

Standing On Guard For Thee: The Role of the Office of the Public Guardian and Trustee*

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Introduction

This article will examine the role of the Public Guardian and Trustee in charitable matters, a role carried out by the Charitable Property Program, a unit in the Office of the Public Guardian and Trustee within the Ontario Ministry of the Attorney General.

Historical Overview

Charities enjoy special privileges because of the public benefit derived from the application of property to charitable purposes. This includes fiscal and nonfiscal privileges. Fiscally, charities enjoy exemption or reduced liability from many federal, provincial or municipal taxes including, but not limited to, income tax. If a charity is also a registered charity under the *Income Tax Act*, it can issue tax credit receipts to donors for the donations it receives.

Charities also enjoy other legal privileges. A charitable trust can have perpetual existence contrary to the general law of trusts (Rule Against Perpetuities). The *cy-près* doctrine provides a charity with relief from forfeiture and escheat of its property.

Unfortunately, charitable property is also vulnerable to abuse, neglect and exploitation. As there are no individual beneficiaries of charitable property and it is devoted to purposes beneficial to the community, the supervision of such property rests with the Crown. This is part of the Crown's *parens patriae* duty, which in addition to charitable property, includes the Crown's duty to protect the person and property of minors, absentees, and the mentally incapable. The Crown as represented by the Attorney General, has had a longstanding right and duty to supervise and come to the assistance of charities.

The courts have inherited jurisdiction over charitable property that arose originally as part of their jurisdiction over trusts. The Superior Court's inherent jurisdiction continues today, however it is enhanced by legislation. Histori-

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cally, while the Court had inherent jurisdiction, it had to rely on the Attorney General for investigations and to bring matters before it.

This situation was one of the reasons for the enactment, 400 years ago, of the *Statute of Charitable Uses*, better known as the *Statute of Elizabeth*, [(1601), 43 Eliz. 1, c. 4 (U.K.)]. This statute created local commissions to inquire into the administration of charitable trusts to ensure that the property was being employed for the charitable purposes.

In Canada “charities” are under the exclusive jurisdiction of the provinces.¹ In Ontario the Attorney General’s powers were codified and expanded with the enactment of the *Charities Accounting Act* in 1915. In 1919 with the enactment of the *Public Trustee Act*, the *Charities Accounting Act* was amended to give the statutory supervisory authority to the Public Trustee, renamed the Public Guardian and Trustee in 1995.²

Even though Ontario has had charities legislation for 85 years, the existing system for the supervision of charities continues to be court based. As noted above, the courts have inherent jurisdiction over charitable property and those who hold charitable property. The net effect of the common law and legislation is to continue the key role of the courts in the supervision of charities.

Role of the Public Guardian and Trustee

a) Mandate of the Public Guardian and Trustee

The community has an interest in seeing that charitable property is properly applied. The role of the Public Guardian and Trustee is to protect the community’s interest in the enforcement and supervision of charitable trusts. The Public Guardian and Trustee acts to:

- protect charitable property;
- afford advice and assistance to the courts; and
- ensure that charitable property is used for the charitable purposes intended by the donor.

The legal meaning of “charity” differs from its popular meaning. “Charity” for charities law purposes means the purpose it is used for, categorized as;

- a) the relief of poverty,
- b) education,
- c) the advancement of religion; and
- d) other purposes beneficial to the community, but not falling under clauses a), b) or c) which have been recognized by the court as charitable.

When acting to protect charitable property, the Public Guardian and Trustee does not act as representative of any person and in particular does not represent

charitable organizations, trustees, executors or other persons who may be responsible for applying charitable property to charitable purposes.

The Public Guardian and Trustee is not the regulator of charities. The Public Guardian and Trustee has very little decision-making power in this area and what power the position has is established by statute. The office does not maintain a registration system or confer charitable status. It is an issue of law and fact whether or not an organization is a charity: if its purposes are wholly *charitable*, it is a charity.

The Public Guardian and Trustee has authority over all charitable property no matter who or what holds the property. This applies to unincorporated associations, trusts, estates and individuals. The Public Guardian and Trustee also has the authority over corporations whether they are incorporated under Ontario's *Corporations Act*, federally, or under other provincial legislation. If the organization or individual operates in Ontario or holds charitable property in Ontario, the Public Guardian and Trustee has jurisdiction to deal with issues concerning the use or administration of the charitable property.

There is one exception to this. In *Re Centenary Hospital*,³ the Court held that the Public Guardian and Trustee's supervisory authority over hospitals is limited; the Ministry of Health is responsible for regulating hospitals and their corporate property. The Court, however, also held that the Public Guardian and Trustee continued to have jurisdiction over restricted-purpose trust property held by hospitals.

The Public Guardian and Trustee's role is different from that of Canada Customs and Revenue Agency. CCRA administers the *Income Tax Act* (Canada) and is concerned with issues arising under the *Act*: whether income tax receipts have been properly issued, there has been compliance with the disbursement quota, and annual information returns have been filed. The Public Guardian and Trustee's concern is whether trustees are complying with their fiduciary duties and whether the charitable property is being properly managed.

b) How the Public Guardian and Trustee Carries Out Its Mandate

The Public Guardian and Trustee carries out its mandate by:

- reviewing Ontario applications for incorporation of not-for-profit charitable organizations and corporate-change documents of those organizations;
- protecting charitable property in court proceedings including Passings of Accounts; and
- acting on written complaints from the public concerning the misapplication of charitable property by investigating and making application to the court if necessary.

Review of Applications for Incorporation

The Public Guardian and Trustee reviews all applications for incorporation of charities under the *Corporation Act*. The Office is interested in whether the

objects are charitable in law, whether the powers of the proposed corporation are appropriate and whether the application otherwise complies with the requirements of charities law. Previously, the Public Guardian and Trustee pre-approved applications in advance of the review by the Ministry of Consumer and Business Services (formerly the Ministry of Consumer and Commercial Relations).

In September 1999 a new approach began for incorporating a charity in Ontario. This resulted in a two-track approach. The fast track approach permits charities to use pre-approved objects drafted by the Office of the Public Guardian and Trustee. The applicants using pre-approved objects apply directly to Companies and Personal Property Security Branch at the Ministry of Consumer and Business Services for incorporation. Companies Branch reviews the objects to ensure that they do not vary from the pre-approved objects. When the fast track approach is used, the application is not reviewed by the Public Guardian and Trustee and the Public Guardian and Trustee's review fee is not charged.

However, many charities may still have a need for specialized objects. The application for incorporation in these situations is sent to the Charitable Property Program and once approved, the Public Guardian and Trustee forwards the application to Companies Branch for their review and processing. The Public Guardian and Trustee currently charges \$150 for this review while the Ministry of Consumer and Business Services charges an additional \$155.

One of the real benefits of the fast track approach is that Canada Customs and Revenue Agency has approved the pre-approved objects to avoid duplication and to simplify the application for a charitable registration number. It is still necessary, however, to meet the other criteria of Canada Customs and Revenue Agency.

If a charitable corporation wishes to change its Letters Patent or to amalgamate with another corporation it needs to apply for Supplementary Letters Patent (SLP) or Letters Patent of Amalgamation. The Public Guardian and Trustee reviews all Supplementary Letters Patent and Applications for Letters Patent of Amalgamation.

Litigation

The Public Guardian and Trustee's standing to be served and participate in charitable matters arises under the *Charities Accounting Act*⁴ and the common law.⁵ The Public Guardian and Trustee does not represent or act for existing charities with an interest in the proceedings as they are legally competent to protect their own interests. The Public Guardian and Trustee will become involved in litigation where there is no identifiable individual or organization to protect the charitable interest or where the charity or its directors are in a conflict of interest in respect of the issue before the court. The Public Guardian

and Trustee can also decide to be involved if there is a general legal principle that affects the charities sector at large.

The Public Guardian and Trustee should be served in any proceeding involving charitable property.

- **Cy-près and Scheme-Making Proceedings**

The doctrine of cy-près is available where property is given to a particular charity or for a particular purpose and it is, or becomes, impossible or impractical to carry out the intended purposes. When property is applied *cy-près*, the court substitutes a charity or charitable purpose which falls within the general charitable intent of the donor and is as similar as possible to the original charity or purpose. The *Variation of Trusts Act*⁶ does not apply to the variation of a charitable trust. The *Variation of Trusts Act* provides a procedure for obtaining court approval when one of the parties is a minor, unascertained or legally incapable of giving consent.

The Public Guardian and Trustee's concern in *cy-près* applications is to ensure that the charitable gift is saved, the substituted charity or charitable purpose is as near as possible to the original charitable purpose, and the intentions of the donor are respected. The Public Guardian and Trustee maintains a database of charities that can be of assistance in identifying substitute charities.

It is important to distinguish a misdescription of the named charity from a gift to a non-existent charity. A misdescription does not necessarily give rise to the need for a *cy-près*. A slight inaccuracy in the name of the charitable beneficiary can often be overcome by extrinsic evidence to identify the intended charity. It is important when drafting a will that the correct name of the charity be used. In addition, consideration should be given to including a *cy-près* clause whenever there is a gift to a named charity.

An application to order a scheme is required where there are indefinite, ambiguous or insufficient directions from the donor. This can be used to replace trustees when the original trust document does not provide for new or replacement trustees.

It is important to note that while the Public Guardian and Trustee can indicate its nonobjection to a *cy-près* or a scheme, only the court has the authority to approve and direct such relief and a court order is required.

- **Passing of Accounts**

The *Estates Act*⁷ provides that the Public Guardian and Trustee must be served on a passing of accounts where there is a beneficial charitable interest of the estate or trust. If the charitable interest is a named existing charity, the Public Guardian and Trustee generally will not participate as the charity is competent to protect its interest. The Public Guardian and Trustee will participate if there is an unprotected charitable interest, for example, where the gift is to charities to be selected by the trustee.

Pursuant to Section 3 of the Charities Accounting Act, the Public Guardian and Trustee can require trustees, including charitable corporations, to apply to the court to pass their accounts. If the trustee does not comply, the Public Guardian and Trustee can make an application to the court for an Order to require the passing of accounts under Section 4 of the *Charities Accounting Act*.

The form of the accounts is set out in the *Rules of Civil Procedure*.⁸

- **Section 13 Orders under the *Charities Accounting Act***

On November 28, 1997 the *Charities Accounting Act* was amended to add a new section, Section 13. A Section 13 Order is a simplified out-of-court procedure which, when filed with the court, is deemed to be an order of the court. A Section 13 Order cannot be obtained unless all parties, including the Public Guardian and Trustee, consent to the Order. The Public Guardian and Trustee will only consent to a Section 13 Order in non-contentious matters. In those situations where a matter could proceed on a consent basis and a court application has not yet been commenced, a Section 13 Order should be considered.

Complaints about Charities

The *Charities Accounting Act* allows members of the public to complain directly to the court about inappropriate use of charitable property. The court may then order the Public Guardian and Trustee to conduct an investigation on the court's behalf. It is more usual, however, for complainants to get in touch with the Public Guardian and Trustee directly.

Although the Public Guardian and Trustee can inquire into issues raised in certain written complaints received from members of the public about the administration of charitable property, the Public Guardian and Trustee is not required to investigate in the absence of a court order. The Public Guardian and Trustee can also inquire on its own initiative into the conduct of charities.

The Public Guardian and Trustee is primarily concerned with three issues:

- 1) Is charitable property being used for the charitable purposes?;
- 2) Have fiduciaries of charitable property acted in a conflict of interest, or otherwise breached their fiduciary duties?; and
- 3) Are particular types of charitable property, such as interests in real property or in businesses, being held or dealt with in contravention of particular provisions of the *Charities Accounting Act*, the *Charitable Gifts Act* or the general law of charities?

The *Charities Accounting Act* provides the Public Guardian and Trustee with the authority to look into issues dealing with the use of charitable property. The Public Guardian and Trustee requires that the complaint be in writing and requests any supporting information and documentation also to be provided. Generally, the office will contact the charitable organization and request information about the alleged wrongdoing. The Public Guardian and Trustee

attempts to work with charities to correct past errors and to prevent future problems. In those situations where the charity does not co-operate, the Public Guardian and Trustee can commence a court application pursuant to Section 4 of the *Charities Accounting Act*, requiring the charity to pass its accounts. Although it depends on the facts of each case the Public Guardian and Trustee may also seek an order for:

- an injunction restraining the charity from operating, and freezing its property;
- an injunction restraining the trustees, directors or officers from managing, administering or holding money or other property for any charitable organization or charitable trust;
- an injunction restraining the charity and its directors from soliciting, accepting or collecting money or other property for any charitable organization or charitable trust; and
- an inventory in writing verified by affidavit of all property of the charity and the location of such property.

Legislation

a) Charities Accounting Act, R.S.O. 1990 c. C. 8, as amended

The *Charities Accounting Act* was enacted in 1915 and confirmed the Attorney General's role in charitable matters. As noted, the statutory powers of the Attorney General under the *Charities Accounting Act* were transferred to the Public Trustee in 1919. Unlike the British model which established charities commissioners that operate as a quasi-judicial body, the *Act* maintains a court-centred model.

The *Charities Accounting Act* is essentially concerned with standing and procedure rather than substantive legal standards for the proper administration of charitable property.

Section 1 provides that where property is given by written instrument for a charitable purpose, notice must be given to the Public Guardian and Trustee.⁹ The *Charities Accounting Act* previously provided that where property was given to charity under a will, both the Public Guardian and Trustee and the beneficiary were to be notified of the gift. The *Charities Accounting Act* was amended in 2000 and now notice need only be given to the beneficiary of a charitable bequest in a will and not to the Public Guardian and Trustee. The notice must describe the property and the *Act* prescribes the time periods in which the notices must be given. While it is no longer necessary to serve the Public Guardian and Trustee when the will contains a gift to charity, they should be notified if any of the following situations arise:

- a charity renounces a gift;
- a charity does not wish to accept a gift for a specific purpose;

- the specified purpose no longer exists;
- a charitable gift involves a misdescribed, dissolved or nonexistent charitable organization; or
- the charity cannot be identified or located after a thorough search.

Subsection 1(2) brings charitable corporations within the ambit of the *Act* by deeming them to be trustees. Section 1.1 was added June 29, 2001. It provides that sections 27–30 of the *Trustee Act* apply to corporations deemed to be trustees under subsection (2).

Pursuant to Section 2, executors or trustees must, upon request, furnish written information to the Public Guardian and Trustee concerning the charitable property they hold, their names and addresses and the administration or management of the estate or trust. Where the executor or trustee has control of a corporation, the Public Guardian and Trustee is also entitled to written information about the corporation including its finances. The effect of Section 2 is to provide out-of-court tools for the investigation of how charitable property is being administered.

Section 3 provides that whenever the Public Guardian and Trustee requires, a person holding property for charitable purposes must submit accounts to the court for passing, examination and auditing by a judge. The *Rules of Civil Procedure* provide that a passing under the *Charities Accounting Act* must comply with the forms for passing as set out in the *Rules of Civil Procedure*.¹⁰

Section 4 enables the Public Guardian and Trustee to commence a court application where an executor or trustee fails to comply with Sections 1, 2 or 3 or misappropriates or misapplies property or makes improper or unauthorized investments, or is not applying the property in accordance with its charitable purposes. The court may order the executor or trustee to:

- comply with the *Act*;
- pay funds into court, assign any securities to the Accountant of the Superior Court or to a new trustee;
- be removed and appoint someone else;
- be subject to an attachment for the amount of property in default;
- invest, dispose and apply the property as directed by the court in order to carry out the intentions of the testator or donor; and
- pay the costs of the application.

The court also has the power to impose a fine or imprisonment of up to 12 months. Section 4 further authorizes the court to appoint a replacement executor or trustee when the executor or trustee has died, ceases to act, has been removed or has gone out of Ontario even if the will or other instrument confers the power to make the appointment on someone else.

Subsection 5(4) provides that the Public Guardian and Trustee must be served in any action or proceeding to set aside, vary, or construe a will or instrument

creating a charitable trust. The Public Guardian and Trustee has the statutory authority to act to protect unprotected charitable interest.

Section 5.1 was enacted in 1996 and amended in 1999. This section authorizes the making of regulations by the Attorney General. The only regulation, O.Reg. 04/01 entitled *Approved Acts of Executors and Trustees*, allows charities to indemnify and buy liability insurance for their directors, officers or trustees and also to combine special-purpose trust funds for investment purposes.

Sections 6 and 10 confirm the public's right to complain to the court about improper use of charitable property.¹¹ Under Section 6 any person with concerns about the manner in which funds are raised from the public for any charitable purpose or how the funds are being used may make a written complaint to a judge of the Ontario Superior Court. If the judge is of the opinion that the public interest would be served by an investigation, the judge has the authority to order the Public Guardian and Trustee to make such an investigation and to report back to the Court.

Section 6 does not apply to any religious or fraternal organization or to any person who solicits or procures any funds for such organizations; Section 10 does apply to religious organizations. It provides that any two or more persons who allege a breach of trust involving a charitable trust can apply to the court for direction concerning the administration of the trust. The court may make such order as it considers just for carrying out of the trust. As with Section 6, the court may also order the Public Guardian and Trustee to conduct an investigation and to report back to the court if the public's interest would be served by an investigation. Under Section 6 and Section 10, if the Public Guardian and Trustee is ordered to carry out an investigation, the Public Guardian and Trustee may exercise powers under the *Act* and, in addition, may also exercise any of the powers of a commission under Part II of the *Public Inquiries Act*.¹²

The *Act* also deals with land held for a charitable purpose. In Section 7 it defines charitable purpose to mean the relief of poverty, education, the advancement of religion and any other purpose beneficial to the community. Section 8 provides that anyone holding land for a charitable purpose shall hold the land only for the actual use or occupation of the land for the charitable purpose.¹³ If the Public Guardian and Trustee is of the opinion that the land held for charitable purposes is not actually being used or occupied for the charitable purposes for a period of three years and is not required in the immediate future, the Public Guardian and Trustee may vest the land in itself and sell it. The Public Guardian and Trustee then applies the money to the charitable purpose. The court, however, has the authority to order that the land be revested in the charity. (Any interested person can apply to the court to have the land revested.) Under Section 9, certain public bodies, municipal corporations, local boards, universities and public hospitals are authorized to hold charitable property.

Section 11 deals with the application of the *Act*. It provides that the *Act* applies even where a will or other instrument excludes its application or a charitable trustee has discretion as to the application of the property. Section 12 provides, however, that the *Act* does not affect any right or remedy any person may have under any other *Act* in equity or at common law.

Section 13 was enacted in 1997.¹⁴ This section allows for a simplified out-of-court procedure to obtain a court order. See section on Section 13 orders at page 6.

b) Charitable Gifts Act, *R.S.O. 1990, c. C. 8*

The *Charitable Gifts Act* was passed in 1949. It generally restricts charities from continuing to hold interests in businesses that are given to them. The common law restricts charities from putting general assets into businesses that do not carry out its charitable purposes. As with the *Charities Accounting Act*, this *Act* applies also to charitable corporations. Under Section 2, a person in whom a business interest is vested for a charitable purpose must dispose of the portion in excess of a 10 per cent interest in the business. There is an exemption provided for religious organizations and different treatment when there is an intervening life interest.

Section 3 provides that the disposal of the business interest must occur within seven years of the gift or the vesting of the interest. A judge can, however, extend the time if it will benefit the charitable purpose. When the business interest has been sold, Section 6 provides that the proceeds may only be invested in investments authorized by the *Insurance Act*.

Under Section 4, the Public Guardian and Trustee is given powers where the interest in the business is greater than 50 per cent. The fiduciary must give the Public Guardian and Trustee an annual return showing assets and liabilities, accounts of profit and loss, particulars of fees paid to any director and particulars of salary and remuneration to any person in excess of \$8,000. The charitable organization, the management of the business and the Public Guardian and Trustee jointly determine the annual profits. The business must distribute to the charity its share of the business profits. This requirement to provide the Public Guardian and Trustee with financial information applies to charitable organizations that own a business.

Section 5 provides that the trustee of the charitable interest which holds the business may acquire that interest provided court approval is obtained.

Under Section 7, the Minister of Finance may appoint a person to make an investigation for any purpose related to the administration or enforcement of the *Act* respecting a business interest held for charitable purposes or respecting the charitable fiduciary who holds it. The investigator has the powers of a commission under Part II of the *Public Inquiries Act*.

Section 8 authorizes the Attorney General, or any person interested, to apply to the court, for an order to carry out the intent of the *Act* or to determine any matter arising from the *Act*.

Section 9 provides for penalties. A fine of no more than \$10,000 or imprisonment for a term of no more than one year or both, can be imposed upon any person contravening the *Act*.

Section 10, specifically states that nothing in the *Charitable Gifts Act* affects the operation of the *Charities Accounting Act*.

c) *Religious Organizations Lands Act, R.S.O. 1990, c. R. 23*

This *Act* was enacted in 1979. It pertains to unincorporated religious organizations that hold and transfer land. Section 1 defines “religious organization” and specifically includes the following faiths and their subdivisions or denominations – Buddhist, Christian, Hindu, Islamic, Jewish, Baha’i, Long House Indian, Sikh, Unitarian and Zoroastrian. For unincorporated associations not covered by the *Religious Organizations Lands Act*, land must be held in the name of a trustee of the organization. Without the *Religious Organizations Lands Act* it would be necessary to have a conveyance of the land every time there was a change of the trustees of the religious organization.

Under Section 10, trustees of a religious organization may lease the land not required for its purposes for up to 40 years. Unleased surplus land not required by the religious organization for its actual occupation, is subject to the provisions of Section 8 of the *Charities Accounting Act*.¹⁵

Section 23 provides for the appointment of new trustees or disposition of land where the religious organization has ceased to exist or no trustees remain in office.

d) *Trustee Act, R.S.O. 1990, c. T. 23, as amended*

Any lawyer dealing with charities needs to be familiar with the *Trustee Act*.

Specifically for charities, Section 14 grants the Ontario Superior Court power to vest land or personal estate in the trustee of any charity or society. Section 15 allows the court the authority to actually sell property which is held by a trustee for charitable purposes. Notice of such an application must be given to the Public Guardian and Trustee.

In 1999 important changes were made to the *Trustee Act* affecting the investment powers of trustees. It is important to look at sections 26 to 30 to review the new standard of care when making investments. The old provisions of the *Trustee Act* set out an authorized list of investments while the new provisions adopt the prudent-investor standard.

Those who manage charitable property have a responsibility to invest the assets not immediately needed to carry out the charitable purposes. To determine the investment powers, it is necessary to examine the instrument which creates the

charity. A charitable organization often has the authority to invest in accordance with the *Trustee Act*. Even for incorporated organizations the Letters Patent may require investments to be made in accordance with the *Trustee Act*. If the Letters Patent state that directors are not limited to investments authorized by law for trustees, the directors should still review the *Trustee Act* as a useful guide to making prudent investments. The Office of the Public Guardian and Trustee has taken the position that where Letters Patent are silent with respect to investment powers, the investments should be governed by trust law. There were additional changes to the *Trustee Act*, effective June 29, 2001 with the enactment of sections 27.1, 27.2, 30, and 31. Trustees are allowed to delegate investment decisions subject to the conditions set out in the *Act*. It is important to be aware of these terms and conditions. [*Government Efficiency Act 2001 c.9, Sched. B, s. 13 (5)*]

Section 35 of the *Trustee Act* deals with technical breaches of trust. Please note that as a result of the amendments to the *Trustee Act* in 1999, Section 35 is not available for technical breaches arising from investment of trust property. Although many take the position that charitable corporations are not trustees and not subject to the *Trustee Act*, it is interesting to note that some corporations have brought court applications requesting relief from technical breaches pursuant to Section 35.

Section 66 deals with the application of the *Act* and states that subject to Section 67, the *Trustee Act* applies to all trusts whenever created and to all trustees whenever appointed. Section 67 states that all powers, rights and immunities contained in the *Trustee Act* are in addition to those conferred by the instrument creating the trust. Section 68 specifically states that nothing in the *Trustee Act* authorizes the trustee to do something that the trustee is forbidden from doing by the terms of the trust instrument.

e) *Corporations Act, R.S.O. 1990, c. C. 38, as amended*

The *Corporations Act* is not administered by the Office of the Public Guardian and Trustee. This is legislation which allows a nonprofit charitable organization to incorporate in Ontario and deals with the organizational operations of such corporations. It is important to note, however, that the responsibility and obligations imposed on trustees of charities can supersede the statutory provisions of this legislation.

It is also important to note that when you are dealing with issues of internal governance, e.g., the direction a charitable organization should take, members can take advantage of provisions of the *Corporation Act*. Some of the remedial sections that can be of assistance to an aggrieved member are: ss. 295, 299, 300, 305, 310 and 332.

Conclusion

The Office of the Public Guardian and Trustee serves an important role in protecting the public's interest in charities. The court in *Re Baker*¹⁶ stated the role as:

Therefore, the statute casts the Public Trustee in the role of invigilator of the executor or trustee, so that, in the case of a trust for a religious, educational, charitable or public purpose, the public interest will be safeguarded and, of course, that public interest demands that the religious, educational, charitable, or public purpose contemplated by the testator be adhered to. I am therefore, of the opinion, that I was right in permitting the Public Trustee to be heard on the merits of the application. Historically, in Chancery matters involving charities the Attorney General acted on behalf of the Crown as *parens patriae* in representing all the objects of the charity: see *A.G. v. Bishop of Worcester* (1851), Hare 328, 68 E.R. 530 at p. 537. In my opinion, the scheme of the Charities Accounting Act imposes upon the Public Trustee the duties that, otherwise, in the absence of that Act, would have fallen upon the Attorney General.

While the mandate is clearly shown in the Public Guardian and Trustee's role in complaints about charities, it is also the underlying principle in all functions carried on by the Public Guardian and Trustee, Charitable Property Program.

FOOTNOTES

1. Head 7, Section 92 of the *Constitution Act, 1867*, (U.K.).
2. The *Public Trustee Act* was repealed by the *Public Guardian and Trustee Act*, proclaimed in force April 3, 1995.
3. *Re Centenary Hospital* (1989), 69 O.R. (2d) 737 (C.A.).
4. *Charities Accounting Act*, R.S.O. 1990, c. 8, as amended.
5. *Re Baker* (1984), 47 O.R. (2nd) 415; 17 E.T.R. 168 (Ont. H.C.).
6. *Variation of Trusts Act*, R.S.O. 1990, C.U. 1.
7. Subsection 49(8) of the *Estates Act*, R.S.O. 1990, c. E. 21.
8. Rule 74.17 of the *Rules of Civil Procedure*.
9. *Red Tape Reduction Act, 2000*, S.O. 2000, C. 26, Schedule A, subsection 2 (1), Royal Assent December 6, 2000.
10. Rule 74, 16 of the *Rules of Civil Procedure*.
11. See *Re Schoen* (1987), 19 C.P.C. (2d) 110, at 112 (Ont. Dist. Ct.), for judicial interpretation of Section 6.
12. *Public Inquiries Act*, R.S.O. 1990, c.p. 41, as amended.
13. This is subject to the provisions of the *Religious Organizations Lands Act*.
14. S.O. 1997, c. 23, ss. 3 (4).
15. Subsection 12 (2) of *Religious Lands Organizations Act*, R.S.O., 1990, c. R. 23.
16. *Supra*, footnote 5.