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## THE CHARITY LAW & PRACTICE REVIEW

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C L & P R

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All editorial correspondence should be addressed to  
Hubert Picarda QC, The Managing Editor  
9 Old Square, (Third Floor North), Lincoln's Inn, London WC2A 3SR  
Facsimile (0171) 831 3584

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## From the Managing Editor

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### EDITORIAL

There are several articles in this latest issue of the *Review* which, it is hoped, could accurately be described as "meaty".

The first claim on readers' attention, at any rate in order of appearance, is a longish appraisal of an exemption for charities and near charities in copyright law. The exemption is, in point of fact, little praised and little known. Since the article in question is the Managing Editor's baby, it would be indecent for the doting parent to say too much about it here. However, the copyright exemption's historical link with earlier rating law provisions gives "Discotheques and the Copyright Exemption for Charities and Near Charities" a particularly interesting extra dimension, not vouchsafed by the arresting narrowness of the title of the article.

Robert Venables QC draws attention to a hazard in the capital gains tax provisions awaiting charities who receive distributions from non-resident trusts. This is consequential on a view promulgated by both the Trust & Settlements Section and the Charities Section of FICO at Bootle and for that reason "Capital Distributions from Non-Resident Trusts: A Tax Trap for Charities" merits serious regard.

Also of topical value for the domestic practitioner is "Charity Landholding: A New Beginning" by Christopher Jessel of Farrer & Co, a firm with a very strong charity department. This considers the implications and effect of the repeal of section 29 of the Settled Land Act 1925 by the cumbersomely named Trusts of Land and Appointment of Trustees Act 1996. The writer sets the scene very appropriately by rehearsing the history of land-holding from feudal times; which done, he goes on to mention some of the problems posed by the new legislation and speculates about the future.

The interest of the article "Charitable Organisations in the Russian Federation" by Nicholas Rumin, who is with Baker & McKenzie in St Petersburg, is, by contrast, instructive rather than comparative. The very idea of "charity" in the new Russia is enough to make the blood quicken. And the Russian Federation needs charities and Western support in that connection.

As Dr Myles McGregor-Lowndes, Co-Director of the Queensland University of Technology's Program on Nonprofit Corporations, points out in his article on "Charitable Australian Housing Co-operatives", the Australian judiciary is receiving fewer opportunities to expatiate on the contemporary boundaries of charity. However, there have been two illuminating decisions recently in the field of housing co-operatives, and these receive timely scrutiny. The tenants in *Common Equity Housing Ltd v Commissioner of State Revenue (Victoria)* (1996) 96 ATC 4598 were not uniformly poor and it was objected that there was in the arrangements governing the co-operative a breach of the non-distribution constraint and that it was a mutual or self-help society. These and other objections were swept to one side on the principles declared in the English case of *Joseph Rowntree Memorial Trust Housing Association Ltd v A-G* [1983] 1 Ch 159. Also analysed by Dr McGregor-Lowndes is the unreported case of *Toomelah Co-operative Ltd v Moree Plains Shire Council* (1996) 4th March, where Stein J, in the Land and Environment Court of New South Wales, held that neither "strengthening and fostering the development of Aboriginal identity and culture" nor "the promotion of Aboriginal land rights" aborted the charitability of the co-operative.

Lastly, Christopher McCall QC brings his silken expertise and philosophising bent to bear on the reviewing of the second edition of that excellent *vade mecum* among practitioners' guides, *The Charities Acts Handbook* (1996) by Fiona Middleton and Stephen Lloyd. Both are partners in Bates Wells and Braithwaite, another front runner (and possibly the leader) firm in the charity law stakes.

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.

10th May 1996

Hubert Picarda QC  
Chambers of Sir William Goodhart QC  
3 New Square  
Lincoln's Inn  
London WC2A 3RS