

CHARITY BEGINS ... AT HOME?

CHARITIES ACT 1982 (No. 20)

The photocopying machine in the Attorney-General's Chambers has been busy again. The Charities Act of 1982 was passed largely as a result of concern expressed by, among others, the Public Accounts Committee, about the administration of charities. It is, to all intents and purposes, a straight reproduction of the English Charities Act of 1960, with modifications where unavoidable. Thus, it is concerned almost exclusively with the administration of charities rather than with the substantive law. It is likely that the operation of the Act will have a considerable impact on the conduct of charitable activities in the Republic. Only the major provisions of the Act will be discussed here.

The meat of the Act is contained in Part II and, particularly, Part III. Part II (sections 3, 4), provides for the appointment of a Commissioner of Charities, who "shall have the general function of promoting the effective use of charitable resources by encouraging the development of better methods of administration, by giving charity trustees information on any matter affecting the charity and by investigating and checking abuses."¹ The Commissioner is to strive to promote the work of charitable bodies without, at the same time, acting in their administration. He has to make an annual report to be laid before Parliament. Further provision is made in respect of the Commissioner's functions in subsequent sections. For instance, section 7 authorises him from time to time to institute full judicial-type inquiries into a charity or charities, and in connection with such inquiry he may require anybody to furnish accounts and statements in writing and to attend and give evidence. Section 15 enables the Commissioner to take various measures if satisfied by the result of an inquiry that there has in fact been maladministration of a charity and that its property needs protecting. These measures include the removal of charity trustees and officers and the transfer of charity property to the Public Trustee.

More generally, the Commissioner has power to require any person having in his possession or control any books, records, deeds or papers relating to a charity to furnish him with copies of or extracts from any of these documents.² Section 9 provides for the transmission of yearly statements of account giving "the prescribed information" about their affairs by all charities save "excepted" charities. Furthermore, the Commissioner may require that the affairs and accounts of a charity for such period as he thinks fit be investigated and audited by an auditor appointed by him.³ Such an auditor is given wide investigating powers and is required to make a report to the Commissioner. In all these cases failure to comply with the various duties imposed on individuals is made subject to criminal penalties. Finally, it should be noted that by virtue of section 14 the Commissioner may, with the consent of the Attorney-General, exercise the jurisdiction of the High Court for certain purposes, such as establishing a scheme for the

¹ S.4.

² S.8.

³ S.9(2).

administration of a charity and the appointment and removal of trustees. However, the Commissioner does not have jurisdiction to adjudicate on the title to property as between a charity and an adverse claimant: hence the typical "failure" situation encountered in the case-law will not be determinable by him.

Moving on to Part III of the Act the most significant single section is probably section 5. This requires the Commissioner "to establish and maintain a register of charities in which shall be entered such particulars as he may from time to time determine of any charity registered therein." All charities save those excepted by subsection (4), which are listed in the Schedule⁴ are required to be registered. Registration is conclusive presumption of charitable status, for all purposes,⁵ though it might be noted that the converse is not true: there is nothing in the Act providing that non-registration is proof of non-charitable status, though the Commissioner can remove from the register any institution which no longer appears to him to be charitable (or which has ceased to exist or does not operate) and charity trustees have a duty to apply for registration⁶ (default in that duty being subject to the customary penal sanction). Any person affected by the registration of an institution may object to its being registered, or apply for its removal, on the ground that it is not a charity. Provision is made for appeal to the High Court from any decision of the Commissioner to enter or not to enter, or to remove or not to remove any institution from the register.⁷

The only other significant matter dealt with by the Act is the *cy-pres* doctrine. Those familiar with the law of charities will be aware of the difficulties caused by the common law's strict approach to the notion of failure. Essentially it was necessary to establish that the specified charitable purpose had become either "impossible" or "impracticable" before *cy-pres* application could be sanctioned by the court, although in practice these concepts had been liberally interpreted.⁸ By virtue of section 11, it is no longer necessary to establish failure in this sense. The section specifies a number of circumstances in which *cy-pres* application is possible, some of them coinciding with the common law situations (as interpreted) and others going beyond. For instance, *cy-pres* application "where the original purposes have been as far as may be fulfilled or... cannot be carried out, or not according to the directions given and to the spirit of the gift"⁹ would probably have been possible before the Act. However, the possibility of *cy-pres* application "where the original purposes... have been adequately provided by other means... or have ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift..."¹⁰ represents an extension of the

⁴ They are "(a) any university or educational institution, hospital or religious body established by an Act of Parliament; (b) any institution which the Minister by order declares to be an exempt charity for the purposes of the Act." Exempt charities are excepted from various of the Act's provisions, e.g. ss. 8 and 9 (transmission of documents and auditing of accounts).

⁵ Such a body can thus gain exemption from income tax as a charity under s. 13, Income Tax Act, Cap. 1, 1976 Singapore Statutes.

⁶ S.5(6)(a).

⁷ S.6(3).

⁸ See e.g. *Re Dominion Students' Hall Trust* [1947] Ch. 123.

⁹ S.11(1)(a).

¹⁰ S.11(1)(e).

previous law. The Act makes it clear that the conditions for *cy-pres* application, apart from the requirement of failure, are unchanged.¹¹ This must be taken to mean, in particular, that in the case of initial (as opposed to subsequent) failure a general charitable intention on the part of the donor must be established in order for *cy-pres* application to be possible. One particular difficulty caused by this generally justifiable rule is dealt with by section 12. The difficulty relates to anonymous donations for specific charitable purposes which fail *ab initio*. At common law application *cy-pres* is not permitted¹² but the obvious difficulty of identifying donors makes the imposition of a resulting trust a pointless exercise. The section provides that property given for specific charitable purposes which fail¹³ shall be applicable *cy-pres*, as if given for charitable purposes generally, where it belongs to an unidentifiable donor or to a donor who disclaims. Normally a donor can only be regarded as "unidentified" after reasonable advertisements and inquiries, but none are necessary where the property consists of the proceeds of collection boxes or of lotteries, entertainments and the like. The High Court can also direct that property is presumed to belong to unidentified donors in certain other circumstances. This change in the law is to be greatly welcomed, although the small quantity of case law on these points (and, for instance, the ease with which Singapore courts have detected general charitable intention in gifts)¹⁴ suggests that these two sections, however valuable in the English context, will be of limited utility here.

There is a case for saying the same about the Act as a whole. No commentator on the English law of charities doubts the need for and the general efficacy of the 1960 Act.¹⁵ The administration of charities was in a serious state of disarray before then. It has been suggested that the position in Singapore is similar, with opportunity for abuse by charity officials.¹⁶ Yet can this really be so? In England some 3000 new charities are registered *every year*. Assuming that a problem does exist in Singapore, surely it does not have to be tackled by passing the English Act. A central register may be a good idea but the vast bureaucratic machinery of a Commissioner plus deputies and staff looks like a case of "overkill".¹⁷ The *New Nation* of 1st August 1982 remarked: "If charity workers are pestering you, do not worry. The government is going to bring all charities under proper control and administration." There is a very real danger in this. Much charitable work in Singapore is done by volunteers giving up their own time and energy for good causes. Such people may well be discouraged by the bludgeoning impact of bureaucracy.

¹¹ S. 11(2).

¹² See, *eg.*, *Re Ulverston and District Hospital New Building Trusts* [1956] Ch. 622.

¹³ A strange choice of words bearing in mind the changes made by s. 11. S. 12(5) provides that "charitable purposes shall be deemed to fail where any difficulty in applying property to those purposes makes that property or the part not applicable *cy-pres* available to be returned to the donors."

¹⁴ See, *eg.* *Re Vallibhoy* [1976] 1 M.L.J. 207.

¹⁵ See, generally, Chesterman, *Charities, Trusts and Social Welfare* Weidenfeld & Nicolson, London 1979.

¹⁶ See *New Nations*, 1st August 1982.

¹⁷ The general law of trusts and in the case of charities registered as companies, company law, provide ample safeguards, often coinciding (*e.g.* the court's inherent power to remove a trustee) with those provided by the Act.

The peculiar thing is that, given that there is a problem, the draftsmen were content to take the English Act as it stands together with the defects that have come to light since 1960.¹⁸ For instance, it has become clear that the rules about accounts are quite inadequate. Accounts submitted to the Commissioner do not have to be audited beforehand, so that it can take some time for discrepancies to come to light. Further, the Commissioner's most effective powers for protecting charity property can only be exercised after the report of a properly instituted inquiry, a rare event in the English context. It should be noted that many of the English problems have arisen because of a shortage of staff and equipment such as computers.

Two final points might be made. Firstly, it is now common knowledge that the first Charity Commissioner in Singapore is the Comptroller of Income Tax. With all respect, this is unfortunate. When someone makes a large donation for a worthy cause, any challenge to the charitable status of the gift is likely to come from one of two sources: his next of kin or the Inland Revenue. In England, appeals to the High Court against the Commissioner's decisions on registration (rare events actually) usually come from the Revenue. Irrespective of the ability and integrity of the individual concerned, the two jobs should not be in the same hands.

Secondly, a Charities Act was an ideal opportunity to tackle the real problem of charity law in Singapore, namely, what *is* charity here. The concept of charity must be in a sense "personal" to the indigenous environment. It is no longer good enough to rely on the Preamble to the 1601 Statute of Elizabeth, for what it is worth. The situation is exacerbated by the fact that the Commissioner, in registering charities, is in a sense making law. Although many have dismissed such attempts as pointless, the draftsman might have contemplated including a definition of "charitable purposes" in the Act. Still, no doubt the Comptroller of Income Tax has a clear notion of what "charity" means.

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¹⁸ See, *Chesterman, supra* note 15, pp. 369-396.