



Government of Bermuda
Ministerial Statement to the Senate

Update on Charity Law Reform

Senator, The Hon. Michael M. Fahy, JP
Minister of Home Affairs

Wednesday, 3 December 2014

Madam President, this past year has seen much activity in respect of the regulation of charities in Bermuda. Earlier this year, the Charities Act 2014 became law. Accompanying regulations are due to come into effect by the end of this month. Orders amending the Good Governance and Employment Acts providing whistle-blowing protection to employees of charities are due to be debated and hopefully approved in another place.

The Registry General and Charity Commissioners have been hard at work publishing guidance notes for the public, designing new application and annual return forms and creating accounting templates – all with a view towards making these changes as user-friendly as possible for the Bermudian public. It is safe to say that the charity law landscape at the start of 2015 will be radically different from just a year ago.

Madam President, Charities play a vital role in our community. Bermudians are very generous with their time and resources. Our collective entrepreneurial spirit extends to rolling up our sleeves and giving each other a helping hand. Notwithstanding this, the donation-giving public expect assurances that their dollars are being put to good use.

Charities must therefore meet a ‘public benefit’ test. The purposes for which they are set up must be for the public benefit, and trustees must administer their organizations accordingly. If the Commissioners cannot see any public benefit, charitable status will not be granted.

Very detailed guidance can be found online at the Registry General's website. However, in summary, the public benefit test contains three aspects:

First, the benefit aspect; a charity must provide actual benefit. It must be clear and identifiable. Charities must avoid excessive and unreasonable inactivity – they must actually do something which is charitable. Charities must also avoid excessive harm or detriment.

Second, the public aspect; a charity must serve the general public or a sufficient section of it. A charity which places limitations on who may benefit must ensure that such limitations are justifiable (that is, legitimate, proportionate and rational). Charities must not prevent those of modest means from being able to benefit from their services.

Finally, the incidental private benefits aspects; a charity can only provide private benefits which are necessary or incidental to carrying out charitable purposes. For example, staff benefits and pay are necessary to delivering programmes. However, these must not be unreasonable or excessive.

Madam President, Charities are delivering more social services than ever before. As a result, they are also interacting with more and more members of vulnerable populations within Bermuda. This includes children, seniors, persons with disabilities and others who are vulnerable because of association with crime, either a victim or perpetrator of crime. To that end, the Registry General and Charity Commissioners have released guidance for charities who work with vulnerable persons. It can also be accessed online at the Registry General website.

This guidance sets out minimum standards required for such charities, in particular, what steps are needed to safeguard and protect such vulnerable persons. Staff and volunteers will need to undergo a police check before starting with a charity. Policies and procedures need to be put in place limiting one-on-one access with

vulnerable persons and setting out reporting responsibilities in cases where abuse is suspected. Training will be required for those who interact regularly with vulnerable persons.

This guidance was drafted by the Commissioners, in consultation with the Centre on Philanthropy, the Family Centre, Age Concern, SCARS, the Bermuda National Standards Committee and representatives from the Council on Accreditation. In particular, I would greatly encourage charities to become accredited or certified with the Bermuda National Standards Committee or the Council Accreditation. Many of the policies these organizations have put in place for accreditation or certification overlap greatly with the requirements of the Registry General and Commissioners. Consistent with my Ministry's desire to avoid unnecessary duplication of effort, such charities can expect an expedited registration process for application for, or renewal of, their charitable status.

Madam President, the new Charity Regulations will combat money laundering and terrorist financing as it relates to the charitable sector. The regulations seek to honour our commitment to ensure that registered charities adhere to the highest standards of governance, particularly in relation to the prevention of them being abused for the purposes of money laundering, the financing of terrorism and other illegal activities.

The regulations will bring Bermuda's charitable sector into compliance with the international standards on combating money laundering and the financing of terrorism. This is of great importance, as charitable organisations enjoy public trust, have access to considerable sources of funds, both public and private, and have a global presence that provides a framework for national and international operations and financial transactions. If these measures were not put in place, charities could be vulnerable to abuse or susceptible to illegal activities engaged by others.

Madam President, all of this may seem daunting to those actively at work within our charity sector. Many are right to question how this might affect smaller, ‘mom-and-pop’ establishments which do not have the luxury of having a large number of staff on payroll.

Let me state this; the new Act requires the Registry General and Commissioners to take a tiered approach, where charities are dealt with proportionality and action is targeted and necessary. Charities with annual revenue of less than \$35,000 will see their accounting standards and procedures remain largely. Only the largest charities will be required to submit detailed, audited financial statements. Fees charged will be similarly tiered.

In addition, the Commissioners have committed to communicating with the public to the greatest extent possible. The Chairperson of the Charity Commissioners gave a public presentation on the operation of the Public Benefit Test in February of this year, and has attended monthly sessions with the Centre on Philanthropy to field questions. I have already mentioned guidance notes on public benefit and the vulnerable person’s policy. These were conceived to be as user-friendly as possible and to get information out into the public domain. The Registry General are also hard at work creating forms and templates to assist charities with annual returns and financial statements.

The Centre on Philanthropy will also hold sessions, organized in conjunction with the Registry General, to discuss the new Act and Regulations. One was already held on Monday this week. Two more will be held on Monday, December 8th and Thursday, December 11th. The Registry General will be releasing a number of statements to the press to discuss various aspects of the new Act, regulations and policies, and will be in touch with Charities directly in the coming weeks by email or otherwise to provide a summary of the key points they need to know.

Finally Madam President, the Holiday Season is fast approaching us. Many charities use this time to raise funds and goods for the benefit of others, and

historically, Bermudians have long demonstrated their generosity. However, the good feelings associated with the season also provide opportunities for the unscrupulous amongst us. I was reminded of this when watching the daily news last week explain how thieves can pose as charities and take advantage of unsuspecting Christmas shoppers. To that end, I wanted to take this opportunity to give the Bermuda public the following reminder.

The law relating to charities is very clear. It is a criminal offence for anyone who is not a registered charity to solicit, or receive from, any member of the public in any public place, a donation for any charitable purpose or for any professed purpose which is otherwise benevolent. Any one unlawfully posing as a charity can face a fine of \$2,000, imprisonment for 6 months, or both. Organizations who have allowed their charitable status to lapse also need to be particularly careful. The Registrar General and the Charity Commissioners will continue to robustly police this aspect of the law.

Of course, public authorities can only do so much. Members of the public have their own role to play in exercising due diligence. If you are interested in donating to a charity, you need to ask the important questions: Are they a charity? What is their charity registration number? Is their status up-to-date and current? Have they submitted their latest return to the Registry General?

If practical, ask them for their latest set of financial statements so that you can assess if this is an organization worthy of your contributions. The Centre on Philanthropy maintains an online non-profit directory which is an excellent starting point for your research. If following this process, you have concerns about certain organizations or persons breaking the law; please report this to the Registry General.

If, however, you are satisfied that certain charities are worthy, do good work and subscribe to a mission which you believe in, then I encourage you to contribute as much of your time and resources as you can. Indeed, making a contribution on

behalf of a loved one to a charity they are passionate about is an excellent idea for a Christmas gift this year. The vast majority of charities in Bermuda do fundamentally important work in augmenting the social services provided by Government and supporting the most vulnerable members of our society. We need to support them as much as we can.

Thank you, Madam President.