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Commissioned Paper:
Donation-Based Crowdfunding: Legal
Framework for Crowdfunding and
Governance of Online Platforms

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Expert Report on Donation-Based Crowdfunding: Legal Framework for Crowdfunding and Governance of Online Platforms

For the Public Order Emergency Commission

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1. Mandate

My mandate is to provide an independent critical review of the relevant literature, which includes an analysis of the legislation, case law and doctrine regarding the legal framework of donation-based crowdfunding and the governance of online crowdfunding platforms.

I will also examine the jurisdictional and transnational aspects of crowdfunding, while considering international legal models where applicable.

Beyond the legal framework, my mandate includes documenting the dominance and influence of certain platforms, along with their associated challenges or problems.

2. Short Answer

Donation-based crowdfunding creates a legal relationship between the project owner, the donors and the beneficiaries of the campaign. The project owner is the person or group that launches the crowdfunding campaign. There are two types of intermediaries that also play a role: first, the crowdfunding platform that hosts the campaign on a dedicated page of its website and, second, the payment intermediary. The payment intermediary is a financial institution or money services business that the crowdfunding platform entrusts with processing donations and transferring them to the designated individuals.

The legal framework applicable to donation-based crowdfunding is poorly defined and somewhat inadequate, both in provincial private law and in federal public law.

In Quebec law, applying the deed of gift to crowdfunding is unsatisfactory, whether one views the project owner or the beneficiary as the donee of the funds collected.

Under Canadian common law, the application of the trust better reflects the role of the project owner, who holds the funds as a trustee. Further challenges arise, however, if the trust is invalid due to uncertainty of objects, if the funds could not be used to achieve the purpose of the campaign, or if there are surplus funds.

The Uniform Law Conference of Canada developed a uniform donation-based crowdfunding act that addresses these challenges. Adopting this act across Canada would provide greater protection for donors and recipients, while limiting the power of the crowdfunding platform when it is involved in administering and distributing the funds. Since crowdfunding often crosses jurisdictional boundaries, adopting a uniform legal framework would reduce uncertainty caused by a conflict of law or forum.

Looking at federal public law, there are several offences in the *Criminal Code* that cover the worst abuses of crowdfunding, such as fraud, false pretence and breach of trust. Clarifying the applicable private law would facilitate the enforcement of these offences, as it would specify who may hold the funds and in what capacity. The provisions on the financing of terrorism appear to

cover the risks of crowdfunding in this respect. The freezing of funds, authorized by the *Criminal Code*, was an effective measure during the 2022 “Freedom Convoy.”

Following up on the financial measures of the *Emergencies Act*, the federal government amended the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* in April 2022 to include donation-based crowdfunding. The usefulness of these measures should be reviewed, since platforms typically outsource payment processing to intermediaries already subject to these regulations. Additionally, some organizations that engage in crowdfunding without the use of a platform may be excluded.

Essentially, crowdfunding platforms collecting and using personal data raises the same issues as with social media. Reforming private sector privacy legislation should address these concerns.

Some crowdfunding campaigns have attracted attention due to their political nature. People are seeing how effective these campaigns are when it comes to mobilizing and funding citizen-led movements, and in some cases, civil unrest challenging the state. We should not exaggerate this risk by applying an overly strict framework to crowdfunding, as it remains above all a tool for mutual aid and support in community-oriented projects. Still, it is important to ensure that crowdfunding does not serve as a means of circumventing electoral law.

The same tax rules that require thorough, transparent management on the part of registered charities do not apply to most crowdfunding organizations, let alone informal groups. It is fair to assume that crowdfunding platforms often do not verify the identity of project owners or donors. However, many private law relationships are formed without public disclosure or identity checks, and this does not seem to be a cause for concern.

Ultimately, it seems essential that private law be clarified across Canada in order to achieve a better framework for donation-based crowdfunding while making it easier to implement public law that applies to this practice.

3. Background

During the “Freedom Convoy” that took place in Ottawa in January and February 2022 (hereinafter referred to as the “Convoy”), the organizers launched crowdfunding campaigns via two U.S.-based platforms: GoFundMe (GFM) and GiveSendGo (GSG). These campaigns raised over \$10 million to provide financial support for the truckers taking part in the Convoy.

The way in which these two crowdfunding campaigns were carried out raises several questions regarding the legal framework for crowdfunding and the governance of online platforms. It is useful to briefly outline how these two campaigns developed, as well as the control measures imposed on them. For context, here is a short timeline of the events that took place until emergency measures were lifted on February 23.

3.1 Timeline of Events

- January 13: “2022 Freedom Convoy” is announced on social media
- January 14: crowdfunding campaign is launched on GFM platform
- January 22: first convoys depart
- January 27: GFM pays Tamara Lich \$1 million on top of the \$6.7 million already raised
- January 28: convoys arrive in Ottawa and protestors reportedly engage in threats, racist remarks and harassment, particularly towards journalists
- January 29: first full day of protests in Ottawa
- Over the next few days, an increasing number of incidents disturb the peace; some protestors wave Nazi and far-right flags and symbols; downtown residents are disturbed by the honking sounds and truck exhaust; some residents are afraid to go outside; many businesses close following a recommendation by Ottawa police
- January 30: the NPO “Freedom 2022 Human Rights and Freedoms” is incorporated under the *Canada Not-for-profit Corporations Act*
- February 2: after a meeting with Ottawa police, GFM announces that the crowdfunding campaign is under review to determine if it complies with its terms of use
- Over the next few days, more and more people are arrested or given tickets
- February 4: Ottawa residents file a class-action lawsuit against the Convoy’s organizers, supporters and participants (*Li v. Barber*); on the same day, GFM shuts down the crowdfunding campaign, which has already raised \$10 million; Tamara Lich announces a new crowdfunding campaign through the GSG platform
- February 5: GFM announces it will automatically refund all donors
- February 6: the City of Ottawa declares a state of emergency
- February 7: as part of the Ottawa residents’ class-action lawsuit, Ontario Superior Court Justice McLean orders the truckers in the Convoy to stop honking their horns
- February 10: at the request of the Ontario Attorney General, Chief Justice McWatt of the Ontario Superior Court of Justice grants an *ex parte* restraint order against the funds held by GSG pursuant to s. 490.8 of the *Criminal Code*
- February 11: Ontario declares a state of emergency
- February 14: the federal government invokes the *Emergencies Act*
- February 15: the Governor in Council makes the *Emergency Measures Regulations* and the *Emergency Economic Measures Order*; Ottawa police chief resigns
- February 17: Tamara Lich and Chris Barber are arrested; as part of the Ottawa residents’ class-action lawsuit, Ontario Superior Court Justice MacLeod grants an *ex parte* interlocutory injunction to freeze the financial assets of the Convoy’s organizers, supporters and participants
- February 20 (approximately): the financial entities specified in the *Emergency Economic Measures Order* freeze several accounts belonging to the Convoy’s organizers or participants
- February 23: the federal government revokes the *Emergencies Act*

3.2 Convoy-Related Crowdfunding Campaigns

On both the GFM and GSG platforms, each crowdfunding campaign has its own dedicated page containing the following key information: 1) the name of the campaign; 2) the name of the project owner; and 3) the campaign details, i.e., the reasons why the project owner is asking for donations and how that person intends to use them. The campaign's launch date does not always appear on the dedicated page, and this page disappears after the campaign has ended, making it sometimes difficult to find this information afterward.

3.2.1 Campaign Launched Through GoFundMe Platform

Name of campaign: Freedom Convoy

Launch date: January 14, 2022

Project owners: Tamara Lich and Benjamin Dichter. Keith Wilson, the lawyer representing Tamara Lich, told the Globe & Mail that Benjamin Dichter was never involved and that he never had control over the funds.¹

Campaign details: the dedicated page no longer exists, but media sources report that the funds were to be used to pay for fuel, food and lodging for the truckers participating in the Convoy.²

Follow-up actions from the GFM platform: the campaign was closely monitored by GFM.³ On January 25, GFM announced that it was freezing the money until Ms. Lich provided a plan on how it would be spent.⁴ GFM paid her \$1 million on January 27.

¹ Colin Freeze, "MPs call on GoFundMe staff to testify about efforts to screen out hate campaigns," *Globe & Mail* (February 3, 2022), online: <[theGlobeandmail.com/canada/article-gofundme-mps-screen-hate-campaigns-trucker-convoy/](https://www.theglobeandmail.com/canada/article-gofundme-mps-screen-hate-campaigns-trucker-convoy/)>, accessed September 26, 2022.

² Christopher Reynolds, "GoFundMe gèle 4 millions destinés aux camionneurs contestataires", *Presse Canadienne* (January 25, 2022), online: lapresse.ca/covid-19/2022-01-25/vaccination-obligatoire/gofundme-gele-4-millions-destines-aux-camionneurs-contestataires.php>, accessed September 26, 2022. The article quotes the following excerpt from the GFM crowdfunding campaign's dedicated page: "Our current government is implementing rules and obligations that are destroying the foundations of our businesses, industries and livelihoods. We are a peaceful country that has helped protect nations across the globe from tyrannical governments who oppressed their people, and now it seems it is happening here."

³ The day after the campaign was launched, GFM began actively monitoring it "based on significant fundraiser activity": Testimony of Juan Benitez, President of GFM. House of Commons, Standing Committee on Public Safety and National Security, Evidence, 44-1, no. 12 (March 3, 2022), online: <ourcommons.ca/DocumentViewer/en/44-1/SECU/meeting-12/evidence>.

⁴ In an email, GFM spokesperson Rachel Hollis told the Canadian Press: "We require that fundraisers be transparent about the flow of funds and have a clear plan for how those funds will be spent. In this case, we are in touch with the organizer to verify that information. Funds will be safely held until the organizer is able to provide the documentation to our team about how funds will be properly distributed." *Canadian Press*, *supra* note 2.

GFM suspended the “Freedom Convoy” crowdfunding campaign on February 2 and terminated it on February 4.⁵ The platform explained that law enforcement had communicated the fact that the protest had turned violent and protestors were committing criminal acts, which violates the platform’s terms of use that prohibit, among other things, the promotion of violence and harassment.⁶

The crowdfunding campaign raised over \$10 million before GFM decided to terminate it.

GFM initially promised to refund the donors who requested it, as well as to donate surplus funds to charities chosen by the project owners.⁷ The next day, GFM announced that all donors would be automatically refunded.⁸

3.2.2 Campaign Launched Through GiveSendGo Platform

The dedicated page no longer exists, but it has been preserved in a blog post by Mark Blumberg.⁹

Name of campaign: “Freedom Convoy 2022”

Launch date: February 4 or 5, 2022

Project owner: Freedom 2022 Human Rights and Freedoms, an NPO incorporated on January 30, 2022, under the *Canada Not-for-profit Corporations Act*. Tamara Lich and Benjamin Dichter are among its directors.¹⁰

⁵ Testimony of Juan Benitez, *supra* note 3.

⁶ Nick Boisvert, “GoFundMe ends payments to convoy protest, citing reports of violence and harassment,” *CBC* (February 4), online: <[cbc.ca/news/politics/gofundme-stops-payments-1.6340526](https://www.cbc.ca/news/politics/gofundme-stops-payments-1.6340526)>. GFM announces on its website: “We now have evidence from law enforcement that the previously peaceful demonstration has become an occupation, with police reports of violence and other unlawful activity.”

GFM justified the payment it made because “organizers were able to prove that money would be used for participants involved in peaceful protest.”

⁷ GFM then “offered donors the chance to request a refund or, in accordance with the statements made by the campaign organizer, to have their donations allocated to recognized and credible charities, chosen by the campaign organizer and verified by GoFundMe.” *Ibid*.

⁸ GoFundMe, “UPDATE: GoFundMe to refund all Freedom Convoy 2022 donations” (February 4, 2022), online: *Medium* <medium.com/gofundme-stories/update-gofundme-statement-on-the-freedom-convoy-2022-fundraiser-4ca7e9714e82>.

⁹ Mark Blumberg, “New Canadian Federal non-profit ‘Freedom 2022 Human Rights and Freedoms’” (February 6, 2022), online (blog): *Canadian Charity Law* <canadiancharitylaw.ca/blog/new-non-profit-freedom-2022-human-rights-and-freedoms/>.

¹⁰ See information available on Corporations Canada website. Corporations Canada, “Federal Corporation Information – 1372685-1”, online: <[ic.gc.ca/app/scr/cc/CorporationsCanada/fdrCrpDtIs.html?corpId=13726851&V_TOKEN=null&crpNm=Freedom 2022 Human Rights and Freedoms&crpNmbr=&bsNmbr=>](https://ic.gc.ca/app/scr/cc/CorporationsCanada/fdrCrpDtIs.html?corpId=13726851&V_TOKEN=null&crpNm=Freedom%2022%20Human%20Rights%20and%20Freedoms&crpNmbr=&bsNmbr=>)>, last updated September 14, 2022.

Campaign details: according to the dedicated page, the funds were to be used to pay for fuel, food and lodging for the truckers, without specifying whether this applied only to Ottawa participants, or to other truckers involved in protests across Canada. The page also indicated that the funds would be paid directly to a fuel supplier and that any surplus funds would be donated to a “credible Veterans organization which will be chosen by the donors.”

In a statement, GSG stated that the organizers had pledged to use the funds to provide the Convoy’s truckers with humanitarian assistance and legal support.¹¹

According to GSG co-founder and representative Jacob Wells, the funds raised in this campaign were eventually refunded to the donors. In one of the judgments in *Li v. Barber*, the judge stated that, “I am advised by Mr. Groot and by Mr. Wells that the defendant Freedom 2022 Human Rights and Freedoms was to have been a recipient of funds raised on the GiveSendGo platform, but it did not open a bank account to receive the funds prior to the granting of the injunction. As a consequence, the funds were never transferred. Mr. Wells advises that GiveSendGo is now returning those funds to the donors.”¹²

The crowdfunding campaign raised over \$12 million.

3.2.3 Other Campaigns Launched Through GiveSendGo Platform

As of September 26, 2022, at least seven other campaigns related to the Convoy are still active. For example, a campaign named “Freedom Convoy 2022 Worldwide Fund God Bless” launched by “Envision LBV” has raised over \$1 million towards a goal of \$2 million.¹³

A second campaign, “Unacceptable Documentary Freedom Convoy,” is collecting donations to produce a feature documentary about the Convoy. This campaign has raised \$45,000 towards its \$90,000 goal.¹⁴

¹¹ Sarah Turnbull, “Freedom Convoy raises millions on new crowdfunding platform,” *CTVNews* (February 8, 2022), online: <[ctvnews.ca/politics/freedom-convoy-raises-millions-on-new-crowdfunding-platform-1.5772985](https://www.ctvnews.ca/politics/freedom-convoy-raises-millions-on-new-crowdfunding-platform-1.5772985)>, accessed September 26, 2022.

¹² *Li v. Barber*, 2022 ONSC 1543, subsec. 18. This judgment, rendered in the Ottawa residents’ class-action lawsuit, pertains to the renewal of the *ex parte* interlocutory injunction to freeze the defendants’ assets. The judge stated that the GSG platform was not subject to the injunction and that the funds that it did not distribute to project owners or campaign beneficiaries were not subject to the freezing of assets (subsec. 17–24).

¹³ GiveSendGo, “Freedom Convoy 2022 Worldwide Fund God Bless,” online: *GiveSendGo* <givesendgo.com/FreedomConvoy2022Worldwide>, accessed September 26, 2022.

¹⁴ GiveSendGo, “Unacceptable Documentary Freedom Convoy,” online: *GiveSendGo*, <givesendgo.com/unacceptabledoc>, accessed September 26, 2022.

A third campaign launched by “Canadian Friends” to provide financial support for Tamara Lich has raised \$70,000. The page mentions that the campaign has been approved by Tamara Lich’s lawyer, Keith Wilson, QC.¹⁵

As these examples show, there can be several campaigns for a single event, and it can be difficult to know whether these campaigns are backed or approved by the beneficiaries or main organizers of a cause or movement. This was the case with the Humboldt bus tragedy in Saskatchewan. The main crowdfunding campaign launched through GFM raised \$15 million to help victims and their families. When that campaign ended, some people were frustrated that they were not able to contribute, and other project owners launched a series of new campaigns. The Broncos team president made a public statement informing potential contributors that these other campaigns were not endorsed by the team.¹⁶

3.2.4 “Ottawa Fund” Crowdfunding Campaign

Another crowdfunding campaign was launched in support of the Ottawa residents’ class-action lawsuit. This campaign can be found through a page, apparently created by the law firm representing the plaintiffs, which provides information about the class-action lawsuit.¹⁷ According to the donation page, the money raised will be used to pay the plaintiffs’ legal fees and other expenses related to the class-action lawsuit, while surplus funds will be refunded to donors who request it once litigation has concluded.¹⁸

The donation page was created using software tools provided by NationBuilder and Progressive Nation, a web designer that integrates NationBuilder’s tools. The software developed by these companies allows users to design websites for an organization, a cause, a movement or a campaign with a wide range of content and features, including donation pages.¹⁹ The personal information of donors and others who follow or engage with the campaign can then be collected in an integrated way. Developed by NationBuilder, a California-based company launched in 2011,

¹⁵ GiveSendGo, “Supporting Tamara Lich,” online: *GiveSendGo* <givesendgo.com/Tamaralich>, accessed September 26, 2022.

¹⁶ It seems that Ms. Kellington, the person who launched the main crowdfunding campaign, gave up leadership rather quickly to Broncos executives and GFM, who created a foundation and petitioned Saskatchewan’s superior court to authorize a plan to distribute the funds. See: *Re Humboldt Broncos Memorial Fund Inc*, 2018 SKQB 341. See also the orders made in this case: Q.B.G. No. 1038 of 2018 (April 6, 2018), online: <cdn2.mltaikins.com/wp-content/uploads/2018/07/Filed-Order-Initial-Order-under-the-IPAA.pdf> and (November 28, 2018), online: <cdn2.mltaikins.com/wp-content/uploads/2018/11/Final-Order.pdf>, accessed September 26, 2022.

¹⁷ See: “Ottawa Convoy Class Action,” online: *Class Action* <ottawaconvoyclassaction.ca/>, accessed September 26, 2022.

¹⁸ See: “Friends of the Ottawa Convoy Class Action Fight,” online: *The Ottawa Fund* <ottawafund.ca/>, accessed September 26, 2022.

¹⁹ See: “Digital Organizing Tools for Campaigns, Causes & Organizations,” online: *Progressive Nation* <progressivenation.ca/services> and “NationBuilder About,” online: *Nation Builder* <nationbuilder.com/about>, accessed September 26, 2022.

this product was originally designed to facilitate election campaigns. Many political parties and politicians in the U.S. and around the world have used NationBuilder’s tools, and the company is now expanding its operations into other areas.²⁰

The above-mentioned examples demonstrate how difficult it can be to identify the individuals or organizations behind crowdfunding campaigns, as these initiatives are sometimes created by informal groups. In some cases, donation-based crowdfunding campaigns are associated with political movements, and it becomes difficult to separate the two. In addition, crowdfunding campaigns do not always go through a platform such as GFM or GSG; they may be integrated into the official website of an oftentimes short-lived organization or movement.

3.3 Control Measures for Funds Raised

Funds raised through the GFM and GSG platforms were subject to a number of control measures aiming at freezing both accounts and funds.

3.3.1 Restraint Order Pursuant to s. 490.8 of the Criminal Code

On February 10, 2022, Chief Justice McWatt of the Ontario Superior Court of Justice granted an *ex parte* restraint order on the funds held by GSG, pursuant to s. 490.8 of the *Criminal Code*, ruling that the funds were likely to be used in the commission of a serious criminal offence.²¹ The order would be enforceable under Canada-U.S. financial crime cooperation agreements.²² On March 3, 2022, GSG reportedly stated that these funds were being held in a U.S. bank account and that the company wanted to ensure they were transferred to the beneficiaries or, if that was not possible, refunded to the donors.²³

3.3.2 Class-Action Lawsuit and Freezing of Financial Assets

On February 4, 2022, Ottawa resident Ms. Li filed a class-action lawsuit against the organizers, supporters and participants of the Convoy in *Li v. Barber*.²⁴ The plaintiffs represented by Ms. Li are the residents, business owners and workers of the area of the city affected by the Convoy.

²⁰ See: “NationBuilder” (February 20, 2022), online: Wikipedia, French: <fr.wikipedia.org/wiki/NationBuilder>, accessed September 26, 2022. English: <en.wikipedia.org/wiki/NationBuilder>.

²¹ This ruling does not appear to be published. The information cited is from *Li v. Barber*, 2022 ONSC 1176, subsec. 31.

²² House of Commons, Standing Committee on Finance, Evidence, 44-1, no. 21 (February 22, 2022), online: <ourcommons.ca/DocumentViewer/en/44-1/FINA/meeting-21/evidence#Int-11540238>; House of Commons, Standing Committee on Finance, “Invocation of the *Emergencies Act* and Related Measures: Report of the Standing Committee on Finance (June 2022) (Chair: Peter Fonseca), p. 20.

²³ See testimony of Jacob Wells: House of Commons, Standing Committee on Finance, Evidence, 44-1, no. 12 (March 3, 2022), online: <ourcommons.ca/DocumentViewer/en/44-1/SECU/meeting-12/evidence#Int-11556653>; *ibid*, p. 21.

²⁴ *Li v. Barber*, 2022 ONSC 1176 (statement of claim), online: <ottawaconvoyclassaction.ca/claim-amended.pdf>.

The class action is based on the tort of nuisance, seeking over \$300 million in compensatory and punitive damages.²⁵

On February 17, Ms. Li brought an *ex parte* application before Ontario Superior Court Justice MacLeod for an interlocutory injunction to freeze the defendants' financial assets before they could be dissipated (Mareva Injunction). The injunction applied specifically to the funds raised through the GSG crowdfunding campaign. The judge granted the application, and the reasons for his decision were released on February 22.²⁶

The judge granted the injunction to freeze all financial assets, including cryptocurrency wallets, held by the defendants (many of whom referred to as "John Doe," as they were not yet identified) to ensure these assets would be available to compensate class action plaintiffs, if appropriate. The injunction targeted the project owners of the crowdfunding campaigns, in particular NPO "Freedom 2022 Human Rights and Freedoms."

With respect to the crowdfunding platforms, the effects of the order are less clear. In the order, GFM and GSG are identified and referred to as intermediaries potentially holding funds for the defendants.²⁷ In his reasons, however, the judge adds that the funds not yet released by the crowdfunding platform to the organizers or beneficiaries are not subject to the injunction.²⁸ However, based on the evidence presented by the plaintiff, the judge considers that the funds raised through the GSG platform are already held by the defendants and that GSG does not have control over these funds, nor the ability to refund the donors,²⁹ which, as we will see in a moment, is not the case.

On February 28, the injunction was renewed, and then postponed, to allow certain defendants or intermediaries to deposit the financial assets being held, allowing thus the injunction against them to be lifted. Records show funds possibly derived from GFM's payment of \$1 million to Tamara

²⁵ *Ibid.* The plaintiffs in this case obtained an order from Superior Court Justice McLean requiring the Convoy participants to stop honking their horns. See: *Li v. Barber*, 2022 ONSC 1037 (court records from February 5 and 7); Irina Ceric and Jasminka Kalajdzic, "Policing Protest via the Civil Law: Class Actions, Injunctions, and the 'Freedom Convoy'" [2022] 70 Crim L Q 247. According to the authors, the injunction was hardly respected (260). It was the responsibility of the Ottawa police to ensure compliance.

²⁶ *Li v. Barber*, 2022 ONSC 1176.

²⁷ *Li et al v. Barber et al*, 2022 ONSC (order), online: <ottawaconvoyclassaction.ca/order-mareva.pdf>.

²⁸ *Li v. Barber*, *supra* note 26, subsec. 15: "Suffice to say that a crowdsourcing fund held by a fundraising platform is probably not the property of the intended beneficiaries until the funds are released. It would be difficult to argue that such a fund would fall within the ambit of a Mareva Injunction."

²⁹ The judge states: "I am satisfied by the evidence that the funds, whether they are in the form of currency or cryptocurrency, are now legally in the possession, power and control of the defendants who are the target of the motion (referred to in the motion material as the "Mareva Defendants"). I am also satisfied that the organizers of the protest and the Mareva Defendants have purposely arranged the control of the funds in this manner to avoid another scenario such as the GoFundMe situation. The funds have been purposely placed outside of the control of any fundraising platform. Moreover, the Mareva Defendants have been promoting the use of cryptocurrency such as bitcoin under the mistaken belief that it is untraceable and cannot be seized by a court or other legal authority." (*ibid*, subsec. 19–20)

Lich, held in a TD Bank account, along with other proceeds from crowdfunding campaigns paid to a Mr. Garrah.³⁰

With respect to GSG, the judge stated:

[18] I am advised by Mr. Groot and by Mr. Wells that the defendant Freedom 2022 Human Rights and Freedoms was to have been a recipient of funds raised on the GiveSendGo platform, but it did not open a bank account to receive the funds prior to the granting of the injunction. As a consequence, the funds were never transferred. Mr. Wells advises that GiveSendGo is now returning those funds to the donors.

[19] Ms. Jilesen takes the position that GiveSendGo is in breach of the injunction by taking this step. Ms. Adams also takes the position that GiveSendGo is in breach of the restraint order.

[20] The question of a breach of the restraint order is not before the court today.

[21] As set out in my original reasons, the funds which the Mareva Injunction intended to preserve were funds that were, at the time, in the possession or control of the Mareva Defendants and therefore potentially exigible property if the plaintiffs are successful in this proceeding. I indicated that I did not view property that was held by a fund-raising platform and had not been distributed as falling within that class.

[22] Ms. Jilesen asked that I not rule definitively on that question today without the benefit of further affidavit material and a formal motion. In her submission, funds that were to have been distributed to Freedom 2022 as soon as it opened a bank account are its property and should fall into the class of assets to which the injunction attached. She argued that the question of whether GiveSendGo is in breach of the Mareva Injunction or whether Freedom 2022 is in breach by not taking the steps necessary to receive the funds should be questions for another day. I agree.

[23] There is no motion for contempt before the court and no motion to expand the scope of the injunction. If the plaintiffs wish to bring such motions for relief against either GiveSendGo or Freedom 2022, they may do so.

[24] For the moment, although Mr. Wells was present and is aware of the position of counsel for the plaintiffs (and counsel for the Attorney General) there is nothing for his company to formally respond to.

Therefore, since the GSG platform never released the funds to the project owner or beneficiaries of the crowdfunding campaign, these funds were apparently exempted from the injunction.

³⁰ *Li v. Barber*, 2022 ONSC 1543, subsec. 8 and 15.

3.3.3 *Financial Measures Based on the Emergencies Act*

The *Emergency Economic Measures Order*³¹ applies not only to Canadian banks and foreign banks authorized to operate in Canada, but also to collaborative and virtual currency platforms that solicit donations.³² These entities are required to determine on a continuing basis whether they are in possession or control of property owned by a designated person and to cease dealings with that property.³³ A designated person is anyone who is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures Regulations*.³⁴ Prohibited activities include participating in a public assembly that leads to a breach of the peace by interfering with trade, the movement of persons or property, or the functioning of critical infrastructure, or by supporting the use of violence, or to “use, collect, provide, make available or invite a person to provide property” to facilitate such an assembly.³⁵

The order authorizes any Government of Canada institution to disclose information that identifies a designated person to any financial entity (s. 6). Under the order, at least 250 accounts were frozen by financial institutions, according to the Royal Canadian Mounted Police.³⁶

These measures ended as soon as the state of emergency was lifted. The only accounts that remained frozen after emergency measures were lifted were those subject to court orders.

4. Key Challenges

Taking into account the mandate I have been assigned, the background information provided in the previous sections highlights several challenges regarding the legal framework for donation-based crowdfunding and the governance of online crowdfunding platforms. Here is an overview of these challenges:

- ***Ownership of funds raised through a crowdfunding campaign.*** Who owns these funds? The platform, the project owners, the Convoy organizers, or the participants benefiting from the campaign? This is a question raised in the interlocutory injunction granted by Justice MacLeod. The judge seems to believe that once the funds were handed over to the project owners or Convoy organizers, that money could then be used to compensate the class-action lawsuit plaintiffs.
- ***Crowdfunding platform’s power over distribution of funds.*** What is the basis and scope of this power? GFM and GSG had significant control over the funds donated in support of the Convoy truckers. These platforms appear to view their position as having the discretion to

³¹ SOR/2022-22. The [order](#) was issued on February 15, 2022.

³² *Ibid*, s. 3 a) and k).

³³ *Ibid*, s. 2 and 3.

³⁴ *Ibid*, s. 1 “designated person” and *Emergency Measures Regulations*, SOR/2022-21.

³⁵ *Emergency Measures Regulations*, *ibid*, s. 5.

³⁶ Standing Committee on Finance, *supra* note 22, p. 9.

terminate the campaign, to refund or refuse to refund donors, to determine which project owner receives the funds, to impose conditions, to withhold the funds and to donate surplus funds to a third-party organization.

- ***Identity and power of project owners and others involved in managing the funds.*** To whom must a crowdfunding platform pay the funds raised as part of a campaign? Can someone other than the person whose name appears on the campaign's dedicated page be in charge of managing the funds? What are the rights, powers and duties of those who receive the funds? In some cases, crowdfunding campaigns appear to be launched by an individual, while in other cases they are launched by a legal entity, or even by or on behalf of an informal group. Sooner or later, the funds are given to an individual or legal entity. It is important to know what their title is.
- ***Rights and legal recourse of campaign donors and beneficiaries.*** In the event that the funds are improperly managed by the platform or fund administrators, or if there are surplus funds, what legal recourse is available to donors and prospective beneficiaries?
- ***Compliance with the terms of the campaign.*** To what extent must the terms of a campaign be respected? During a campaign, can platforms, project owners or other fund administrators make changes or add clarifications to its terms? Changes appear to have been made to those of the GSG campaign. Initially, the purpose was to pay for fuel, food and lodging, and then it was about paying the protestors' legal fees—a cause not mentioned when the campaign was launched. It was also unclear who the campaign's beneficiaries would be; was it just for Convoy participants, or was it for people involved in other Canadian protests and blockades?
- ***Illegality of the campaign or of its use of donations; platform's powers and duties.*** If the campaign pursues an illegal objective or if the funds are used to finance an illegal activity, what are the legal consequences, and how should the funds be managed? Does the crowdfunding platform have the power, or even the duty, to terminate a campaign if it is illegal? In such a case, are donors to be refunded? GFM and GSG do not appear to have the same threshold for intervention. Some people praised GFM's decision to terminate the campaign, while others criticized it as "political."
- ***Illegality of the campaign or of its use of donations; Attorney General's or supervisory authority's power to intervene.*** What power does the federal or provincial government have with regard to terminating a crowdfunding campaign that is illegal or whose funds are being used to finance criminal activity? Is this power adequate?
- ***Governance of crowdfunding platforms.*** Under current law, what are the regulations governing these platforms and how they operate? Are they adequate? Crowdfunding platforms have been presented as neutral intermediaries, but this is clearly not the case. They

give themselves a significant amount of authority in their terms of use. The discretion of these platforms is not clearly defined, and there is a risk of arbitrary decision-making.

- **Challenges related to the international nature of crowdfunding.** The major platforms are based in the United States, while donations come from different provinces, territories and countries. Since beneficiaries may be located outside the country, it can be a complex process to determine which law applies to the legal relationship between the platforms, project owners and other fund administrators, donors and beneficiaries. The international aspect of crowdfunding also makes it more difficult for Canadian supervisory authorities to intervene.
- **Politicization of crowdfunding and protection of personal information.** There is often a fine line between political movements and crowdfunding, which raises questions as to whether political party financing laws are respected. Also, the use of social media to promote crowdfunding campaigns, all while collecting personal information, raises important privacy issues.

5. Different Types of Crowdfunding

There are several types of crowdfunding, depending on the type of reward offered to contributors:

- In donation-based crowdfunding, contributors receive nothing in return.
- In donation-based crowdfunding with a reward, contributors receive a token of appreciation such as a thank you or an object of symbolic value.
- In rewards-based crowdfunding, contributors make a donation in exchange for goods or services, such as one of the products developed thanks to the donated funds. This often involves what is referred to as “prepurchase” or “presale.”
- In lending-based crowdfunding, contributors receive their money back, with or without interest.
- In equity-based crowdfunding, contributors receive equity ownership and become shareholders or members of the corporation or group. Sometimes, they are offered bonds or preferred shares instead.

Based on these different types of crowdfunding, contributors can have a range of motivations, from the more charitable intent of donation-based crowdfunding to seeking a return on investment with equity-based crowdfunding.

Of the different categories, donation-based crowdfunding is the least regulated. Rewards-based crowdfunding is governed by sales or service contract regulations, and most likely by consumer law.³⁷ Lending-based or equity-based crowdfunding is governed by securities law.³⁸

This report focuses exclusively on donation-based crowdfunding.

6. Major Donation-Based Crowdfunding Platforms in Canada

The most established platform is GFM, a joint-stock company incorporated in 2010 under Delaware law, specializing in donation-based crowdfunding. According to its president, Juan Benitez, the company has raised over \$17 billion in over 19 countries since its inception. In Canada, \$200 million are donated each year through the platform. GFM has over 400 employees.³⁹

GFM is a well-organized leader in the field of crowdfunding. The company has taken an interest in legislative reform proposals that seek to regulate the practice of donation-based crowdfunding and has offered valuable insight on the subject. For example, GFM served as a consultant to the United States Uniform Law Commission working group in drafting a uniform act on donation-based crowdfunding. The company also worked with the Uniform Law Conference of Canada working group as it developed a similar project in Canada. I will discuss this in further detail below.

The GSG platform, which calls itself “the # 1 Free Christian Fundraising Site,”⁴⁰ is a joint-stock company incorporated in 2014 under Delaware law. Jacob Wells, one of the company’s founders, serves most often as its representative. Prior to the “Freedom Convoy” crowdfunding campaigns, GSG had a limited presence in Canada.⁴¹ In the United States, the platform has been the focus of several controversies, including security flaws. On February 11, 2022, a group of hackers successfully attacked the site and retrieved the list of donors for the “Freedom Convoy 2022” campaign.⁴²

³⁷ See Michelle Cumyn, “Le sociofinancement” in Charlaïne Bouchard, Ed., *Droit des PME*, 2nd ed., Cowansville, Yvon Blais, 2021, 337 at pp 359 and following.

³⁸ See RLRQ c V-1.1, r 21, *Regulation 45-110 respecting Start-up Crowdfunding Registration and Prospectus Exemptions* adopted June 23, 2021, by the Canadian Securities Administrators; Cumyn, *ibid* pp 345 and following.

³⁹ See testimony of Juan Benitez, President of GFM in: Standing Committee on Public Safety and National Security, *supra* note 23, online: <ourcommons.ca/DocumentViewer/en/44-1/SECU/meeting-12/evidence>.

⁴⁰ See GiveSendGo website, online: <givesendgo.com/>.

⁴¹ See Standing Committee on Public Safety and National Security, *supra* note 23.

⁴² See “GiveSendGo” online: *Wikipedia* <en.wikipedia.org/wiki/GiveSendGo>, last updated September 28, 2022.

The Canadian company FundRazr is a donation-based crowdfunding platform that offers perks to donors, but without presales.⁴³ Yoyomolo is another Canadian crowdfunding platform.⁴⁴

Also in Canada, the platform CanadaHelps specializes in donation-based crowdfunding for charity organizations, essentially by helping Canadian charities organize fundraisers through its platform. CanadaHelps is itself a registered charity that aims to distinguish itself from other platforms that have little or no regulation.⁴⁵

While the above-mentioned platforms focus on donation-based crowdfunding, others such as the Quebec-based platform La Ruche, along with the U.S.-based Indiegogo, host a wide range of projects. Sometimes, a single campaign can be both donation-based and rewards-based, i.e., in exchange for goods or services.⁴⁶

Facebook and Instagram have also become major players in the world of donation-based crowdfunding since they created their own fundraising tools in 2015.⁴⁷

Data on the subject is vague, but the crowdfunding craze is showing no signs of slowing down.⁴⁸ It is estimated that there are between 600 and 1,500 donation-based crowdfunding platforms throughout the world.⁴⁹ This does not include NPOs, individuals or groups, which, as previously mentioned, can add donation pages to their own websites.⁵⁰

7. Politicization of Crowdfunding

The use of crowdfunding for political purposes seems to be a growing phenomenon. Crowdfunding provides support for political or judicial activism,⁵¹ both of which are detailed in a fascinating paper on the important role of crowdfunding in the 2019 Hong Kong protests.⁵² The author outlines the many advantages of crowdfunding: the fact that it is simple, spontaneous,

⁴³“Crowdfunding Perks and Wishlists,” online: *FundRazr* <fundrazr.com/pages/perks-wishlist-crowdfunding>.

⁴⁴ “About Yoyomolo,” online: *Yoyomolo* <yoyomolo.com/pages/about-yoyomolo.aspx>.

⁴⁵ Marina Glogovac, “Fundraising, Crowdfunding, and the Emergency Measures Act” (February 17, 2022), online: *CanadaHelps* <canadahelps.org/en/giving-life/marina-on-giving/fundraising-crowdfunding-and-the-emergency-measures-act/>.

⁴⁶ See, for example, some of the projects presented on the La Ruche platform, online: <laruchequbec.com/>.

⁴⁷ See: Naomi Gleit, “People Raise Over \$2 Billion for Causes on Facebook” (September 19, 2019), online: *Meta* <about.fb.com/news/2019/09/2-billion-for-causes/>, accessed September 26, 2022.

⁴⁸ For a comprehensive overview of the available data: Lloyd Hitoshi Mayer, “Regulating Charitable Crowdfunding” (2022) 97:4 *Ind LJ* 1375, p. 1377–99.

⁴⁹ Mayer, *ibid*, p. 1381 and cited sources.

⁵⁰ See above, section 3.2.4.

⁵¹ See Joe Tomlinson, *Justice in the Digital State: Assessing the Next Revolution in Administrative Justice*, Bristol (UK), Policy Press, 2019, c 2 “Crowdfunding and the changing dynamics of public interest judicial review.”

⁵² Julius Yam, “Political Crowdfunding of Rights” (2020) 50:2 *HongKong LJ* 395.

informal, engaging and international, as well as its ability to outwit the authorities. One can draw parallels with how crowdfunding was used during the Convoy.

Another telling example is the “We Fund the Wall” campaign, which raised over \$25 million through the GFM platform. This project was aimed at helping fund part of the wall that President Donald Trump had promised to build along the U.S.-Mexico border.⁵³

Several politically-charged crowdfunding campaigns have led to scandals, prompting some platforms to distance themselves from certain projects and others to welcome them. This may lead to platforms becoming polarized to some degree, or rather, specialized, perhaps. Here are a few examples related to judicial activism.

GFM discontinued a campaign to help a bakery owner pay her legal fees when she was sued for refusing to bake a wedding cake for a same-sex couple. The funds already raised before the campaign’s removal were handed over to the project owner, and a new campaign was launched through another platform.⁵⁴ GFM then changed its eligibility policy to exclude this type of campaign. Campaigns that are deemed discriminatory and that provide legal support to a person accused of a violent or financial crime are banned.⁵⁵

A similar case occurred in France, involving a crowdfunding campaign to help file a lawsuit against a National Front candidate who had made homophobic remarks. The campaign was rejected by the Ulule platform, but the association behind the project was able to move forward using a NationBuilder site.⁵⁶

The Goteo platform allowed a citizen collective to raise money for a fraud and money laundering lawsuit against former Spanish politician Rodrigo Rato, who served as the managing director of the International Monetary Fund and as the president of Bankia. The collective also created secure websites for citizens to anonymously submit documents in support of the lawsuit. Rodrigo Rato ended up receiving a four-and-a-half-year prison sentence.

⁵³ After the campaign was launched (and presumably at GFM’s request), the project owner formed an NPO to collect donations. This did not stop several individuals, including Steve Bannon, from diverting some of the funds to themselves. They are facing criminal charges for fraud. For a summary, see: “We Build the Wall,” online: *Wikipedia* <en.wikipedia.org/wiki/We_Build_the_Wall>, last updated September 28, 2022.

⁵⁴ See: Valerie Richardson, “Sweet Cakes by Melissa crowdfunder breaks record with \$352K,” *The Washington Times* (July 14, 2015), online: <washingtontimes.com/news/2015/jul/14/sweet-cakes-melissa-crowdfunder-breaks-record-352k/>, accessed September 26, 2022.

⁵⁵ See “Terms of use,” under “Prohibited Conduct,” no. 8 and 9, online: *GoFundMe* <gofundme.com/en-ca/c/terms>, accessed September 26, 2022.

⁵⁶ Aude Lorriaux, “Le crowdfunding de plainte en justice a-t-il un avenir?,” *Slate* (September 17, 2015), online: <slate.fr/story/106919/crowdfunding-plaintes-en-justice>, accessed September 26, 2022.

To some extent, the class-action lawsuit by Ottawa residents follows the same trend. Faced with police inaction, citizens took it upon themselves to enforce the law, acting as a “private attorney general,” as aptly described by Ceric and Kalajdzic.⁵⁷

While some more high-profile campaigns tend to be very political, it is important to remember that the vast majority of crowdfunding campaigns are founded on mutual aid and the desire to carry out community projects.

8. General Law Applicable to Crowdfunding

There is little or no case law on donation-based crowdfunding in Canada, and very little doctrine on the subject. The following section is therefore exploratory in nature and should be interpreted with caution.

8.1 General Law Applicable in Québec

Donation-based crowdfunding involves a gift, a contract named by the *Civil Code of Québec* in sections 1806 and the following. This definition also applies when a low-value reward is promised to the donor.⁵⁸

The three essential components of a gift are:

- 1) the donor’s intention to benefit the donee (donative intent or *animus donandi*)⁵⁹
- 2) the donee’s acceptance of the gift⁶⁰
- 3) the immediate transfer from donor to donee or, at least, the immediate creation of an obligation to pay⁶¹

⁵⁷ *Supra* note 25, 247; see also above, sections 3.2.4 and 3.3.2.

⁵⁸ See *Messier v. Béique* [1929] RCS 19; *Martin v. Dupont*, 2016 QCCA 475, subsec. 56.

⁵⁹ *Tétrault v. Gagnon* [1962] RCS 766; *Deschênes v. Gagné*, 2007 QCCA 123, subsec. 70; *Trépanier v. Murray*, 2008 QCCS 4311, subsec. 21; *Lacroix (Syndic de)*, 2014 QCCA 1994, subsec. 34; *Martin v. Dupont*, *ibid*, subsec. 46 and 53. Donative intent is not presumed and must, if necessary, be proven. See Pierre Ciotola, *De la donation*, 2nd ed., Montréal, Wilson & Lafleur, 2006, p 1.

⁶⁰ S. 1386 CcQ. S. 755 of the *Civil Code of Lower Canada* expressly mentioned this requirement in the rules for donation. It is not repeated in full in the chapter on donation in the *Civil Code of Québec*, but it is still applicable, as a donation is a contract. See: Québec, *Commentaires du ministre de la Justice. Code civil du Québec*, Québec, Les Publications du Québec, 1993, t I, p. 1131; Jean-Louis Baudouin, Pierre-Gabriel Jobin and Nathalie Vézina, *Les obligations*, 7th ed., Cowansville, Yvon Blais, 2013, subsec. 54.

⁶¹ S. 1806–1807 CcQ; *Hennebury v. Hennebury*, [1981] CA 136; *Family Law – 504*, [1990] RJQ 302 (CA). See also *GL v. AG*, 2006 QCCS 1314, subsec. 42 and following.

In theory, a gift must be in notarial form, but if the object of the gift is movable property, the gift is valid on the condition that the donee receives the property immediately; this is referred to as a manual gift.⁶² The promise to give a gift is not legally binding under Québec law.⁶³

In the context of crowdfunding, the difficult question that arises is knowing who qualifies as the donee. Is it the project owner, or is it the campaign's beneficiary?

If the project owner is considered the donee, this person can use the funds as they wish, without having to comply with the terms of the campaign.⁶⁴ In fact, donors have very limited recourse for nullity or revocation of the donation.⁶⁵ This also means that that funds could be seized by the project owner's creditors.

If one considers instead that the crowdfunding campaign's beneficiary is the donee, this raises the issue of whether the donations are valid, since the gift must be accepted by the donee. This acceptance is considered valid if the campaign is launched on behalf of and with the knowledge of a specific beneficiary, because the existence of an agency relationship can be inferred. If the project owner receives the donations as an agent for the beneficiary, the donations are valid.

If there is no agency relationship and if the project owner is not considered the donee, donations are void because they are not validly accepted.⁶⁶ However, it often happens that a campaign is launched without the knowledge of the beneficiaries.⁶⁷ In other cases, the beneficiaries are undetermined. Some projects have too broad a scope to even discuss beneficiaries, such as in the case of a campaign to protect a wetland and preserve its biodiversity.

In other words, treating the project owner as the donee would not satisfy donors who expect the funds to be used as specified in the terms of the campaign. On the other hand, if one finds the beneficiary to be the donee, the validity of donations could be challenged in the case of many crowdfunding campaigns.

⁶² S. 1824 CcQ; *Spina v. Sauro*, [1990] RL 232 (CA); *Therriault v. Clément*, [1992] n°AZ-92031262 (CQ); *Québec (Deputy Minister of Revenue) v. Vidal*, [1992] n°AZ-92038111 (CQ); *Family Law — 2760*, [1997] no. AZ-97021739 (CS). The transfer of funds from one account to another meets this requirement: *Spina v. Sauro*, *ibid.*

⁶³ According to s. 1812 CcQ, the beneficiary who has relied on the promise may, however, claim damages.

⁶⁴ It may be tempting to invoke the stipulation for another or the gift with a charge to compel the project owner seen as donee to use the funds in the way promised. However, the beneficiary of a stipulation for another must be determinate or determinable (s. 1445 CcQ), which is often not the case. As for the charge in a gift with a charge, it cannot be the entire consideration for the donation. In either case, in order for the project owner to be a donee, there must be an intention to benefit the project owner personally.

⁶⁵ See s. 1400–1401 and 1836 and following, CcQ

⁶⁶ It should be remembered that in Québec law, a gift must be made by notarial act, except in the case of a manual gift (*supra* note 62). The manual gift implies that the donee gains immediate possession of the donated property.

⁶⁷ Mayer, *supra* note 48, p. 1393–94.

I have not found any decision in Québec case law relating to donation-based crowdfunding that would confirm this analysis.

8.2 General Law applicable in Common Law Provinces and Territories

As with the province of Québec, I have not found any decisions in the common law provinces and territories that addresses the legal characterization of donation-based crowdfunding.

There have been at least two decisions in Canadian case law, however, regarding the characterization of public appeals for donations (or public subscription fundraising). In accordance with British case law,⁶⁸ Canadian judgments use the term “trust” to refer to funds resulting from public donation.⁶⁹ Canadian doctrine follows the same approach,⁷⁰ which is also enshrined in Saskatchewan law.⁷¹

Public appeals can be considered the precursor to crowdfunding, prior to the rise of online platforms and social media. It is therefore likely that under Canadian common law, the “trust” characterization would apply to donation-based crowdfunding, in keeping with previous doctrine on public appeals.

This solution can be easily applied since there is no formal requirement in common law for creating a trust. A trust may be established out of a unilateral act by which a person declares to hold property for another person or to solicit gifts for another person (declaration of trust). It may also be implied.

Perhaps surprisingly, the same characterization of a trust does not seem to apply in U.S. law. Instead, it would be a gift to the project owner or to the beneficiary of the donations.⁷² This solution is surely linked to the structure adopted by GFM for donation payments, wherein project owners have the choice of receiving the funds themselves, or having them sent directly to the beneficiary. This seems to be what determines who owns the funds.

⁶⁸ See, for example: *Re the Trusts of the Abbott Fund*, [1900] 2 Ch 326; *Re Gillingham Bus Disaster Fund*, [1958] 1 All ER 37, affd [1959] Ch. 62 (CA).

⁶⁹ *In re YMCA Extension Campaign Fund* [1934] 3 WWR 49; *Halifax School for the Blind v AG* [1935] 2 DLR 347.

⁷⁰ Canada, Law Reform Commission of British Columbia, *Report on Informal Public Appeal Funds*, LRC 129, January 1993, p. 4, online: <bcli.org/publication/129-informal-public-appeal-funds/>; Richard Thompson, “Public’ Charitable Trusts Which Fail: An Appeal for Judicial Consistency” (1971) 36 Sask L Rev 110; L Sheridan, “Cy-Près in the Sixties: Judicial Activity” (1968) 6 Alberta L Rev 16, 24.

⁷¹ *Informal Public Appeals Act*, SS, c I-9.0001, s. 4.

⁷² See: Jamie Drennen, “An Analysis and Prediction of Federal Taxation as it Pertains to Crowdfunding” (2017) *Duquesne Bus L J* 144, p. 152, 154–155; Mayer, *supra* note 48, p. 1394–95: “Some crowdfunding efforts start out as efforts to raise funds for a cause [...] As a practical matter, such efforts become a campaign to raise funds for a particular organization that supports the cause at issue or a number of campaigns to raise funds for individuals in need, or a combination of the two, since an abstract cause cannot actually receive any funds. [...] Donative campaigns focused on specific causes therefore collapse into the other two categories because someone has to actually receive the funds raised.”

Returning to the subject of Canadian law, it must be noted that if project owners solicit donations for themselves, there is no trust. A trust applies only if project owners are soliciting donations for one or more beneficiaries, or for a project that benefits persons other than the project owners themselves. In the case of charities and NPOs soliciting donations as part of their mission, these organizations are generally seen as soliciting donations for themselves. This solution seems to apply even if these organizations name a specific victim or cause as the beneficiary of the funds.⁷³

In any case where the crowdfunding campaign qualifies as a trust, it is necessary to determine who the trustees are. These are the people who have control over how the funds are managed and used. Usually, these people are the project owners and others who have or who obtain that control. If the crowdfunding platform becomes involved in the administration and disposition of the funds, this platform should be considered a trustee. On the other hand, a platform that does not interfere, or a financial intermediary that holds funds for the sole purpose of transferring them to the recipient, is not considered a trustee.

Trustees must avoid commingling their own funds with the funds they administer. Funds held in trust cannot be seized by the trustee's creditors. Trustees have strict duties to manage funds in accordance with the purpose of the trust. In that sense, the trust model provides significant protection to a crowdfunding campaign's donors and beneficiaries.

There are, however, challenges with respect to creating a non-charitable purpose trust without determinate or determinable beneficiaries. Such a trust may fail because it does not comply with the rules regarding certainty of object. Except in jurisdictions where the law permits, such a trust cannot apply the *cy-près* doctrine, which would validate the trust by specifying its purpose.⁷⁴

Sometimes, a trust created through a public appeal or crowdfunding campaign starts out as valid, but the funds cannot be used in their entirety for their intended purpose. This can occur for a number of reasons: the funds are not sufficient to complete the project; there are surplus funds after the project has been completed; or it has become impossible, for one reason or another, to complete the project. Again, the rules are complex and can be difficult to apply, depending on whether the purpose of the trust is considered charitable or not. Broadly speaking, there are three options: reimburse the donors (resulting trust), allocate the funds to another purpose as closely related to the original purpose as possible (*cy-près* doctrine), or declare the funds

⁷³ See *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23:

31. A corporation owns any property of any kind that is transferred to or otherwise vested in the corporation and does not hold any property in trust unless that property was transferred to the corporation expressly in trust for a specific purpose or purposes.

The Act also states:

33. Subject to the limitations accompanying any gift and the articles or by-laws, a corporation may invest its funds as its directors think fit.

⁷⁴ See Lyn L Stevens, "Certainty and Charity. Recent Developments in the Law of Trusts" (1974) 52 Can Bar Rev 372; Johanna C.C. Caithness, "Legal Issues Associated with Informal Public Appeals and Crowdfunding" (2020) 39 Estates, Trusts & Pensions J. 271.

“bona vacantia,” which means that they are returned to the Crown. Some of these solutions may be impractical, such as reimbursing the donors, while others may not be desirable, such as returning funds to the Crown. A number of public appeal cases illustrate the inadequacy of these rules.⁷⁵

The injunction granted by Justice MacLeod raises the question of who owns the funds raised through a crowdfunding campaign. He states:

[15] A more difficult question is whether the plaintiffs have a claim against the funds they are attempting to freeze. Just because a fund was created to support the protest does not necessarily mean that a judgment against an individual defendant would attach to that fund. Fundraising law is complex. People who start a fundraiser may have a duty to the donors. Funds raised from the public may be impressed with a trust or in some cases may fall under the jurisdiction of the Public Guardian and Trustee. Suffice to say that a crowdsourcing fund held by a fundraising platform is probably not the property of the intended beneficiaries until the funds are released. It would be difficult to argue that such a fund would fall within the ambit of a Mareva Injunction.

[16] The pertinent question for this motion is whether the funds the plaintiff seeks to enjoin are now owned or controlled by the defendants who are the target of the injunction and not whether the fundraisers owe obligations to donors or others. It is fundamental to the granting of a Mareva Injunction that the defendants are attempting to dissipate funds to which a judgment might attach.

[17] A fundraising platform which controls the funds and acts like a granting agency might have the power to grant or withhold funds in its own discretion. An example of this occurred earlier in February. The protestors had originally raised a considerable sum of money through a GoFundMe campaign. At a certain point GoFundMe concluded that, in its view, the original peaceful protest had mutated into something more sinister and unlawful which was a violation of its terms service. It froze the funds and returned them to the donors. Evidently, in that case, the ownership of the asset had not passed to the defendants.

[18] The situation is different if the funds are in the hands of the defendants and no longer controlled by either the original donors or the fundraising platform. In that case the gift has vested [reference omitted].

⁷⁵ See: *Re Gillingham Bus Disaster Fund*, supra note 68; *In re YMCA Extension Campaign Fund*, supra note 69; Caithness, *ibid*.

This passage demonstrates just how vague the current law is when it comes to characterizing donation-based crowdfunding, as well as identifying who has control over the funds and the nature of their rights with respect to these funds.

8.3 Uniform Crowdfunding Acts Proposed by the Uniform Law Conference of Canada

In response to the shortcomings of the law as it applies to public appeals, the Uniform Law Conference of Canada (ULCC) adopted two uniform acts: one for the common law provinces and territories in 2011, and the other for Québec in 2012.⁷⁶ Only Saskatchewan has enacted the uniform act.⁷⁷

The ULCC recently revised and replaced its uniform act with one better suited to the current crowdfunding landscape. There are two specific versions of the uniform crowdfunding act:

- The *Uniform Benevolent and Community Crowdfunding Act* (UBCCA), proposed for adoption in all Canadian provinces and territories except Québec.⁷⁸ This act was adopted by the Conference in 2020 and has not yet been enacted by any province or territory.
- The *Loi uniforme sur le sociofinancement à titre gratuit** (LUSTG), proposed for adoption in Québec. This act was adopted by the Conference in 2022 and will be made public in the near future. [*Translator's note: uniform act for socio-financial fundraising when no consideration is involved]

The uniform acts amend and complete the law applicable to donation-based crowdfunding for the benefit of third parties. These acts affirm (in the case of Québec) or confirm (in the case of the common law provinces and territories) that funds raised through a crowdfunding campaign are held in trust (UBCCA, s. 3(1); LUSTG, s. 4).

These acts specify who qualifies as a trustee; this is generally the project owner and any other person who is performing the role of a trustee, which may include the crowdfunding platform if it is involved in the administration and disposition of funds (UBCCA, s. 4; LUSTG, s. 7 and 8). The acts provide a framework for the administration of funds and specify the rights and remedies of donors and beneficiaries.

In Québec, the uniform act would validate donations since they would be accepted by the project owner, who would be acting as a trustee, and they would be added to the trust estate.⁷⁹ The Civil

⁷⁶ Uniform Law Conference of Canada, *Uniform Informal Public Appeals Act*, Winnipeg, August 2011; Whitehorse, August 2012, online: <ulcc-chlc.ca/Civil-Section/Uniform-Acts/Uniform-Informal-Public-Appeals-Act>.

⁷⁷ *Informal Public Appeals Act*, *supra* note 71.

⁷⁸ Uniform Law Conference of Canada, *Uniform Benevolent and Community Crowdfunding Act*, August 2020, online: <[ulcc-chlc.ca/Civil-Section/Uniform-Acts/Uniform-Benevolent-and-Community-Crowdfunding-\(1\)](http://ulcc-chlc.ca/Civil-Section/Uniform-Acts/Uniform-Benevolent-and-Community-Crowdfunding-(1))>.

⁷⁹ See s. 1283, CcQ.

Code recognizes three categories of trusts, each applicable to different circumstances: 1) a personal trust, if the crowdfunding campaign is launched on behalf of one or more determinate or determinable beneficiaries (s. 1267 of the Civil Code); 2) a private trust, if the purpose of the crowdfunding campaign is to raise funds for a specific use, either for the benefit of potential beneficiaries or for another private purpose (s. 1268 of the Civil Code); 3) a social trust, if the crowdfunding campaign has a “purpose of general interest, such as a cultural, educational, philanthropic, religious or scientific purpose” (s. 1270 of the Civil Code).

In the other provinces and territories, a crowdfunding campaign described as a non-charitable purpose trust would be considered valid (UBCCA, s. 3(2)).

The uniform acts clarify the issue of ownership in relation to donations. Those who administer these donations are considered trustees. When the funds are transferred to the beneficiaries, the beneficiaries gain full ownership of those funds.

The purpose of the trust is determined by the terms of the crowdfunding campaign. It follows that the funds must be used in accordance with that purpose. Under certain conditions, the terms of a crowdfunding campaign can be modified, but any changes must reflect the purpose of the campaign (UBCCA, s. 6; LUSTG, s. 21).

The uniform acts allow any person who does not wish to have a crowdfunding campaign launched for their benefit or on their behalf to terminate or be excluded from the campaign. The crowdfunding platform is then required to honour this request (UBCCA, s. 25; LUSTG, s. 22).

The uniform acts provide a scheme for distributing surplus funds. The preferred solutions are to return the surplus to the beneficiary or to an organization whose purpose is similar to that of the campaign (UBCCA, s. 9–12; LUSTG, s. 27–34).

The uniform acts allow any interested person, such as a donor, trustee or beneficiary to seek remedy with the court in the event of difficulty. The court has broad powers of action (UBCCA, s. 10; LUSTG, s. 34).

The Québec version of the uniform act provides that in the event of a breach of the law or public order, any interested person may ask the court to terminate the crowdfunding campaign. Donors must then be reimbursed, unless a court orders otherwise (LUSTG, s. 23). It is understood that the crowdfunding platform has the right to terminate the campaign under the same conditions.

It is interesting to note that the Uniform Law Commission (ULC) in the United States initiated a uniform donation-based crowdfunding act, modelled on the Canadian version. However, the ULC moved away from the trust model that initially served as the basis for the project. A preliminary draft circulated by the Commission in 2020 nevertheless imposes certain fiduciary duties on the

project owner and anyone else in charge of administering the funds. The ULC's draft has been put on hold.⁸⁰

It would be beneficial for the provinces and territories of Canada to enact the ULCC's uniform acts as soon as possible to foster greater legal certainty in this area.

8.4 Governance of Crowdfunding Platforms Under Private Law

The purpose of uniform acts is not to regulate crowdfunding platforms. However, the acts would indirectly impose certain restrictions on the platforms. A crowdfunding platform that acts as a trustee by becoming involved in the administration and disposition of funds would be subject to the strict duties that apply to trustees.

The platform could not impose or authorize the funds to be used in a way that does not respect the project owner's powers or duties and the terms of the campaign. For the distribution of surplus funds, the scheme provided for in the uniform acts would apply. In short, these acts would limit the discretion of crowdfunding platforms.

This would allow donation-based crowdfunding to be carried out in a more predictable legal environment that is better suited to the reality of this type of fundraising.

8.5 Rules of Private International Law

Crowdfunding campaigns often extend beyond the boundaries of a single jurisdiction.

In the event of a dispute between the donors, the project owner and the beneficiaries, or a combination thereof, it would be necessary to enforce the rules of private international law applicable to the province or territory of the forum. It is unlikely that these parties would consider choosing the law applicable to their legal relationship. The connecting factors recognized by the private international law of the forum would therefore be determinative.

If a donor, project owner or beneficiary is in a dispute with the crowdfunding platform, the platform's terms of use generally stipulate that the dispute must be submitted to arbitration and

⁸⁰ See: Uniform Law Commission, *Fundraising Through Public Appeals Act* (Draft), March 10, 2020 (unpublished). An earlier version dated June 6, 2019, can be found online: uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=1ce51aeb-a39b-d755-2114-5a192e67606e.

that class actions are excluded.⁸¹ If it is not prohibited or neutralized by law, such a clause could be deemed unjust.⁸²

Adopting a uniform legal framework across Canada would reduce uncertainty caused by a conflict of law or forum.

9. Public Law Applicable to Crowdfunding

Given the issues mentioned above, public law may have a role to play in regulating donation-based crowdfunding. Without specific sources on the subject, it is difficult for me to comment on how this law would be applied, especially since it is not part of my expertise, which is more in the area of private law. For that reason, I will approach the subject with caution, focusing on federal law.

9.1 The *Criminal Code*

Crowdfunding can be used to commit a variety of criminal acts.

The most common offences are most likely fraud (s. 380(1) CCC), false pretence (s. 362(1) CCC), theft (s. 330(1) CCC) or breach of trust (s. 336 CCC), usually on the part of the project owner. How these offences are enforced depends in part on private law, which defines who owns the funds and in what capacity, as well as how these funds are to be disposed of.⁸³

⁸¹ See, for example, the terms of use under “Disputes”, online: *GoFundMe* <gofundme.com/en-ca/c/terms>, accessed September 26, 2022: “**Arbitration; Class Action Waiver:** YOU AGREE THAT ALL DISPUTES BETWEEN YOU AND US OR ANY OF OUR OFFICERS, DIRECTORS OR EMPLOYEES ACTING IN THEIR CAPACITY AS SUCH (WHETHER OR NOT SUCH DISPUTE INVOLVES A THIRD PARTY) WITH REGARD TO YOUR RELATIONSHIP WITH US, INCLUDING WITHOUT LIMITATION DISPUTES RELATED TO THESE, YOUR USE OF THE SERVICES, AND/OR RIGHTS OF PRIVACY AND/OR PUBLICITY, WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU AND WE HEREBY EXPRESSLY WAIVE TRIAL BY JURY. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND WE ARE EACH WAIVING OUR RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.”

⁸² *Uber Technologies Inc. v. Heller*, 2020 SCC 16. Section 3117 of the *Civil Code of Québec* precludes a clause that has the effect of, “depriving the consumer of the protection afforded to him by the mandatory rules of the law of the State where he has his residence.” Moreover, section 3149 of the *Civil Code of Québec* could invalidate a choice of forum clause that would have the effect of ousting the jurisdiction of the courts of Québec, the platform user’s place of residence. See *Douez v. Facebook Inc.*, 2017 SCC 33, [2017] 1 R.C.S. 751, the solution of which was repeated in *Demers v. Yahoo! Inc.*, 2017 QCCS 4154.

⁸³ For the impact of crowdfunding fraud, see Mayer, *supra* note 48, p. 1395–99. It is important to distinguish false pretence from breach of trust. In the case of breach of trust, the property is obtained legally, but its misuse is what characterizes the offence. In the case of fraud, the property is obtained in a fraudulent manner.

Crowdfunding is not usually seen as a way to launder money or proceeds of crime, since donations most often consist of small amounts (s. 462.31(1) CCC).⁸⁴ However, this offence was reportedly applied in connection with the Hong Kong protests, as well as in Florida for the misappropriation of funds raised through the “We Fund the Wall” campaign.⁸⁵

There is also a risk of crowdfunding campaigns being used to provide financial support for criminal activities. It is not always immediately obvious that such an offence is taking place. For example, in 2015, the GFM platform terminated a campaign that had raised over \$580,000 to free “Yazidi and Christian sex slaves who had been captured by the Islamic State terrorist group.” GFM was heavily criticized for its decision, which was seen as, allegedly, political. This was however a justified decision, as the project owner intended to use the funds to ransom the captive women from the terrorist organization.⁸⁶

In the more serious cases, the *Criminal Code*'s provisions on the financing of terrorism could be applied. Terrorist activity is broadly defined and includes several types of attacks on persons, property, or public or private systems, as long as these acts are committed:

- for a political, religious or ideological purpose
- or “in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada” (s. 83.01(b) CCC).

Any project owner who raises funds for the purpose of financing a terrorist activity as defined above could be found guilty of financing of terrorism (s. 83.02 CCC). This section could even apply to donors, provided they know that the funds are intended to be used, in whole or in part, to finance a terrorist activity. As for the crowdfunding platform, it can be targeted if it makes available “any financial or other related services,” intending that they be used or even “knowing that they will be used, in whole or in part, for the purpose of facilitating or carrying out any terrorist activity” (s. 83.03 CCC).

⁸⁴ See Michelle Gallant, “Using an Anti-Money Laundering Terrorist Finance Approach to Harness a Convoy” [2022] 70 Crim L Q 292, 304–305.

⁸⁵ Brian Schwartz, “Former Trump advisor Steve Bannon pleads not guilty in alleged border wall fundraising scheme”, *CNBC* (August 20, 2020), online: <[cnbc.com/2020/08/20/former-trump-advisor-steve-bannon-arrested-on-charges-of-defrauding-donors-in-fundraising-scheme.html](https://www.cbc.com/2020/08/20/former-trump-advisor-steve-bannon-arrested-on-charges-of-defrauding-donors-in-fundraising-scheme.html)>, accessed September 26, 2022.

⁸⁶ See: Caroline Piquet, “Steve Maman, l’homme d’affaires qui rachète les esclaves sexuelles de Daech,” *Le Figaro International* (August 20, 2015), online: <www.lefigaro.fr/international/2015/08/20/01003-20150820ARTFIG00033-steve-maman-l-homme-d-affaires-qui-rachete-les-esclaves-sexuels-de-daech.php>, accessed September 26, 2022; Jean-François Bégin, “Libération d’esclaves sexuelles détenues par l’EI: une campagne illégale?” *La Presse +* (August 31, 2015), online: <plus.lapresse.ca/screens/f56547ac-e675-44c5-b390-e178e907f5c7_7C_zul-Npg_caCb.html>.

It should be noted that a restraint order can be issued, pursuant to s. 490.8 of the *Criminal Code*, if it appears that the funds will be used in the commission of a serious criminal offence—a measure that was applied during the Convoy (see section 3.3.1 above).

A key step in enforcing the criminal law would be to clarify the private law as it applies to donation-based crowdfunding, by specifying who holds the funds and in what capacity.

9.2 *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

The main purpose of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* is to combat terrorist activities and organized crime by facilitating the detection of such activities and by simplifying investigations.⁸⁷ For example, this law requires financial services providers to report certain transactions deemed risky and to establish record keeping and client identification requirements. It was for this purpose that the act established the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

FINTRAC is “Canada’s financial intelligence unit and anti-money laundering and anti-terrorist financing regulator.”⁸⁸ The Centre’s main purpose is to ensure the compliance of businesses subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and its related regulations. It does this by collecting information from these businesses and disclosing it to the appropriate department for investigation. The businesses subject to the act are mainly Canadian financial institutions and money services businesses, or foreign-controlled enterprises operating in Canada.

On April 5, 2022, Canada adopted regulations to include crowdfunding platforms in the above-mentioned framework. These changes can be seen as a continuation of the financial measures outlined in the *Emergency Economic Measures Order*.⁸⁹ Crowdfunding platforms are now “covered as money services businesses (MSBs) or foreign money services businesses (FMSBs).”⁹⁰ As a result, they are under new obligations with FINTRAC:

- “register with FINTRAC
- develop and maintain a compliance program
- carry out know-your-client requirements, including verifying the identity of persons and entities for certain activities and transactions
- keep certain records, including records related to transactions and client information

⁸⁷ *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c 17, s. 3. See Gallant, *supra* note **Error! Bookmark not defined.**

⁸⁸ Government of Canada, “Mandate of the Financial Transactions and Reports Analysis of Canada,” online: <fintrac-canafe.canada.ca/fintrac-canafe/1-eng>.

⁸⁹ See above, section 3.3.3.

⁹⁰ *Regulations Amending the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations and the Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations*, TR SOR/2022-76, (2022), Gaz C II, v 156, no. 9.

- report certain transactions to FINTRAC.”⁹¹

There are two definitions crucial to determining which new businesses are subject to these obligations. A crowdfunding platform is defined as a website, application or other software “that is used to raise funds or virtual currency through donations.”⁹² Crowdfunding platform services are defined as “the provision and maintenance of a crowdfunding platform for use by other persons or entities to raise funds or virtual currency for themselves or for persons or entities specified by them.” These obligations apply to any business providing crowdfunding platform services.

Crowdfunding platforms that allow both donations and presales would likely be targeted. But, what about donation pages embedded on websites belonging to organizations or movements, such as that of the above-mentioned Ottawa Fund?⁹³ In this case, the site owner is not maintaining the site to allow someone else to raise funds. Therefore, this site does not appear to be subject to the obligations. However, the company providing the donation collection application or software could be targeted, but it would be difficult to enforce the new provision as the company itself does not administer the site.

The Canada Gazette’s Regulatory Impact Analysis, published at the end of the regulations text, states that the amendments tend to impact small businesses.⁹⁴ It was deemed necessary to include these, or else there would be a high risk that “criminal and terrorist financing would be diverted to these businesses.” The impact analysis also states that FINTRAC will adjust its monitoring regime based on the size of the organization and on the risk assessment.

The National Crowdfunding and Fintech Association, which represents several crowdfunding platforms operating in Canada, has criticized these new measures, stating that the impact analysis was not conducted in a rigorous manner. The association denounced the costliness of the new regulations for the impacted platforms and the fact that these measures were applied so quickly. It also points out that crowdfunding platforms do not hold the funds directly, but deal with money services businesses or financial institutions that are already subject to the regulations.⁹⁵

Indeed, one may wonder whether direct control of payment intermediaries does not remain the most effective approach after all.

⁹¹ Government of Canada, “Crowdfunding platforms and certain payment service providers must register with FINTRAC and the definition of ‘EFT’ has been amended,” online: <fintrac-canafe.gc.ca/notices-avis/2022-04-27-eng?wbdisable=true>; SOR/2022-184, art 29.1.

⁹² Regulations, *Ibid*, s. 1(2).

⁹³ See above, section 3.2.4.

⁹⁴ *Supra* note 90.

⁹⁵ “NCFCA Response to FINTRAC’s ‘Knee Jerk’ Regulations Requiring Donation Crowdfunding Platforms to Register and Comply with AML/ATF Legislation,” NCFCA (June 10, 2022), online: <ncfacanada.org/?s=DONATION+CROWDFUNDING>.

9.3 Personal Information Protection

Much of the information that crowdfunding platforms are likely to collect is personal information protected under the *Personal Information Protection and Electronic Documents Act* (PIPEDA) or, in the case of Alberta, British Columbia and Québec, under provincial legislation deemed equivalent.

Crowdfunding platforms do not retain financial data if they contract with another company to process payments.⁹⁶ However, platforms are likely to collect information regarding donation amounts and other personal information from donors, project owners and beneficiaries.

It seems quite clear that crowdfunding platforms collect, use or disclose this personal information to engage in commercial activities, even if this data is collected during a donation. The platforms would therefore be subject to the act (s. 4(1)(a)).⁹⁷

The success of a crowdfunding campaign depends largely on its social media outreach; the two activities are closely integrated. We can therefore reasonably assume that these platforms face the same issues as a company such as Facebook. I have not reviewed Federal Bill C-27, *Digital Charter Implementation Act, 2022*, but one can only hope it will fill the gaps in the current law by providing better protection of personal information collected through social media and online platforms.

Section 7(3)(c) of PIPEDA authorizes organizations subject to the act to disclose personal information without the knowledge or consent of the individual if the disclosure is “required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information.” This means it is possible for a public authority to obtain such information in this manner.

⁹⁶ See the terms of use, under “Payment processor,” online: *GoFundMe* <gofundme.com/en-ca/c/terms>, accessed September 26, 2022: “GoFundMe is not a payment processor and does not hold any funds. Instead, GoFundMe uses third-party payment processing partners to process Donations for a Fundraiser (“Payment Processor”). You acknowledge and agree that the use of Payment Processors is integral to the Services and that we exchange information with Payment Processors in order to facilitate the provision of the Services.”

⁹⁷ At least that would likely be the view of the Office of the Privacy Commissioner of Canada, which has always considered Facebook to be subject to the act, see “Report of Findings into the Complaint Filed by the Canadian Internet Policy and Public Interest Clinic (CIPPIC) against Facebook Inc. Under the *Personal Information Protection and Electronic Documents Act*” by Elizabeth Denham, July 16, 2009, online: <[priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2009/pipeda-2009-008/](https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2009/pipeda-2009-008/)>; see also: *Privacy Commissioner of Canada v. SWIFT*, Report of Findings, online: https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2007/swift_rep_070402/.

9.4 Electoral Laws

Due to time constraints, I will not undertake a review of the electoral laws that govern political advertising, partisan activities and party financing. However, it would be worthwhile to examine whether these laws provide an adequate framework for political crowdfunding campaigns, where necessary (see above, section 7).

9.5 Tax Laws

For the same reasons, I will not review tax laws, which require registered charities to be managed in a thorough and transparent manner. However, most organizations that engage in crowdfunding are not charities. Sometimes, these are merely short-lived, informal organizations.

It seems plausible that crowdfunding platforms do not verify the identity of project owners or donors. As we have seen, project owners may use a name that does not correspond to any legally existing organization. Also, some donors may ask to remain anonymous, so the platform may or may not collect information on these individuals. However, these individuals will need to identify themselves in order to send or receive a payment.

Considering that many private law relationships are formed without public disclosure or identity checks, this situation does not seem to be a cause for concern.

10. International Models

I have not found any law, in any other country, that regulates donation-based crowdfunding specifically. Most countries with crowdfunding regulations focus instead on equity-based crowdfunding and sometimes on presales, without addressing donations.⁹⁸

As of 2014, however, the French *Code monétaire et financier* (hereinafter “CMF”) has regulated crowdfunding platforms in general.⁹⁹ Although the CMF applies mainly to investment- or lending-based crowdfunding,¹⁰⁰ the amending order of 2014 has had a significant impact on the supervision of donation-based crowdfunding platforms by including these platforms in the definition of “intermediation in participatory financing.”¹⁰¹ This statute gives rise to several obligations, listed in the CMF’s sections L548-1 and following, which state that platforms must register (s. L548-3), comply with rules of good conduct (s. L548-6) and conform to the rules regarding the prevention of money laundering and the financing of terrorism, as stipulated under

⁹⁸ For international models, see Caroline Kleiner, Ed., *Legal Aspects of Crowdfunding*, IUS Comparatum – Global Studies in Comparative Law, vol 55, Springer Cham, 2021. See also Mayer, *supra* note 48.

⁹⁹ Order no. 2014-559 of May 30, 2014, on participatory financing, JO, May 31, 2014, no. 0125. See also s. L548-1 and s. CMF.

¹⁰⁰ François Barrière, “Le Crowdfunding, ou l’Adaptation du Droit au Service des Investissements en France” in Caroline Kleiner, Ed., *Legal Aspects of Crowdfunding*, IUS Comparatum – Global Studies in Comparative Law, vol 55, Springer Cham, 2021, 303, p. 306.

¹⁰¹ S. L548-1 CMF.

Title VI of the CMF.¹⁰² This is a special scheme that applies, in addition to the provisions of the penal code, to many financial institutions.¹⁰³

Finland is said to have passed a law in 2016 that requires crowdfunding platforms to obtain a licence.¹⁰⁴ I was not able to review this law.

A comprehensive study would require an investigation into whether other countries have laws that regulate donation-based crowdfunding in an incidental manner. Unfortunately, this thorough research would require more time than I have at this moment.

¹⁰² S. L561-2(4) CMF.

¹⁰³ S. L561-2 to L561-4 CMF.

¹⁰⁴ Aki Kallio, "Crowdfunding Act Accelerating the Growth of the Crowdfunding Market in Finland" in Kleiner, *supra* note 98, 291, p. 295.