

## From the Editor . . .

This issue is the first since the affiliation of *The Philanthropist* with the Canadian Centre for Philanthropy. The editorial committee of *The Philanthropist* welcomes the establishment of the Centre under its Executive Director Allan Arlett and the opportunity the association will afford to broaden the focus of the journal and the range of material available to it. The Canadian Bar Association by resolution of its National Council will assist in the preparation of the journal.

The principal purposes of the Centre are to encourage philanthropy in Canada and to provide a meeting ground and service centre. Its objects include making the public aware of the importance of the non-profit sector and encouraging increased support, both in financial donations and time; providing a meeting place for discussion of common problems and for the exchange of ideas and information; gathering and disseminating information concerning philanthropy; encouraging research; and working towards improved understanding and communication between the non-profit sector and government at all levels.

The Centre is located in Toronto and has been designated a regional collection centre of the Foundation Centre in New York City. It will receive material from the Foundation Centre and this will be available to the public in the library of the Centre. We are confident that the Centre will provide a much-needed service to the community and we hope that it will be supported by everyone who is interested in charities and philanthropy.

The question of the range of political activities in which charities may engage is currently both of some concern and some uncertainty. To a large extent this arises out of the issue on February 27, 1978 of Revenue Canada's Information Circular No. 78-3, *Registered Charities; Political Objects and Activities*. Although the Circular was withdrawn shortly after its publication its disappearance does not appear to have altered the policy of Revenue Canada to deny registration to charities which engage in political activities.

It is well known that the provisions of the *Income Tax Act* require charitable organizations and charitable foundations to devote all their resources to charitable activities. In the absence of a statutory definition of charity or of charitable activities in the *Income Tax Act* the most authoritative statement of the governing principles is to be found in the decision of the House of Lords in *Income Tax Commissioners v. Pemsel*, [1891] A.C. 531. In that case Lord MacNaghten divided charitable activities into four groups: the relief of poverty, the advancement of education, the advancement of religion, and other activities beneficial to the community within the spirit of the terms of the preamble to the *Statute of Charitable Uses* of 1606. Although Lord MacNaghten's classification is usually followed in Canada to determine whether for the purposes of the *Income Tax Act* a particular activity is charitable, the appropriateness of the reasoning of the decision for this purpose is questionable. The law governing the definition of charity has been described by one English Judge as a morass. Its foundations are antiquated and arguably have little relevance to the policy issues raised in the context of income taxation in 1980. The reasoning in the cases both before and after *Pemsel's* case is tortuous and technical in the extreme.

The decisions on political activities illustrate the confusion and the unsatisfactory state of the law. It is generally considered that political activity is, *per se*, not charitable. Yet it has been held in a number of cases that some degree of political activity is permitted so long as it is secondary to the main activities of the organization. The cases are difficult to reconcile and in reviewing them it is difficult to believe that the nature of political goals of particular bodies has not on occasions had some influence on judges. Many of the decisions were decided either in the nineteenth century or in the early years of this century and they reflect social and moral attitudes towards such once hotly-debated questions as the promotion of temperance and the abolition of vivisection. Most people would acknowledge that public attitudes towards participatory democracy have changed and that the world is more complex and very different from that which gave rise to such cases. Many may well consider that charities should be permitted to engage in some amount of political activity as a primary objective. In this issue we have included an editorial of the *Toronto Star*, dated April 18, 1978, in which this view is advanced strongly. Because of the current interest in the question of charity and politics a large part of this issue is devoted to a consideration of the question.

In the Spring 1977 issue of *The Philanthropist* we included an article by Professor L. A. Sheridan, *The Charpol Family Quiz* which provided a humorous but exhaustive review of the case law applicable to the questions of charities and politics. We know of no other published article in which the abstruse subtleties and contradictions of the law of charity have been so relentlessly exposed. In this issue, we have included an earlier lecture delivered by Professor Sheridan on November 8, 1972 at University College, Cardiff, which we believe provides a concise overview of the issues and the relevant

cases which are pertinent to the current controversy surrounding the degree to which charities should be permitted to engage in political activities.

The feasibility of changing the definition of charity by statute has been considered from time to time and, following the recent report of the Goodman Committee, it is possible that some legislation will be introduced in the United Kingdom in the near future. In the past, the conservatism of the legal profession has resisted any suggestion that Parliament could improve upon the sorry performance of the courts. We do not accept this view. We believe that the time is ripe for the federal government to seriously consider the terms of a modern definition of charity which would be appropriate for the purposes of income taxation in Canada at the present time.

The most recent case to come before the courts in Canada involves an attempt by Revenue Canada to deregister the Manitoba Foundation for Canadian studies. This case, and the background issue, is dealt with by Arthur B. C. Drache in *Political Activities: A Charitable Dilemma* on page 21. Mr. Drache points out that Revenue Canada seems to be adopting a hard line in those cases where it considers a charity is or may be engaged in political activities. He considers that the Manitoba Foundation case is a test case, and that its resolution will be of wide interest.

Another issue which we consider to be important and of current interest is the proposal by the Committee of National Voluntary Organizations to amend the *Income Tax Act* to permit charitable contributions to be credited against tax payable. We have outlined some of the arguments for and against the proposal, beginning at page 27.

This issue also contains the first two of a series of articles on the management and investment of charitable funds, as well as a regular *Bookshelf* feature.

Mary Louise Dickson