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## THE CHARITY LAW & PRACTICE REVIEW

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C L & P R

Volume 5, 1999, Issue 3

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**The Charity Law & Practice Review**  
is published by  
Key Haven Publications PLC  
7 Crescent Stables  
139 Upper Richmond Road  
London SW15 2TN  
Telephone (0181) 780 2522, Facsimile (0181) 780 1693

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## From the Managing Editor

### EDITORIAL

Two great events are unrolling in our jurisprudence and procedure at present. The first is the enactment into our system of a Humans Rights Act mirroring the European Convention on Human Rights; the second is the radical reform of civil procedure under the Woolf reforms. The first of these has a very considerable impact on our law and practice relating to charities. And although charity litigation is not an exuberantly flourishing field at present, there are always warring factions within religious organisations whose advisers will need to keep their eyes on the new reforms.

#### **Religion, Charity Law and Human Rights**

The lead article in the present issue is by Francesca Quint of 11 Old Square and Thomas Spring, an American lawyer. The issue of what is a religion in charity law is a very vexed one. It has prompted considerable periodical literature and is a topic on which a decisive statement from the courts is needed.

The article underlines the presence on the register of Buddhist, Jainist and other non-theistic sects and reviews the American cases. It posits, with detailed references to pronouncements by international human rights organisations, that the Human Rights Act 1998 will have a profound effect on how the definition of religion evolves under charity law. It will be interesting to see whether the Charity Commissioners will accept this thesis.

#### **Scottish Charity Law Reform**

With the impending advent of a devolved Scottish Parliament, Patrick Ford, a Writer to the Signet and a member of the Charity Law Research Unit of the University of Dundee, offers a contribution to the debate on the charity reform proposals of the Kemp Report. The Kemp Report, it will be remembered, was produced by the Commission on the Future of the Voluntary Sector in Scotland set up with funding by the SCVO. In other words it was Scotland's Deakin Report. Whether one

accepts the accuracy of the metaphor implicit in the image of a "three tiered" public benefit system, it is, for expositional purposes, more than sufficient. English practitioners will, moreover, find the resumé of Scots common law and statute and of the impact of the English law of charities a valuable summary to have at hand. The failures in coherence in the Scots system identified by Patrick Ford are the springboard for his suggestions for an agenda of post-devolution reform.

### Definition again

'Old Hats, New Models or *Chapeaux Révisés*? Defining Charity' by Professor Ann Everton of the University of Central Lancashire and Dr Alison Dunn of the University of Newcastle is a timely and well argued defence of the existing definition of charity. Vociferous political activists are, of course, entitled to grind their axes. In the field of reforming the definition they have been at it since at least the mid-seventies. Most of them are unfamiliar with, or do not care about, the rich diversity and flexibility of our "living preamble" (not some fossilised Elizabethan talisman) and of the traditional equitable approach. This article is a convenient summary of the compelling arguments in rebuttal of any need for reform.

### Human Rights and the *Bowman* Case

Debra Morris of the Charity Law Unit at the University of Liverpool in her article 'Charities, Politics and Freedom of Speech' draws attention to the implications, for charities wishing to engage in political activities, of the Human Rights Act 1998 and in particular of the decision in *Bowman v UK* (1998) 26 EHHRR 1. The view that courts are in all circumstances precluded from assessing whether a particular change in the law or in government policy is for the public benefit, is one which, she suggests, is becoming increasingly indefensible. In this regard she contrasts *Southwood v AG* (1998), *The Times*, 26th October with the decision of Santow J in the Supreme Court of New South Wales in *Public Trustee v AG for New South Wales* (1997) 42 NSWLR 600.

### Capital Gains Tax

Lastly, Robert Venables QC in 'Charities and Imputed Capital Gains' draws attention to a recent change of tack by the Revenue in relation to a particular capital gains tax exemption. The Revenue now accept that the exemption contained in Taxation of Capital Gains Act 1992 s. 256 may exempt gains which would otherwise be charged on charities under TGCA 1992 s.87. The revised view does not help

those who have received benefits under a section 87 charitable trust, as Robert Venables explains; and this and other problems are discussed in the same article.

Finally, I should repeat that articles long or short on charity law or practice are most welcome for consideration, as are suggestions for areas of charity law or practice to be covered.

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March 1999