



Colloque annuel de common law

Le droit des organismes de bienfaisance The Law of Charitable Trusts

8 Mai 2015

8.00 – 8.30h
Registration

8.30 – 9.00
Keynote Address

Judge Alison McKenna
Principal Judge, First-tier Tribunal (Charity)
How does charity law develop in the age of the Tribunal?

9.00 – 10.15

Panel 1: Qu'est-ce qu'un organisme de bienfaisance? Pemsel et les présomptions

Ce panel va examiner les approches modernes quant à la définition d'organisme de bienfaisance.

Panel 1: *What is Charity? Pemsel and the Presumptions*

This panel will examine modern approaches toward the definition of charity. The focus of the discussion would be on both statutory and non-statutory approaches to defining charity. Some specific questions to be addressed would be:

- (1) the way in which the definition of charity has, might, or ought to expand in the wake of the Charities Act (2006)(UK), Independent Schools Council, and Vancouver Society. In other words, "Is (or should) Pemsel still be good law?"
- (2) whether the traditional presumptions in favor of the charitableness of efforts to relieve poverty or advance education and religion ought to continue to be presumed.

Presenters:

Mary Synge (Cardiff): *To Presume or Not to Presume*
Hubert Picarda (Lincoln's Inn): *Radical and Political Pulls Against Settled Notions of Charity*
Kathryn Chan (Victoria): *The Advancement of Religion*

10.15 – 10.30
Pause Santé

10.30-12.00***Panel 2: Est-ce bienfaisant de discriminer? L'intérêt public et les normes d'égalité***

Ce panel va étudier la controverse actuelle portant sur le niveau de discrimination en matière de race, religion ou de sexe permise aux fiducies de bienfaisance.

Panel 2: Is it Charitable to Discriminate? Public Benefit and Equality Norms

This panel will investigate the ongoing controversy about the extent to which charitable trusts may discriminate on the basis of race, religion, or sex.

Presenters:

Chair & Commenter: Jeffrey Talpis (Montréal)

Debra Morris (Liverpool): *The Relationship Between the Public Benefit Requirement and Exceptions for Charities to Anti-Discrimination Law*

Matthew Harding (Melbourne): *Charitable Trusts and Discrimination: Two Themes*

Matthew Harrington (Montréal): *Is It Charitable to Discriminate? A Canadian Perspective*

12.00 – 13.00**Dîner/Lunch****13.00– 14.15*****Panel 3: Les activités caritatives dans un monde multi-juridictionnel***

La portée des organismes de bienfaisance s'étend dans des milieux d'intérêts et d'opérations toujours plus grandes. Ce panel discutera des problèmes relevant du droit des organismes de bienfaisance dans un contexte multi-juridictionnel.

Panel 3: Charity in a Multi-Jurisdictional World

The reach of charities extends into ever larger areas of interest and operation. The typical charity is no longer the trust for the local church or hospital. Instead, charities operate over large geographic areas and perform a variety of functions. This panel will consider the problems of charities law in a multi-jurisdictional context. Among the issues to be discussed include how regulation might affect attempts to operate in multiple jurisdictions, the extent to which difficulties in one regime might affect the work of the charity in another, and how different jurisdictions' definitions of charity can be reconciled

Presenters:

Chair & Commenter: Steve Levy (Atro-Levy, Montréal)

Anne-Sophie Hulin (McGill): *La notion de "bienfaisance" en droit civil*

Michael Lubetsky (Davies, Montréal) & Aline Grénon (UdeM): *Discussion: Bijuridisme et l'interprétation de "bienfaisance"*

14.15 – 15.45

Panel 4: Les organismes de bienfaisance et les activités politiques

L'étendue permise aux organismes de bienfaisance enregistrés pour mener des activités politiques sans compromettre leur statut d'exemption fiscale est un des sujets les plus controversés en matière de droit des organismes de bienfaisance dans ces dernières années. Ce panel va considérer si les restrictions traditionnelles portant sur les activités politiques épousées dans *Bowman v. Secular Society* (1917) et *Human Life International v. Minister of National Revenue* (1998) devraient être assouplies ou abolies.

Panel 4: *Charities and Political Activity*

Charities and Political Activity One of the more explosive issues in charities law in recent years is the extent to which registered charities and other nonprofits can engage in political advocacy without endangering their tax-exempt status. This panel will consider whether the traditional restrictions on political activity espoused in *Bowman v. Secular Society* (1917) and *Human Life International v. Minister of National Revenue* (1998) should be eased or even abolished, and, for U.S. nonprofits, the effect on political activity restrictions in light of the Citizens United decision and the (related) recent scandal involving the purported "targeting" of nonprofits by the IRS.

Presenters:

Roger Colinvax (Catholic): *Political Activity by Non-Profits*

Adam Parachin (Western): *Charities Established for Political Purposes*

Terrence Carter (Carters LLP, Toronto): *Separating Fact from Fiction: CRA Audits of Charitable Activities*

Evelyn Brody (Chicago-Kent): *Federation as a Reputational Mechanism for Nonprofit Organizations*

15.30 – 15.45

Pause Santé

15.45 – 17.15

Panel 5: Le régulateur moderne d'organismes de bienfaisance

Ce panel va explorer le rôle des tribunaux et des agences administratives dans la résolution de questions portant sur le statut et l'opération d'organismes de bienfaisance.

Panel 5: *The Modern Charities Regulator*

Given the importance of tax considerations, much of modern regulation of charities seems increasingly to be a function undertaken by taxing authorities. At the same time, other courts and tribunals have interests in both traditional questions of charitable purpose and "newer" questions such as the extent to which charities must comply with various equality statutes. This panel will explore the role of courts and administrative agencies in resolving questions about the status and operation of charities.

Presenters:

Mark Blumberg (Blumberg Segal LLP Toronto): *Overview of the Regulatory Environment in Canada for Registered Charities*

Dana Brakman Reiser (Brooklyn): *U.S. Charity Enforcement by State Attorneys General and Self-Regulation*

Oonagh Breen (UCD): *Redefining the Regulatory Space?: The First Forays of the Irish Charities Regulatory Authority.*

Mark Sidel (Wisconsin): *Expanding the Third Sector and Constricting Civil Society: Evolving Forms of Charity Regulation in China and India*

17.15 – 18.00

Réception