) the resignation, suspension or expulsion of a member does not relieve the member of any liability or obligation that he or she incurred as a member.**

Membership is voluntary

14(2) No person may be made a member of a nonprofit association without his or her consent, and a person may resign from membership at any time.

Comment: Subsection (1) establishes default rules for the admission and resignation of members. As is the case for the other default rules in the Uniform Act, subsection (1) only requires a majority vote for the admission of a new member. A UNA may wish to set a higher requirement. Clause (b) confirms that the resignation, suspension, or expulsion of a member has no effect on the liability of a member to the UNA. Subsection (2) is

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intended to clarify that, even though the terms and conditions of membership can be set by a UNA's governing principles, the governing principles cannot require any person to become or remain a member against that person's wishes.

Derivation: Principles (35)–(36)

Membership decisions

- 15(1) Except as otherwise provided by an association's governing principles,**
- (a) each member is entitled to one vote on each matter put to a vote at a meeting of members;**
 - (b) matters to be decided by members are to be decided by a majority vote; and**
 - (c) membership approval is required for**
 - (i) a change in the association's governing principles,**
 - (ii) a merger under section 24, and**
 - (iii) any transaction or activity outside the ordinary course of the association's activities, including a sale, lease or other disposition of all or substantially all of its property.**

Notice and quorum for meetings of members

- 15(2) A nonprofit association's governing principles govern the notice and quorum requirements for meetings of members.**

Comment: The purpose of this section is to establish a basic default framework for decision-making by the members of a UNA. Subsection (1) sets out a default list of matters that require member approval. Some of the matters listed in subsection (1) require supermajority approval under nonprofit corporation statutes. The Uniform Act does not take this position. If a UNA wishes to require a supermajority for any of these issues, then it may implement this requirement through its governing principles. Subsection (2) does not contain a default rule for notice of and quorum at a meeting of members, but it does give statutory recognition of those requirements as they are spelled out in a UNA's governing principles.

Derivation: Principles (26), (30)

Member is not agent

- 16 A member of a nonprofit association is not an agent of the association merely by reason of being a member.**

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Comment: This section is intended to clarify that a person's status as a member of a UNA does not, in itself, make that person an agent of the UNA. Agency and the power to bind a UNA are the subject of general agency principles. Under agency law, the managers of a UNA would, in a typical case, be considered to have the apparent authority to bind the UNA for acts in the ordinary course of the UNA's activities. So, a member who is also a manager should be considered to be an agent of the UNA. This conclusion is reached by virtue of the person's status as a manager. Under general agency law, a member may have the actual authority to bind the UNA or may have apparent authority to bind the UNA because of the member's established course of dealing with a third party or because of the doctrine of estoppel. In these cases, the member is not an agent of the UNA solely by virtue of being a member.

Derivation: Principle (27)

Membership not transferable

17 A membership in a nonprofit association is not transferable except as permitted by the association's governing principles.

Comment: This rule corresponds to a basic position of the nonprofit or voluntary sector. A member is usually understood to be making a personal commitment that should not be transferable. If a specific UNA wishes to allow transfers, then they can be made in accordance with the UNA's governing principles.

Derivation: Principle (37)

Managers

Selection or dismissal of managers

18(1) Except as otherwise provided by a nonprofit association's governing principles, membership approval is required for the selection or dismissal of a manager.

Members as managers

18(2) If an association would otherwise have no managers, every member of the association is a manager.

Comment: This section provides default rules for the selection of managers. The word "selection" is used as a neutral term, embracing election, appointment, and other means of selecting an individual to be a manager of a UNA. The selection of managers is to be done in accordance with a UNA's governing principles. If no selection has been made in accordance with the governing principles, or if a UNA has no governing principles covering this issue, then by default all the members of a UNA are managers. This may be appropriate for small UNAs, but larger UNAs will have an incentive to select their managers in accordance with their governing principles.

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Derivation: Principle (28)

Rights, responsibilities and decisions of managers

19(1) Except as otherwise provided by a nonprofit association’s governing principles,

(a) the managers of an association have equal rights in carrying out their responsibilities as managers; and

(b) differences among the managers are to be resolved by a majority of the managers.

Notice and quorum for meetings of managers

19(2) A nonprofit association’s governing principles govern the notice and quorum requirements for meetings of its managers.

Comment: This section provides a basic default framework for decision-making by a UNA’s managers. The intent is that a UNA’s governing principles will provide for the type of managerial structure that the UNA wants to have. Clause (a) of subsection (1) provides that managers have equal rights in carrying out their managerial responsibilities. The nature of these responsibilities can be grasped from the definition of “manager” in section 1, which provides that a manager is an individual who actively manages or is responsible for supervising the management of a UNA. Clause (b) provides that the managers of a UNA have equal rights in carrying out their responsibilities. Both statements are default rules, which may be modified by a UNA’s governing principles.

Subsection (2) confirms that the governing principles of a UNA govern practical issues such as notice and quorum requirements for a managers’ meeting. The use of proxies at a managers’ meeting is not permitted at common law.

Derivation: Principles (29)–(30).

Manager’s duties of loyalty, good faith and care

20 A manager of a nonprofit association

(a) has the same duties of loyalty, good faith and care that a director or officer of a nonprofit corporation has under the laws of [enacting jurisdiction]; and

(b) is liable for a breach of any of those duties to the same extent that a director or officer of a nonprofit corporation would be liable under that law.

Comment: This section contains the duties of loyalty, good faith, and care that apply to a manager of a UNA. The section is geared to the duties that are set out in the enacting jurisdiction’s nonprofit corporation statute. This approach has been taken for two reasons.

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First, most of the issues that confront the managers of a UNA are essentially the same as the issues that confront the directors of a nonprofit corporation. Framing the duties applicable to managers in the same terms as the duties applicable to directors will ensure that the large body of jurisprudence that has built up around the corporate duties will be available to assist with interpretation of the UNA duties. Second, there is considerable variation in the statutory expression of these duties for nonprofit corporation directors across Canada.

This section is one of the few sections in the Uniform Act that is mandatory rather than default.

Derivation: Principles (31), (33)

Association may indemnify manager

21(1) Subject to its governing principles, a nonprofit association may indemnify, or enter into an agreement to indemnify, a manager of the association to the extent that a nonprofit corporation may indemnify a director or officer of the corporation under the laws of [enacting jurisdiction].

Association may advance litigation expenses

21(2) Subject to its governing principles, a nonprofit association may advance, or enter into an agreement to advance, an amount to a manager who is, or is about to become, a party to a legal or administrative action or proceeding to pay for expenses related to that action or proceeding pending its outcome, but only to the extent that a nonprofit corporation may advance an amount to a director or officer in similar circumstances under the laws of [enacting jurisdiction].

Association may obtain insurance

21(3) A nonprofit association may purchase and maintain insurance for the benefit of a manager against any liability incurred by the manager in his or her capacity as a manager of the association.

“Manager” includes former manager

21(4) In this section, “manager” includes a former manager.

Comment: The right to indemnification for nonprofit corporation directors varies greatly from jurisdiction to jurisdiction. Some statutes do not provide for indemnification, others only provide for indemnification with court approval, and still others take note of recent developments in litigation and authorize the advancement of defence costs. In view of this variety, subsections (1) and (2) are both tied to the statute governing nonprofit corporations in the jurisdiction.

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Subsection (3) confirms that a UNA may purchase and maintain liability insurance for its managers. Subsection (4) gives the word “manager” an expanded definition for this section.

Derivation: Principle (34)

Access to Records

Access to records

22(1) The members and managers of a nonprofit association and their agents and legal representatives are entitled, upon reasonable notice, to inspect and copy, at a reasonable time and location specified by the association, any records of the association that are material to their rights or obligations as members or managers, as the case may be.

Membership lists

22(2) Despite subsection (1), no member is entitled to inspect or copy a list of members of the association unless he or she has provided a written undertaking not to use the information, or allow it to be used, except in connection with

(a) an effort to influence the voting of the members of the association; or

(b) any other matter relating to the affairs of the association.

Comment: The Uniform Act does not require a UNA to maintain books and records. If a UNA chooses to maintain books and records, then they must be made available to the members and managers in accordance with this section. The term “records” should be interpreted broadly, embracing both written and electronic data. Subsection (2) is included as a special rule applying to membership lists. Access to these lists has been an area of rising concern in the voluntary sector. A clear statutory rule helps to allay that concern.

Derivation: Principle (32)

Restrictions on access and use

23 A nonprofit association may impose reasonable restrictions on access to its records and on their use.

Comment: This section authorizes a UNA to impose reasonable restrictions on access to and use of its records. These restrictions will vary from case to case. In general, they may include restrictions such as making the records available only at specific location, limiting the time of access to business hours, and charging a reasonable fee for copies. Whether any given restriction is reasonable depends in large measure on the context in which it is imposed.

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Derivation: Principle (32)

MERGER

Capacity to merge

24(1) A nonprofit association and one or more other organizations (each of which is referred to in this section as a “participating organization”) may merge and continue as one organization (referred to in this section as the “merged organization”) in accordance with a plan of merger and this section.

Plan of merger

24(2) A plan of merger must include

- (a)** the name and form of each participating organization;
- (b)** the name and form of the merged organization and its proposed governing principles or similar rules;
- (c)** the terms of the proposed merger, including
 - (i)** terms that address the manner in which the interests of owners and members of the participating organizations in those organizations are to be disposed of or converted into interests in the merged organization,
 - (ii)** terms that address the effect of the proposed merger on the liability of a member, owner or manager of a participating organization, or any similar person in relation to a participating organization, for any liability of the participating organization,
 - (iii)** terms that provide for the vesting of property of each participating organization in the merged organization, and the disposition of any such property that is not to vest in the merged organization,
 - (iv)** terms that specify the extent to which the rights, privileges, immunities, powers, and purposes of each participating organization lapse or continue as rights, privileges, immunities, powers and purposes of the merged organization, and
 - (v)** terms that continue the liabilities of the participating organizations as liabilities of the merged organization, or ensure that any liability not so continued, including any liability to a person who does not consent to the merger, will be satisfied or adequately provided for;

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(d) a description of persons who may adversely affected by the merger, the nature of their interest in the outcome, and the measures, if any, to be taken to protect their interest; and

(e) the proposed effective date of the merger.

Approvals required

24(3) A merger under this section takes effect only if

(a) the merger complies with the governing law of each participating organization, and has been approved by each participating organization in accordance with its governing law; and

(b) the terms of the merger are approved, upon a joint application by the participating organizations, by [the superior court of plenary jurisdiction in the enacting jurisdiction].

Powers of court

24(4) The court, in response to an application for its approval of the terms of a proposed merger, may

(a) make any interim order it thinks fit, including any order determining notice to be given to any person, or dispensing with notice to any person; and

(b) dismiss the application, or approve the terms of the merger as proposed or with any amendments or additional terms or conditions the court considers necessary to protect any material interest in a participating organization.

Effect of merger

24(5) Subject to any terms or conditions of the court order approving a merger,

(a) on the effective date of the merger,

(i) the participating organizations are continued as the merged organization, and cease to exist as separate organizations, and

(ii) the merger takes effect in accordance with the terms of merger approved by the court;

(b) any property that was held under a trust or condition by a participating organization and vests in the merged organization, continues to be held by the merged organization under the same trust or condition; and

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(c) if a bequest or other gift made to a participating organization takes effect or remains payable after the merger, it enures to the benefit of, and may be transferred or paid to, the merged organization, subject to any condition or trust obligation that would have applied to the participating organization if the merger had not occurred.

Comment: This section authorizes a UNA to merge with another UNA or with another organization. The bulk of the section is concerned with setting out the procedure for such a merger. The starting place for any merger is the plan of merger, which is an agreement between the parties. Subsection (2) sets out in detail the requirements for a plan of merger. Subsection (3) describes the approvals that are required for a merger to be effect. For a UNA, a merger must be authorized by a majority vote of the UNA's members, unless the UNA's governing principles require a different authorization. *See* section 15 (1) (c) (ii). A merger must also be authorized by the Superior Court of an enacting jurisdiction. Subsection (5) sets out the legal effects of a merger.

In order for another type of organization to merge with a UNA, it will need to be authorized under its governing legislation. In all likelihood, enacting jurisdictions will have to consider amending the governing legislation for various types of organizations to give this section its full effect.

Derivation: Principle (40).

DISSOLUTION AND WINDING-UP

How association may be dissolved

25 A nonprofit association may be dissolved as follows:

- (a) as provided for in its governing principles;**
- (b) if not provided for in the governing principles, by a majority vote of its members;**
- (c) as permitted or required by a court order; or**
- (d) if the association is no longer active and has been inactive for at least three years, by a resolution of its managers or, if it has no managers, of its last incumbent managers.**

Comment: This section provides a very basic procedure for the winding up of a UNA. The key reform in this section is the default rule that a UNA may be wound up by a majority vote of its members. (A UNA may provide for a different standard in its governing principles.) The section also provides for the winding up of inactive UNAs.

Derivation: Principle (38).

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Winding-up

26 Subject to any court order governing the dissolution, when a nonprofit association is dissolved, any remaining property of the association must be dealt with according to the following rules:

- 1.** Any property held under a trust must be dealt with, transferred or distributed according to the terms of the trust.
- 2.** Any donated property held subject to a condition that it be paid or transferred to a person designated by the donor must be paid or transferred to that person.
- 3.** All known debts and liabilities of the association must be paid or adequately provided for.
- 4.** Any remaining property must be distributed according to the association's governing principles or, in the absence of an applicable governing principle, equally among the association's current members or as they otherwise direct.
- 5.** If any remaining property cannot be distributed according to rule 4, it is to be dealt with in the same manner as property of a person who dies intestate and without a successor under [name of intestate succession Act in enacting jurisdiction].

Comment: This section contains a basic distribution scheme for a UNA's assets after it has been wound up. The section is based on Cal. Corp. Code § 18410.

Derivation: Principle (38).

COMING INTO FORCE

Coming into force

27 This Act comes into force

Comment: Canadian jurisdictions take a variety of approaches to bringing legislation into force. For example, in some jurisdictions it is typical for statutes to come into force on royal assent; in others, legislation typically comes into force by proclamation or regulation. It is not the intent of the Uniform Act to prescribe a specific method for coming into force. Enacting jurisdictions should consider whether a transitional period is necessary. The Uniform Act works significant changes in the legal framework for UNAs. It may be advisable to spend six months or one year publicizing the changes among participants in the nonprofit sector and providing plain language educational materials explaining the changes to the law.

Derivation: no specific principle.

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¹ See, online: NCCUSL Committees <http://www.law.upenn.edu/bll/archives/ulc/hunaa/2007july_principles.htm>.

² C.C.Q. arts 2267–79.

³ *Conservative and Unionist Central Office v. Burrell (Inspector of Taxes)*, [1982] 1 W.L.R. 522 at 525, [1982] 2 All E.R. 1 (C.A.).

⁴ See, e.g., *Labour Relations Code*, R.S.B.C. 1996, c. 244, s. 154 (“Every trade union and every employers’ organization is a legal entity for the purposes of this Code.”).

⁵ 2002 SCC 40, [2002] 2 S.C.R. 493, 211 D.L.R. (4th) 651 [*Berry* cited to S.C.R.].

⁶ *Berry*, *ibid.* at para. 48.

⁷ *Berry*, *ibid.* at para. 51.