

# International Report

*The following reports describe some of the approaches taken in Europe to encourage and regulate philanthropy*

---

## **The Charity Commissioners for England and Wales**

**C. ARTHUR BOND**

*Executive Director, P.S.I. Foundation, Toronto*

---

In Canada, the registration of charities is the responsibility of Revenue Canada, Taxation Division, whereas in the United Kingdom, or more specifically England and Wales, this role falls to a body known as the Charity Commissioners.

*The Charities Act, 1960*, sets out the constitution of the Charity Commissioners and replaces the *Charitable Trusts Act* of 1853 which originally established a board of Charity Commissioners. The 1960 *Act* provides that there be three Commissioners appointed by the Home Secretary. At least two must be lawyers but all are civil servants. The cost of operating the Charity Commission in 1984/85 was estimated to be 4.8 million pounds.

The general function of the Charity Commissioners is: "promoting the effective use of charitable resources by encouraging the development of better methods of administration, by giving charity trustees information or advice on any matter affecting the charity, and by investigating and checking abuses." (*Charities Act, 1960*, Section I (3)) The *Act* further states that the general object of the Commissioners is: "to act in the case of any charity so as best to promote and make effective the work of the charity in meeting the needs designated by its trust." (Section I (4)) To carry out the general function and achieve this object, the *Act* sets out several specific duties of the Commissioners.

### *Advice to Trustees*

The Commissioners give advice, free of charge, on all aspects of the administration of charities and other problems trustees might encounter in the performance of their duties.

### *Maintain a Register of Charities*

With certain exceptions, all charities are required to apply for registration. The register, maintained by the Commissioners, is open for public inspection at all reasonable times. The application for registration of a charity must be accompanied by the governing instrument of the organization and the 1984 report of the Charity Commissioners indicates that there are 150,511 charities on the register. Registration of an organization is confirmation of its charitable status, but the fact that a charity is registered does not necessarily indicate that the Commissioners approve of it.

### *Power to Alter the Trusts of a Charity*

With changing times and changing social needs, some charities may find it difficult or impossible to carry out the directions of their trusts or their trusts may require amendment for other reasons. As the trustees cannot alter the trusts themselves (unless the trusts include the power to do so), they may ask the Charity Commissioners to make a scheme or order to alter the trusts. The Commissioners have the powers of the high court in making schemes, particularly a *cy près* scheme, where the precise purposes of the charity have become impossible to achieve.

### *Appointing New Trustees*

While most charities have rules governing the appointment and retirement of trustees, a charity encountering legal difficulties in appointing a new trustee may seek advice from the Charity Commissioners who are empowered, when requested by the charity, to appoint new trustees or to remove existing trustees.

### *Enquiries into Charities*

The Commissioners have the power to conduct enquiries into a charity and to require the charity to furnish statements of account and such other documents as they see fit. If the Commissioners are satisfied that there has been misconduct or mismanagement they have the power to take steps to protect the property of the charity. *The Finance Act, 1986*, now gives Inland Revenue the ability to disclose to the Charity Commissioners information about a charity which Revenue believes is carrying on, or has been carrying on, activities which are not charitable.

### *Local Review of Charities*

*The Charities Act, 1960*, permits local authorities (the council of a county or a borough) to carry out reviews of charities if they have the consent of the trustees of the charity and to make a report on the review to the Charity Commissioners, along with such recommendations as they think fit after consultation with the trustees of the charity. The Charity Commissioners encourage the charities to co-operate in carrying out these reviews, the purpose of which is to ensure that the resources of the charity are used effectively. The scheme-making powers of the Commissioners, previously mentioned, can be used to carry out the recommendations of such a report.

### *Custodianship*

A senior member of the Commissioners acts as the official custodian to hold property in trust for charities. The vesting of property in the official custodian saves the charity the time and the trouble of altering title when there is a change of trustees. However, the official custodian acts only as a custodian trustee and has no power of management. The two services provided are the safekeeping of securities and remittance to the charity of income on investments held in safekeeping.

### *Charities Official Investment Fund*

The Charity Commissioners have established a common investment fund which is open to all charities. By participating in this pooled fund, charities have the benefit of a diversity of investments and trustees are relieved of the problem of investment of their charity's funds. Although the fund is managed by trustees appointed by the Commissioners they operate independently.

### *Comment*

While the powers conferred upon the Charity Commissioners by the *Charities Act* would appear to provide an effective mechanism for monitoring charities in England and Wales, there have been calls for a tightening of the powers of the Commissioners and improvement in the registration system. For example, the National Audit Office has recently completed a report on the monitoring and control of charities in England and Wales. This report expresses serious concern about the present arrangements for monitoring charities, indicates that the registration system is less than perfect, and states that the actual number of charities in the register maintained by the Commissioners is not known. (The current figure of about 150,000 may have a margin of error of more than 10,000.)

---

## **INTERPHIL**

**COLIN GRAHAM**

*Clarkson Gordon, Chartered Accountants, Toronto*

---

INTERPHIL, the International Standing Conference on Philanthropy, is an international umbrella organization for the voluntary sector. It was founded in 1969 in Evian, France and currently has its headquarters in the United Kingdom. There are two Canadian directors, Donald Rickerd, president of the Donner Canadian Foundation, who is the present chairman, and Colin Graham, a partner of Clarkson Gordon, Toronto. There are also a number of Canadian members. INTERPHIL has received strong support from United Way International and from the Charities Aid Foundation of the United Kingdom.

In its recent Annual Report, INTERPHIL notes that like business, philanthropy is beginning to operate in many countries. Fund raising for some causes is taking place in scores of countries simultaneously and this is likely to be a pronounced trend in the future. Funds originating in a single country may be deployed across many others. It is only through understanding, sensitivity, and experience that such undertakings can be brought to a successful conclusion. Problems must be identified and solved in advance, so as to avoid the ad hoc solutions that can often lead to misunderstanding and grief. It is the aim of