By Way of Introduction...

BERTHA WILSON
Founding Editor, The Philanthropist

[The following editorial from Volume I, Number 1, of The Philanthropist, *was written by Bertha Wilson, at that time with Osler, Hoskin & Harcourt, Toronto, an active member of the Wills and Trusts Section of the Canadian Bar Association and first editor of this journal. Editor Wilson subsequently served as a distinguished Justice of the Ontario Court of Appeal and the Supreme Court of Canada.]*

It took the British Government ten years to review the state of charity in the United Kingdom and come up with the Charities Act of 1960 (8 & 9 Eliz. II, Ch. 58), a whole new constitution of English charity: three of those years for the sittings of the Nathan Committee to hear evidence and receive and consider briefs from government departments, charitable foundations, churches and voluntary associations and submit its Report to Parliament; two years of heated debate in the Commons culminating in the Government's White Paper on Charity; further lengthy debate in the Lords during which critics on the right expressed their concern over the contemplated increase in the control to be exercised by public authorities and critics on the left castigated the Nathan Report for its timidity. But what is perhaps most interesting for us in Canada, where a review of the state of charity has yet to be undertaken, is the frame of reference which the Chairman of the Nathan Committee set for himself. His Committee's task, he said, was "to recommend ways in which the goodwill of the past might be more free to serve the changing needs of the present" and, more specifically, ways in which charitable gifts and bequests might "add their full weight to the whole drive of voluntary action for social progress".

The Nathan Committee devoted itself to two major aspects, the technical, legal side of charity and the operational administrative side. On the legal side it faced the basic question whether a new definition of charity was required. Was the Preamble to the Statute of Elizabeth archaic? Should Lord Macnaghten's four categories, the relief of poverty, education, religion and other purposes beneficial to the community, which had in fact been accepted by the courts as the operative definition of charity, replace it? What would be the effect on existing jurisprudence? The Committee opted for Lord Macnaghten's four categories: the Government stayed with the Statute of Elizabeth and the definition of charity in the United Kingdom remains unchanged.

It was on the operational and administrative side of charity that the real scope for reform was found to lie and the same is probably true in Canada. Although there was already a Charity Commission with much larger powers than normally attached to the office of Public Trustee in the provinces of Canada, its jurisdiction was ill-defined and its senior members who were all lawyers were excessively legalistic and technical in their decisions. The Commission was not affiliated with any particular government department and its spokesman had been for years and continued to be an unpaid Parliamentary Commissioner whose influence was limited by his back-bench status.

The Committee brought forward in its Report a whole new concept of the role of the Charity Commission. There should be fewer lawyers on it and more "men and women of standing and experience in public and charitable affairs". Its concerns should be broadened with a view to maximising the social utility of charitable activity in the community. Its power to put forward schemes for the application of funds cy-près should be extended, likewise its power to recommend the revision of trusts which had become obsolete. Greater flexibility should be built into trustee investments for charities. The Commission required a face-lift. It must cease to be, in the words of one member of the Nathan Committee, "a sleepy, bureaucratic backwater" and become sensitive to the role of private philanthropy in the drive for social progress. Its public relations had to be developed: it must become a source of information on charitable organizations for potential donors, beneficiaries and the public generally. To this end it must establish a registry system and determine the data to be recorded. In effect, it must come alive and be the dynamic on the charitable scene.

There seems to be little doubt that in many respects the state of charity in Canada today parallels the conditions in the United Kingdom which prompted the establishment of the Nathan Committee. We suffer from the same technicalities in our law governing charity and many beneficent donors find their good intentions frustrated in the courts. We have the same lack of flexibility in dealing with charitable trusts and the investment of their funds and the same vacuum of publicly available information. We have in addition a complex body of jurisprudence in relation to the tax treatment of charities and charitable gifts under the federal and provincial taxing statutes.

It is against this background that the Canadian Bar Association in the Fall of 1969 through the Wills and Trusts Section of the Bar established a Special Committee on Charitable Organizations. This Committee hopes through this publication to offer a forum for an informed and constructive critique of the charitable and philanthropic scene in Canada. It is intended as a vehicle of expression not only for lawyers but for those engaged in the operational side

of charity, for public servants charged with the responsibility for the supervision of charity and for private individuals interested in a more contemporary way of expressing their benefactions. The Committee welcomes their response to this new venture and their active participation in its concerns.