

THE CHARITY LAW & PRACTICE REVIEW

C L & P R
Volume 2, 1993/94, Issue 3

EDITORIAL BOARD

Hubert Picarda QC, MA, BCL(Oxon)
(Managing Editor)
Roger Madsen, Solicitor
(Assistant Editor)
Debra Morris, Lecturer in Law, University of Liverpool
(Case Note Editor)

CONSULTING EDITORIAL BOARD

The Right Honourable Lord Justice Hoffmann
The Honourable Mr Justice Knox
The Honourable Mr Justice Mummery

*For details of the
Advisory Editorial Board please refer over*

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

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

Disclaimer

DISCLAIMER

The views contained herein are put forward for further consideration only and are not to be acted upon without independent and professional advice.

Neither the Publishers nor the Authors or Contributors can accept any responsibility for any loss occasioned to any person no matter howsoever caused or arising as a result of or in consequence of action taken or refrained from in reliance on the contents hereof.

© 1994 KEY HAVEN PUBLICATIONS PLC

Conditions of Sale

All rights strictly reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the publisher.

Any person infringing the publisher's copyright will be liable to criminal and/or civil proceedings.

Printed in England by Anthony Halms & Partners, London.

Robert Venables QC

Chairman of Advisory Editorial Board

Robert Venables

Charity Commissioner

Christopher McCall QC

formerly Junior Counsel to the Attorney General in Charity Matters

Professor Gareth Jones QC LLD

Trinity College, Cambridge

Professor Christopher Nobes
Professor of Accountancy, University of Reading
Lee Sheridan LL.D
formerly Professor of Law, University College, Cardiff
Harry Kidd
Emeritus Fellow, St John's College, Oxford (European Developments)
James Kessler
Barrister
Andrew Phillips
Solicitor and Partner, Bates Wells & Braithwaite
Adrian Longley
Solicitor and former legal adviser to NCVO
Peter Mimpriss
Solicitor and Partner, Allen & Overy
Brian McGeough
Solicitor and Partner, Denton Hall Burgin & Warren
Michael Carpenter
Solicitor and Partner, Withers
Peter Luxton
Lecturer in Law, University of Sheffield
Jean Warburton
Senior Lecturer in Law, University of Liverpool
Elizabeth Cairns
Solicitor
Judith Hill
Solicitor and Partner, Farrer & Co
Jennie Gubbins
Solicitor and Partner, Trowers & Hamlins
(Charitable Housing Associations)
Peter Smith
Lecturer in Law, University of Exeter
(Universities & Ecclesiastical Charities)

OVERSEAS CORRESPONDENTS

AUSTRALIA

Dr Myles McGregor-Lowndes

Associate Professor, Queensland University of Technology, Brisbane

CANADA

E Blake Bromley

Partner, Douglas Symes & Brissenden, Vancouver, British Columbia

MAURITIUS

Dr S Bhoushan Domah

President, Intermediate Court, Judiciary of Mauritius
Lecturer, University of Mauritius

RUSSIAN FEDERATION

Nina Belyaeva

President Interlegal, International Charitable Foundation
for Political and Legal Research
Moscow

SOUTH AFRICA

Richard Rosenthal

Director, Richard Rosenthal Consultancy, Cape Town

USA

Robert Atkinson

Associate Professor of Law, Florida State University

J Clifton Cox

of The Florida Bar

Professor Harvey Dale

Program of Philanthropy and Law, New York University

Professor Karla W Simon

Executive Director, International Center for Not-for-profit Law
Farmington, Connecticut

CONTENTS

	Page No
Editorial	v
The Treaty of Rome and Competition in the Voluntary Sector Harry Kidd	175
Cy-près Application of Three Holloway Pictures Lee Sheridan	181
Exporting Civil Society: Confessions of a "Foreign Legal Expert" E Blake Bromley	185
Avoiding being Personal: Public Benefit and the Personal Nexus in Educational Trusts Jeremy Callman	203
The Rationale for Charity Law Francesca Quint	211
The Charitable Trust in English, French and Mauritian Law S Bhoushan Domah	219
Education Matters Debra Morris	243
Charity Law Unit	257

From the Managing Editor

EDITORIAL

Readers will notice a distinctly international and comparative flavour in this last issue of the second year of the *Review's* life. This is a consequence of the highly successful NCVO International Charity Law Conference held at Royal Holloway College, Egham, Surrey on 16th and 17th September. No less than three of the papers delivered at that Conference appear in this issue, although Francesca Quint's contribution on "The Rationale for Charity Law" is home grown and home slanted. More will appear in future issues. For good measure Harry Kidd's article on "The Treaty of Rome and Competition in the Voluntary Sector" adds a European perspective in the important area of competition. Blake Bromley, an overseas correspondent of this *Review* (now joined by a squad of further overseas correspondents) ruminates on the direction which "the third sector" will take in his contribution "Exporting Civil Society: Confessions of a 'Foreign Legal Expert'". The theme of the competition between the common law notions of charity and those of civil law systems is neatly contrasted in Dr S Bhoushan Domah's consideration of "The Charitable Trust in English, French and Mauritian Law". That theme is one which, in due course, it is hoped to illustrate further by reference to the comparative experiences of charity lawyers in Quebec and the other provinces of Canada.

This diet of internationalism is not exclusive. And domestic questions have not neglected. Lee Sheridan, a master in the field of *cy-près*, has studied the decision of the Charity Commissioners concerning three pictures owned by Royal Holloway and Bedford New College. Jeremy Callman, a Chancery barrister, takes a fresh look at public benefit and the personal nexus in educational trusts in his article "Avoiding Being Personal".

The two most recent reported cases in this country are also in the field of education and Debra Morris of the newly established Charity Unit at the Faculty of Law of the University of Liverpool analyses *Marchant v Onslow*, a case on the Reverter of Sites Act 1987, and *Gunning v Buckfast Abbey Trustees Registered* which concerns standing to sue in charity actions in her ambiguously titled contribution "Education Matters".

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.

Hubert Picarda QC
10 Old Square
Lincoln's Inn
London WC2A 3SU

8th December 1994