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## THE CHARITY LAW & PRACTICE REVIEW

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C L & P R

Volume 6, 1999, Issue 1

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## From the Managing Editor

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### EDITORIAL

In one way or another, all the contributions to this edition of the *Review* are concerned with definitional problems.

First there is an extended treatment by the Managing Editor of the two recent cases on the promotion of peace as a charitable object. 'War and Peace: A Political Saga' attempts to grapple with the inconsistencies between the two cases and to extract some order out of the chaos of the surrounding case law.

Peter Somerfield, a solicitor working in the Liverpool offices of the Charity Commission gives, a personal assessment of the claims of the relief of unemployment to be a charitable object. His article 'Reviewing the Register: Unemployment' explores the implications of the decision of Lightman J in *IRC v Oldham Training and Enterprise Council* and of the Charity Commission's welcome initiative in investigating the viability of unemployment trusts and charities.

Robert Venables, formerly Legal Charity Commissioner and now a Consultant Solicitor with Bircham & Co, with his colleague Judith Morris also a Consultant Solicitor with that firm, explores the boundaries of private benefit in charity law in one particular area. Their article 'Private Benefit: A Conundrum' considers the question of the extent to which contractual arrangements relating to the care of a disabled child can obtain where the parents of the child make a donation to the charity that is to offer care to the child.

In answer to their invocation of the possible relevance of the views of Joe Public on what should be treated as charitable, they and other readers of this *Review* and the Charity Commission might like to consider the sage and salutary words on the irrelevance of public opinion and public consensus in the judgment of Dé Cary J in the Canadian case of *Everywoman's Health Centre Society (1988) v Minister of National Revenue* [1992] 2 FC 52 at 68-69:

"To define charity through public consensus would be a most imprudent thing to do. Charity and public opinion do not always go hand in hand; some

forms of charity will always precede public opinion, while others will often offend it. Courts are not well equipped to assess public consensus, which is a fragile and volatile concept. The determination of the charitable character of an activity should not become a battle between pollsters. Courts are asked to decide whether there is an advantage for the public, not whether the public agrees that there is such advantage.”

Blake Bromley is a leading Canadian commentator on charities and well known to readers of this *Review*. In his article ‘Answering the Broadbent Question: The Case for a Common Law Definition of Charity’ he delivers a typically robust and powerfully argued response to the suggestion that a new statutory definition of charity is needed because of the failure of Canadian Supreme Court majority to provide one in the *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue* (1999) 169 DLR (4th) 34. This judgment delivered on 28th January 1999 has predictably, been excoriated as “politically incorrect”. But, as Gonthier J points out, had counsel for the Society spent less time on arguing for a new common law definition and more time on bringing the case within the existing regime he might have succeeded. For example, insufficient attention was devoted to the dictum of Lord Macnaghten in *Pemsel* to the effect that it was perfectly acceptable for a charity to benefit the rich as well as the poor. The particular value of Bromley’s contribution, as it seems to me, is not only in his acute analysis of the discrepant reasoning in the *Immigrant Women* case but also in his articulation of the great utility of the protections and collected wisdom of over 400 years of legal reasoning on the nature of charity. These benefits are at present happily at the disposal of courts all over the Commonwealth.

Robert Venables QC, the taxation editor, provides an interesting analysis of a thorny question which often arises when the residue of a deceased’s estate is shared between charities and non-charities. Should the division of the stated shares take place before or after the payment of inheritance tax?

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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29th July 1999