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**Advancing Religion as a Head of Charity:
What Are the Boundaries?***

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Without the values and principles which underlie not only the Charter but also our democratic institutions and policy, there can be no recourse to rights or freedoms.

The Honourable Justice Frank Iacobucci¹

Introduction

All world religions follow some equivalent to the “Golden Rule” for Christians: “Love your neighbour as yourself.”² This principle also forms the basis of tort law in common law jurisdictions, as reflected in Lord Atkin’s comment in *Donoghue v. Stevenson*: “[t]he rule that you are to love your neighbour becomes in law, you must not injure your neighbour.”³

The majority of individuals who hold religious convictions would agree that practical applications of their faith, such as teaching others about their religious experience in the context of everyday life, is as important as engaging in religious worship. Thus, for most religious faiths, worship and practical applications of faith are not and cannot be made to be mutually exclusive in relation to determining the boundaries for the advancement of religion as a head of charity, as they constitute two sides of the same coin.

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It is the practical manifestations of faith that make religion valuable to society. Society depends, to a great extent, on religion to teach morality and civility to its members. In this regard, the Chief Justice of the High Court of Australia remarked that

[i]t is the general acceptance of values that sustains the law and social behaviour; not private conscience. Whether the idea is expressed in terms of teaching, or communication, there has to be a method of getting from the level of individual belief to the level of community values. Religion is one method of bridging that gap.⁴

The principle that religion should be broadly defined in order to include practical manifestations of religious beliefs was affirmed in the Supreme Court of Canada decision of *Syndicat Northcrest v. Amselem*.⁵ This was the first opportunity the Court had to articulate the boundaries of freedom of religion. The court stated that religious practice is as important as religious belief and acknowledged that religion should be broadly defined. This was echoed in the Court's decision in *Reference re Same-Sex Marriage*, which confirmed that "[t]he protection of freedom of religion afforded by s. 2(a) of the Charter [of Rights and Freedoms]⁶ is broad and jealously guarded in our Charter jurisprudence."⁷

Historically, there are four heads of charity recognized by the courts: relief of poverty, advancement of education, advancement of religion, and other purposes beneficial to the community.⁸ In Canada, the Charities Directorate of the Canada Revenue Agency ("CRA") functions in an administrative role as regulator in defining the boundaries of advancement of religion. CRA determines whether charitable status should be granted to a religious organization that applies for it or attempts to maintain it following an audit. CRA's role in this regard arises from its authority under the *Income Tax Act*⁹ to establish policies that assist in determining whether an applicant is charitable at common law. Since unsuccessful applicants can seldom afford to judicially challenge CRA's denial of charitable registration, CRA's administrative decisions often become the *de facto* equivalent of the rule of law in determining charitable status. In recent years, the other three heads of charity (i.e., relief of poverty, advancement of education, and other purposes beneficial to the community) have generally been broadened in both their scope and application by the courts and CRA, as is evident in the new CRA policy entitled *Assisting Ethnocultural Communities*.¹⁰ In this regard, Canadian religious charities expect that the definition of advancement of religion should similarly be broadened in order to reflect the diversity of faiths in Canada and to facilitate the breadth in the practical manifestations of those faiths.

Given this context, the purpose of this article is to provide an explanation of the historical perspective concerning advancement of religion as a head of charity by examining influential case law that has defined the scope of advancement of religion. A discussion then follows regarding how the Charter has impacted the definition of religion and may impact advancing religion as a head of charity in the future.

As a result of somewhat inconsistent judicial decisions, it is difficult to predict what will happen in Canada concerning the advancement of religion as a head of charity. Nevertheless, this article attempts to address the question posed in its title: “Advancing religion as a head of charity: What are the boundaries?” and suggests that based upon the predominance of judicial decisions to date, the overarching value of religion to society, and Charter considerations, advancement of religion as a head of charity should be broadly interpreted by the courts and CRA when determining whether religious organizations should be granted and/or allowed to retain their charitable status under the *Income Tax Act (ITA)*.

A. Overview of Advancement of Religion

1. Historical Background for the Advancement of Religion as a Head of Charity

When considering whether a purpose is charitable at law, the courts and CRA have historically relied upon the House of Lords decision in *Special Commissioners of Income Tax v. Pemsel*,¹¹ a decision emanating from the preamble of the *Statute of Elizabeth 1601*,¹² which provided a list of charitable purposes recognized at law at that time.¹³ Hubert Picarda suggests that “[t]he purpose of the preamble was to illustrate charitable purposes rather than to draw up an exhaustive definition of charity.”¹⁴

By the 19th century, courts began recognizing that it was inappropriate to draw distinctions between different religions when determining whether a gift made for the purposes of advancing religion was valid. In *Thornton v. Howe*, the court showed deference towards sincere religious beliefs, even those on the fringe of a particular faith.¹⁵ This principle was subsequently affirmed in *Bowman v. Secular Society Ltd.*¹⁶ and *National Anti-Vivisection Society v. Inland Revenue Commissioners*.¹⁷

As a result of the Pemsel decision, advancement of religion was clearly recognized as a head of charity. Lord Pemsel, the plaintiff, was a treasurer of the Moravian Church who sued the Income Tax Commissioners on behalf of the church for having denied the church a property tax rebate that was normally given to charities. The main issue at trial was whether the Moravian Church, the stated purpose of which was to maintain, support, and advance missionary establishments among heathen nations, could be considered a charitable trust.¹⁸ At trial, the court rejected Pemsel’s application and found that the purposes of the Moravian church were not charitable as they were not solely directed towards the relief of poverty.

This decision was reversed on appeal and was further appealed by the Tax Commissioners to the House of Lords, where Lord MacNaghten rejected the notion that relief of poverty is the only valid charitable object and acknowledged that advancement of religion can take various practical forms, including the zealous missionary work undertaken by the Moravians. The following passage best illustrates the principle established by that decision:

“Charity” in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly.¹⁹

This statement clearly negated the narrow view of the definition of charity expressed by the Crown’s counsel who argued in the case that

[c]harity implies the relief of poverty and that there must be in the mind of the donor an intention to relieve poverty.²⁰

Canadian courts and CRA have historically relied upon the Pemsel decision to determine what is a charity at common law and have thus consistently recognized advancing religion as an accepted head of charity, unique from the relief of poverty. In the seminal Supreme Court of Canada decision, *Vancouver Society of Immigrant and Minority Women v. Canada (Minister of National Revenue)*,²¹ the existence of the four heads of charity enumerated in the Pemsel decision and their origin in the preamble of the *Statute of Elizabeth 1601*²² was reaffirmed. However, the court in the Vancouver Society decision remarked that charitable purposes listed in this statute are “not to be taken as the only objects of charity but are given as instances”²³ and that “the court has always had the jurisdiction to decide what is charitable.”²⁴

2. How do the Courts Determine What is Charitable at Law?

In the Vancouver Society decision, the Court explained that a charitable purpose “seeks the welfare of the public” and “is not concerned with the conferment of private advantage.”²⁵ To be considered charitable, two essential attributes are required:

- (1) voluntariness (or what I shall refer to as altruism...); and
- (2) public welfare or benefit in an objectively measurable sense.²⁶

The courts have held that a charitable purpose trust must have purposes that are exclusively and legally charitable, and must be established for the benefit of the public or a sufficient segment of the public.²⁷ Therefore, generally only “religious services tending directly towards the instruction or edification of the public” are considered “charitable.”²⁸ This “public benefit” requirement applies to all four heads of charity but is “attenuated under the head of poverty.”²⁹

In the Vancouver Society decision, the Court stated that the focus of their analysis should be more on the purpose of the charitable activity than on the activity itself.³⁰ The Court emphasized that, “it is really the purpose in furtherance of which an activity is carried out, and not the character of the activity itself, that determines whether or not it is of a charitable nature.”³¹ As a result,

even the pursuit of a purpose which would be non-charitable in itself may not disqualify an organization from being considered charitable if it is pursued only as a means of fulfillment of another, charitable, purpose and not as an end in itself.³²

In his dissenting judgment in the Vancouver Society decision, Justice Gonthier provides the following example to illustrate this point:

supposing the example of a company which published the Bible for profit, and compared it to one which published the Bible without a view to profit, but with the purpose of distributing copies of it to the public. In each case, the activity engaged in—publishing the Bible—is identical. But the purposes being pursued are very different, and consequently the status of each company also differs. Although the former company clearly would not be pursuing a charitable purpose, the latter almost certainly would be.³³

3. What Is It That Makes Religion Charitable?

Carl Juneau, the former Assistant Director of Communications of the Charities Directorate of CRA, posed a question that has not often been addressed by the courts: “Why is *any bona fide* religion charitable?”³⁴ Mr. Juneau answered this question as follows:

In essence, what makes religion “good” from a societal point of view is that it makes us want to become better—it makes people become better members of society.³⁵

People who are religiously motivated have a greater tendency to volunteer and donate their money in order to assist others in society.³⁶ This propensity towards volunteering is likely based on the ethical mores taught by most religions. Religion has “taught us to respect human life; it has taught us to respect property; it has taught us to respect God’s creation; it has taught us to abhor violence; it has taught us to help one another; it has taught us honesty,” along with other ethical principles which make us better citizens.³⁷ Religion is one of the few catalysts that exists through which a private conscience can become a public conscience. Thus,

institutional religion alone seems to reliably and consistently provide that collector function. Institutional religion has had an undefined role in ... shaping collective conscience and values in moral ways—and when [it] is pluralized, so much the better for we avoid the excesses that Alexis de Tocqueville identified so long ago when he coined his colourful phrase, “the tyranny of the majority.”³⁸

In discussing the evolution of constitutional rights, Justice Iacobucci affirmed that society’s understanding of rights, responsibilities, and societal notions of freedom are based on moral and theological principles:

My thesis is quite simple: legal rights and freedoms cannot be properly understood without appreciating the existence of corresponding duties and responsibilities. This understanding of rights-duties and freedoms-responsibilities in turn rests ultimately

on moral and theological principles which inform our Western political, religious and philosophical cultures and traditions.³⁹

In this regard, he acknowledged that, “without the values and principles which underlie ... our democratic institutions and policy, there can be no recourse to rights or freedoms.”⁴⁰ This was echoed by Justice Sopinka in a criminal proceeding involving Charter issues wherein he stated that “much of the criminal law is based on moral conceptions of right and wrong.”⁴¹ The following example was given by Justice Iacobucci to illustrate his point that the law would be hollow in the absence of the values that underlie it, which are often shaped by religion:

Quite apart from these legal duties, however, if you see someone drowning, and you turn to me and ask, “what shall I do?” and I tell you that you have no legal duty to throw the life preserver in your hand to the person drowning, you would hardly be satisfied with my answer. That you have no legal duty to save someone’s life when it is within your power to do so says nothing about your moral or civil duty to act. I think everyone would accept that, even in the absence of a prior relationship with the person drowning, the fact that you are a human being gives you a moral duty to throw the life preserver to save the drowning person.⁴²

Even though it is most often religion that teaches us how to be ethical, the courts have drawn a distinction between religion and ethics for the purposes of determining where the boundaries of advancement of religion lie. As stated in *Re South Place Ethical Society*, “religion ... is concerned with man’s relations with God, and ethics are concerned with man’s relations with man.”⁴³ Despite the fact that the ethical teachings of religion are part of what makes religion for the public benefit, the courts have held that in order for advancement of religion to qualify as a charitable purpose, two essential elements are necessary, “faith in a god and worship of that god.”⁴⁴ In addition, in order for a prospective charity to qualify under advancement of religion, the court must be able to ascertain that the organization in question is, in fact, advancing a *bona fide* religion and how it is that the organization advances that religion.⁴⁵ It follows that in order to qualify as advancing religion, an organization generally must pursue a religious purpose that promotes faith in a god and worship of that god. This leads to the question the courts have often had to address: What constitutes a religious purpose?

4. What Constitutes a Religious Purpose?

In the Bowman decision⁴⁶ and the National Anti-Vivisection Society decision,⁴⁷ the courts held that any charitable purpose intended to advance a particular religion is charitable in nature, provided that the purpose is otherwise lawful. In this regard, the courts are generally willing to defer to sincerely held religious beliefs, including those on the fringe of a particular religion, and are reluctant to distinguish between various religious beliefs.⁴⁸ The underlying reasoning behind this approach is that

[t]he law must accept the position that it is right that different religions should each be supported irrespective of whether ... all of its beliefs are true. A religion can be regarded as beneficial without it being necessary to assume that all its beliefs are true, and a religious service can be regarded as beneficial to all those who attend it without it being necessary to determine the spiritual efficacy of that service or to accept any particular belief about it.⁴⁹

The Ontario Law Reform Commission (“OLRC”) notes that religious purposes should be given a wide meaning in order to avoid conflicts between the judicial and public view and to reflect the evolving nature of religion.⁵⁰ The courts have not become involved in questioning the doctrinal beliefs of a particular religion out of respect for the right to religious freedom as guaranteed in section 2(a) of the Charter.⁵¹ The general consensus in the courts seems to be that “any religion is at least likely to be better than none.” Consequently, promoting religion is for the common good.⁵² This was the principle expressed in the *Hanlon v. Logue* decision:

since the court cannot know whether any particular doctrine is true and therefore able to produce the intended benefit for others, it must accept the view of the religion in question on this matter, the only alternative being for the court to reject all acts of worship as being beyond proof of spiritual benefit.⁵³

5. Charitable Activity Versus Charitable Purpose

As noted, the determination of whether a religious activity is charitable cannot be addressed without reference to its purpose.⁵⁴ This is because

[t]he character of an activity is at best ambiguous; for example, writing a letter to solicit donations for a dance school might well be considered charitable, but the very same activity might lose its charitable character if the donations were to go to a group disseminating hate literature.⁵⁵

As Maurice Cullity (now the Honourable Justice Cullity) explained:

The distinction between ends and means is fundamental in the law of charity. It is the ends, ... not the means by which they are to be achieved, which determine whether a trust or corporation is charitable in law. It follows that one cannot determine whether a body or trust is charitable merely by focusing on the activities that it is authorized to pursue. A further question is necessary: are the activities to be construed as ends in themselves or are they really means to some other end? Only when that question is answered can the charitable or non-charitable nature of the body or the trust be determined.⁵⁶

Thus, a religious activity can only be charitable in so far as its purpose is charitable. As a result,

[o]nce it has been determined that the body is a charity, it is contradictory to suggest that any of its activities, that have been determined to be lawful means of achieving a charitable object, are prohibited because they are not charitable.⁵⁷

6. *Is Public Benefit Presumed?*

To be charitable at common law, a religious organization must engage in activities intended to achieve its religious purpose, which benefit at least a sufficient segment of the public. In *Re Compton*⁵⁸ and *Oppenheim v. Tobacco Securities Trust Co.*,⁵⁹ the courts cautioned that the potential beneficiaries of a charity must not be numerically negligible, and no personal relationship can exist between the beneficiaries and any named person or persons. In some common law jurisdictions, it is a well-established legal principle that the advancement of religion is *prima facie* charitable and is assumed to be for the public benefit.⁶⁰ In *Re Watson*, the court stated that “a religious charity can only be shown not to be for the public benefit if its doctrines are adverse to the foundations of all religion and subversive of all morality.”⁶¹ In *Thornton v. Howe*, the court stated that a gift for the advancement of religion should be upheld unless the religion at issue “inculcate(s) doctrines adverse to the very foundations of all religion.”⁶² In *Application for Registration as a Charity by the Church of Scientology (England and Wales)*, the Charity Commissioners confirmed that “in the absence of evidence to the contrary, public benefit is presumed.”⁶³

In this regard, the courts have historically rejected the notion that charity is limited to the relief of poverty and suffering and have recognized other charitable purposes as being for the public benefit. As well, as noted by Peter Luxton, there has been a presumption of public benefit which has been interpreted to mean that “unless it is shown that such doctrines are immoral, the court will treat them as charitable, no matter that it considers them foolish or even devoid of foundation.”⁶⁴ However, Luxton cautions that the presumption does not extend to the religious purpose benefiting a sufficient section of the community, therefore “a public benefit must be shown.”⁶⁵

In the context of advancing religion, the public benefit requirement has resulted in a debate in the case law over whether a distinction should be drawn between public worship and private worship when determining whether a public benefit exists. In the often-cited English case of *Gilmour v. Coates*, it was held that a gift to a contemplative order was not charitable, as it did not provide a discernable public benefit. The court identified that the problem with this type of religious organization is that “you [can]not demonstrate . . . whether intercessory prayer or edification by the example of such lives is for the benefit of the public.”⁶⁶ On the other hand, another English Court found that members of a Jewish synagogue, by virtue of the fact that the synagogue was theoretically open to the public and that the members lived their lives in the world, were worshipping in a sufficiently public way to qualify for charitable status.⁶⁷ Courts have also held that

[t]he fact that most gifts for religious purposes are directed to a particular denomination does not infringe the public benefit requirement because, the courts have reasoned, it is open for any member of the public to join the denomination or congregations should he or she choose.⁶⁸

As explained in an unreported Australian decision, “[i]t is always a matter of degree whether or not the activity which takes place is open to the public or not.”⁶⁹ The issue adjudicated in the Jensen decision was whether a meeting room used by the Brethren was for “public worship,” which was a requirement in order to be eligible for a property tax deduction. The court determined that the room was being used for public worship despite the fact that some of the events held in the meeting room were not open to the public.⁷⁰ The findings of this case reflect the principle stated above: that worship should be deemed to provide a public benefit as long as the services are open to the public, albeit in a limited way.

Canadian case law does not provide clear direction about whether or where a line should be drawn between “public” and “private” religious worship. Prof. James Phillips is of the opinion that “it is unlikely that Canadian courts would follow it (i.e., the Gilmour decision) down the road of declaring private masses to be non-charitable, for there is a line of cases accepting them.”⁷¹ If Canadian courts were to adopt the Gilmour position and deny charitable status to groups who participate in private worship, they would be creating somewhat of a contradiction for themselves. This was suggested by Prof. Phillips in the following statement:

How can charity law assert that public benefit from religion is a thing to be proved rather than assumed and that not all religious purposes are charitable, then concede that such matters are beyond legal proof, then steadfastly ignore the issue of benefit in the vast majority of cases?⁷²

It would be more consistent and logical for the courts to adopt the position suggested by the OLRC that

[i]f one accepts that the advancement of religion is charitable per se ... then one does not value religion mainly as a means to some other good or for its by-products.⁷³

Drawing a distinction between public and private worship could be interpreted as having a discriminatory effect, since the courts would then be expressing “a preference for religions which do not go in for private observance or disalced⁷⁴ communities.”⁷⁵

The courts and CRA have had difficulty defining what constitutes a “sufficient segment of the community” for the purposes of the public benefit test. David Stevens suggests there are several different public benefit tests that can be deduced from case law. He explains that when considering whether an organization or trust whose stated purpose is the advancement of religion, the advancement of education, or the relief of poverty is charitable at common law, the courts and CRA will often allow the trust or organization to focus its activities on a

particular segment of the community which identifies itself by religion, race, or some other attribute. However, if the organization or trust chooses to limit its membership or beneficiaries to a certain class of persons, then the distinction being drawn must relate directly to the purpose of the organization or trust being pursued and must not contravene the laws and policies governing unlawful discrimination. On the other hand, an organization or trust attempting to qualify under the fourth head of charity—other purposes beneficial to the community—must be found to be beneficial to the community as a whole.⁷⁶ Consequently, although it may be appropriate for an organization or trust whose stated purpose is the advancement of religion to limit its membership or beneficiaries to members of a certain denomination, it may not be acceptable for an organization or trust trying to qualify under other purposes beneficial to the community to limit its membership in this way.

Underlying these various public benefit tests is a primary public policy concern that in order for a trust or organization to be considered charitable it cannot be for private advantage or contrary to public policy. A charity should be able to demonstrate that its objects “demonstrably serve and [are] in harmony with the public interest” and that they are a “beneficial and stabilizing influence in community life,” which is likely not the case if the organization is engaging in illegal activities or in activities clearly contrary to public policy.⁷⁷ In the Bob Jones University decision, a U.S. court found the IRS was correct in revoking the charitable status of the University due to their discriminatory policies.⁷⁸ However, that court noted a “declaration that a given institution is not ‘charitable’ should be made only where there can be no doubt that the activity involved is contrary to a fundamental public policy.”⁷⁹

This “public policy doctrine,” as it is referred to in the United States, was also applied by the Ontario Court of Appeal in *Canada Trust Co. v. Ontario (Human Rights Commission)*,⁸⁰ which is discussed in more detail in the Constitutional Law section of this article. The court in the Canada Trustco decision found that a trust restricted to white, protestant British subjects was void as being contrary to public policy as it had a discriminatory effect. Still, the court warned that “public policy is an unruly horse,” and as a result, it “should be invoked only in clear cases, in which harm to the public is substantially incontestable, and does not depend on the idiosyncratic inferences of a few judicial minds.”⁸¹

Representatives from religious charities in Canada opposed to the legalization of same-sex marriage on religious grounds expressed concern that the public policy doctrine could be invoked as grounds for revoking their charitable status for speaking out against same sex-marriage or for having policies that allegedly discriminate against same-sex couples.⁸² These concerns have largely been alleviated by a last minute amendment to the *Civil Marriage Act* providing that

(6.2.1) For greater certainty, subject to subsections (6.1) and (6.2), a registered charity with stated purposes that include the advancement of religion shall not have its registration revoked or be subject to any other penalty under Part V solely because

it or any of its members, officials, supporters or adherents exercises, in relation to marriage between persons of the same sex, the freedom of conscience and religion guaranteed under the Canadian Charter of Rights and Freedoms.⁸³

7. *How Far Does a Religious Purpose Extend?*

Religious purposes deemed by the courts to be charitable include, but are not limited to, the promotion of spiritual teachings, the maintenance of doctrines and spiritual observances, the organization and provision of religious instruction, the performance of pastoral and missionary work, and the establishment and maintenance of buildings for worship and other religious use.⁸⁴ In some instances, the courts have even found gifts for ancillary projects to be charitable. An example of this can be found in *Re Armstrong*,⁸⁵ wherein the Nova Scotia Supreme Court decided a direction to an estate trustee in a will to make payments to a church for ancillary projects to be used at the discretion of the estate trustee fell within the definition of advancement of religion as a head of charity, since the projects were connected to the church's main activities.

Canadian courts have generally taken the position that the concept of religious freedom means it is not the role of the courts to determine the religious or devotional significance of certain practices of a religious organization.⁸⁶ Accordingly, courts in Canada have been reluctant to exclude any religious practices, whether they be public or private.

The same can be said of the English courts. For example, in the *Keren Kayemeth Le Jisroel Ltd. v. Inland Revenue Commissioners* decision,⁸⁷ which was affirmed in Canada in *Re Anderson*,⁸⁸ the court held that “the promotion of religion means the promotion of spiritual teaching in a wide sense, and the maintenance of the doctrines on which it rests, and the observances which serve to promote and manifest it—not merely a foundation or cause to which it can be related.”⁸⁹ CRA's interpretation of this decision is that it stands for the proposition that “religion is advanced when people carry out the rights of the faith or propagate it.”⁹⁰

8. *Advancement of Religion Inherently Involves Dissemination and Propagation of Religious Beliefs*

Courts in most common law jurisdictions have affirmed that advancement of religion, at its core, involves the promotion of one's religious beliefs to others, and “freedom of religion involves freedom in connection with the profession and dissemination of religious faith and the exercise of worship.”⁹¹ In the Australian case of *Church of the New Faith v. Commissioner of Pay-Roll Tax*, the court acknowledged that a central element of religion is the acceptance and promotion of moral standards of conduct which give effect to a belief.⁹² This principle was perhaps best expressed in the *United Grand Lodge of Ancient Free and Accepted Masons of England v. Holborn Borough Council* decision, where it was stated that

[t]o advance religion means to promote it... ; to take some positive steps to sustain and increase religious belief; and these things are done in a variety of ways which may be comprehensively described as pastoral and missionary.⁹³

Canadian courts have also affirmed that religion involves matters of faith and worship, and freedom of religion involves freedom in connection with the profession and dissemination of religious faith and the exercise of worship. In *Fletcher v. A.G. Alberta*, the Supreme Court of Canada wrote that

[r]eligion, as the subject matter of legislation, wherever the jurisdiction may lie, must mean religion in the sense that it is generally understood in Canada. It involves matters of faith and worship, and freedom of religion involves freedom in connection with the profession and dissemination of religious faith and the exercise of worship.⁹⁴

9. Advancing Religion Includes Addressing Social, Moral, and Ethical Issues

Courts have acknowledged that advancement of religion extends beyond worship and includes related activities, such as addressing social, moral, and ethical issues. In relation to this inclusive approach, the OLRC remarked that

[t]he domain of religious activity is essentially, but by no means exclusively, spiritual and that there is a necessity for an established doctrine and an element of doctrinal propagation, both within and sometimes outside the membership.⁹⁵

In *Re Scowcroft*, the court affirmed the principle that despite that the nature of a particular activity may in and of itself not appear to be charitable, it may still be held to be charitable where it is done for the larger purpose of advancing religion.⁹⁶ The court accepted that a gift of a reading room “to be maintained for the furtherance of Conservative principles and religious and mental improvement” was made for the purposes of advancing religion and was therefore charitable.⁹⁷ In *Re Hood*, the court determined a gift that was made to spread Christianity by encouraging others to take active steps to stop drinking alcohol was a charitable gift since it was made for the purpose of advancing religion.⁹⁸ The court held:

In this will it is not necessary for me ... to express ... whether a gift for the suppression of drink traffic would ... be a good charitable gift, because it seems to me that the essential part of the will is that part which deals with the application of Christian principles to all human relationships. I cannot bring myself to doubt that a gift for the spreading of Christian principles is a good charitable gift and falls within the views expressed by Stirling J. in *In re Scowcroft*, the question relating to the drink traffic being only subsidiary to the main question of the spreading of Christian principles. I therefore hold that the disposition constitutes a good charitable trust.⁹⁹

Hubert Picarda also indicates that where an activity of a charity is incidental to its main charitable purpose, it is acceptable even though it is not itself charitable at law. Picarda writes:

Where an authorised activity is in fact a means to an end (and not an end in itself), the fact that it is not on its own a charitable activity is irrelevant provided the end is charitable. ... If non-charitable activities or benefits do not represent a collateral or independent purpose, but are incidental to and consequent upon the way in which the charitable purpose of the body in question is carried on, the body is charitable.¹⁰⁰

Picarda cites *IRC v. Temperance Council*¹⁰¹ and the National Anti-Vivisection Society decision,¹⁰² wherein the courts found the promotion of legislation was ancillary to the attainment of the fundamental object of the charity, which was the advancement of religion, and held that the promotion of such legislation is merely a means to an end and would not negatively impact the charitable nature of the organization. In the *Re Neville Estates* decision, where a synagogue was not only used for religious services and instruction but also for social activity, the court found that a charitable trust existed and characterized the social activity as merely ancillary to the religious activities.¹⁰³ In *Ontario (Public Trustee) v. Toronto Humane Society*, the Ontario High Court of Justice stated that a charity was permitted to engage in political activities as long as these activities were ancillary to charitable purposes. Since the political activities were incidental to the educational purpose and not ends in themselves, the court held that the Society was not disqualified from being a charity.¹⁰⁴

In summary, the courts have recognized that advancing religion can encompass activities that are not in and of themselves overtly spiritual in nature, but which nevertheless maintain the crucial element of being based within, and serving to promote, a recognized religious doctrine. It is within this context that a religious organization whose work places an emphasis upon a practical application of religious principles should be able to be recognized as charitable under the head of advancement of religion. In this regard, the Chief Justice of the Australian court, Justice Gleeson, correctly points out that

[p]eople sometimes react with surprise and even indignation when church leaders make a public affirmation of religious doctrine. But what is to be expected of church leaders if they do not, from time to time, do that? Have people really considered what the social consequences would be if the great religions abandoned their teaching role?¹⁰⁵

10. Can a Single Issue Religious Organization Be Charitable?

The question remains whether it is possible for a religious organization to be considered charitable where its main activity consists of something that in itself may not be intrinsically religious but is done for a religious purpose. Such an organization is often referred to as a “single-issue religious organization.” CRA suggests that such organizations cannot be charitable, stating that “[t]he pursuit of one object which is not intrinsically religious and that may be pursued equally for religious and secular purposes is not charitable as advancing religion.”¹⁰⁶ The reason CRA gives for this position is that

in general, when assessing charitable status, the motives behind the formation of the group are not considered, but the character of the activities engaged in are. Analysis of the activities engaged in is seen as allowing an objective analysis, preferred to a subjective one.¹⁰⁷

CRA goes on to explain that in order to be charitable, a religious organization must contain a “significant element of religion” and be able to pass the “religious substance” test, which asks:

- Is the activity accepted in the writings or by a majority of the followers of that faith as central to the pursuit of that particular religion?
- Does it fit directly or by analogy into one of the categories of activities historically considered to advance religion, such as:
 - the maintenance and promotion of public worship, including the building and repair of churches etc.;
 - the orderly administration of divine services—support of clergy, and;
 - spreading religion.¹⁰⁸

Presently, as a result of CRA’s policy in this respect, it would be difficult for single-issue religious organizations to obtain charitable status under the head of advancing religion. In order to qualify for charitable status, a single-issue religious charity would have to show that it meets the criteria of one of the other three heads of charity: advancing education, the relief of poverty, or other purposes beneficial to the community, since it would otherwise not be able to meet the “religious substance” test required by CRA.

However, even if a religious organization were successful in obtaining charitable status under one of the other three heads of charity, such an organization might put its charitable status at risk if donations intended for the purpose of advancing religion were used for a different purpose, since the organization would be acting in a way that could be seen as contrary to the donor’s intent. In such a situation, both the organization and its directors could be at risk of being exposed to liability for breach of trust. Additionally, even in the absence of donor-directed trust funds, such a religious organization could arguably be restricted from undertaking any religious activities, as such activities would not be related to the charitable purpose for which CRA had granted it charitable status.

World Vision Canada is arguably an example of a single-issue religious charity, although CRA might not categorize it as such. World Vision Canada describes itself as “a Christian humanitarian organization reaching out to a hurting world,” and focuses on providing relief to poor children in third world countries. One of its “core values” is described as follows: “We are Christian. From the abundance of God’s love, we find our call to ministry.”¹⁰⁹ On the CRA website, World Vision is currently listed in the category of “Missionary Organizations

and Propagation of Gospel,”¹¹⁰ which is interesting given the fact that World Vision Canada’s website does not mention either missionary activities or a focus on the “Propagation of Gospel.” Presumably, if World Vision Canada were to apply for charitable status today, it should be able to qualify under both the relief of poverty head and the advancing religion head, as its mission is to relieve poverty as a way of demonstrating God’s love in response to a hurting world. However, if World Vision Canada were to qualify for charitable status under only the head of relieving poverty, as CRA would likely do given its policy on single issue religious charities, such designation would not reflect the true nature of the organization as a “Christian humanitarian organization” and, as a result, could potentially be misleading to donors and thereby possibly expose the directors to allegations of breach of trust.

As a further example, consider a religious organization that prepares food to be used for religious observance. In some faiths, such as some sects of the Hindu faith, properly prepared foods are not universally considered to be a requirement for adherents. Nevertheless, there is a belief among certain segments of the Hindu faith that eating religiously prepared food is an act of worship. Similar to Kosher food, the food must be prepared by certain people in a certain way. The manner in which this food is prepared involves various religious rituals and can involve only certain ingredients. The food is purchased only by people who practice in the faith and these organizations are usually funded by donors who also practice the faith and whose intent it is to advance their religion. If you take away the religious aspect of the food preparation, such an organization would not likely qualify as charitable. The only way it could qualify as a registered charity is if it is accepted as an organization advancing religion. This would only be possible if CRA was willing to look at the motive driving the organization and not at the activity alone.

CRA’s position, as outlined earlier, runs contrary to a fundamental principle in determining what is charitable, as expressed by the Supreme Court of Canada in the *Vancouver Society* decision, in that it is the motive or purpose behind the activities that must be scrutinized when determining whether an organization is charitable.¹¹¹ It is inconsistent for CRA to suggest that the motives behind the formation of a group are not relevant, choosing instead to look only at the activities in which the organization is engaging. Furthermore, the “religious substance” test outlined by CRA is very restrictive and is not consistent with the test the courts have been using in recent decisions concerning advancing religion. CRA’s test appears to only recognize mainstream religious groups engaging in public worship as qualifying for charitable status, not recognizing that even within a particular faith, different subgroups often choose to practice and express their faith in different ways.

A more rational approach to the issue would be to look for indicia of a nexus between the activity that is taking place and the advancement of religion. Some of the factors that could be considered in this regard could include:

- whether the organization adheres to a set doctrine, which preferably would be in writing;
- whether the organization is putting the said doctrine into practice in various ways;
- whether the structure and governance of the organization reflects that the organization is advancing religion;
- whether the organization has a statement of faith of some kind;
- whether the board of directors or board of trustees is made up entirely of members of the faith in question;
- whether the membership of the organization is made up entirely of people who are members of the faith and practice the faith;
- whether the intention of the donors who donate gifts to the organization is to advance the faith;
- whether the organization intends to give all of its assets to another organization that is advancing religion in the event of dissolution; and
- whether the organization is directly or indirectly connected or is accountable to a larger faith group.

From the above examples, it is evident that it does not make sense to take an activity out of context. If an organization has a truly religious purpose and meets the criteria outlined above, it should be able to qualify as charitable as advancing religion without having to fall under another head of charity.

II. Religious Charities Must Actually Be Advancing a Religion

CRA has also been reluctant to grant charitable status to religious organizations that define their objects too broadly. Specifically, in *Fuaran Foundation v. Canada (Customs and Revenue Agency)*,¹¹² the Federal Court of Appeal endorsed CRA's decision not to register a religious organization (the Fuaran Foundation) as a charity because the foundation defined its objectives too broadly and was not seen as actually advancing religion.

The Fuaran Foundation was a Canadian foundation supporting a Christian retreat centre in Great Britain. Their application listed its purposes as being advancement of religion and advancement of education. However, the promotional materials the foundation used for the retreat centre did not make it sufficiently clear that the retreat centre was for religious and educational purposes. One pamphlet published by the foundation invited people to come "for a day of quiet or for a day of creativity using your hidden talents to produce a drawing, painting, wood carving, cut gemstone, icon or photograph."¹¹³ Attendees at the retreat centre had complete discretion whether to participate in the religious activities provided. In addressing the appeal, the court agreed with the position taken by CRA

that the foundation's objects were overly broad and could allow it to undertake non-charitable purposes.

Justice Sexton was not convinced that the foundation's activities were exclusively for the purpose of advancing the Christian religion, since "the appellant has not made it clear whether the primary activity will involve conducting religious retreats or merely the operation of a resort like any quiet inn or lodge." The court further explained that

[w]hat the appellant proposes is to simply make available a place where religious thought may be pursued. There is no targeted attempt to promote religion or take positive steps to sustain and increase religious belief.¹¹⁴

As a result, he ruled that it was not unreasonable for CRA to deny registration on the basis that the foundation's objectives were not "exclusively charitable." In reaching this decision, the court analogized Justice Iacobucci's position in Vancouver Society with respect to the threshold requirement for registering a charity. In that case, Justice Iacobucci stated that

[s]imply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished, but need not be, is not enough.¹¹⁵

In concluding the foundation's activities did not fall within the ambit of advancing religion or education, the court narrowly construed what practices constitute "advancing religion" in the charitable sense. Consequently, concern has been expressed that this decision could be a hurdle to religious organizations that do not have as their aim a focused purpose of either religious proselytizing or worship.¹¹⁶ However, as will be seen below, the subsequent decision of the Supreme Court of Canada in *Syndicat Northcrest v. Amselem*¹¹⁷ is likely to overshadow any limiting effect of the Furan decision.

B. Advancing Religion and the Charter of Rights and Freedoms

With the advent of the Charter of Rights and Freedoms in 1982, CRA and the courts have had to grapple with the issue of how the guarantee of freedom of religion in s. 2(a) of the Charter and the equality guarantee in s. 15(1) of the Charter relate to advancement of religion as a head of charity.

1. The Charter Assists in Defining the Boundaries of Freedom of Religion

The 2004 Supreme Court of Canada decision in *Amselem* provides a definition of freedom of religion and uses the Charter to define the boundaries of this freedom.¹¹⁸ The Court rendered a broad interpretation of the Charter right to religious freedom. The appellants were Orthodox Jews who co-owned residential units in a condominium complex in which a by-law in the declaration of co-ownership restricted them from building structures on the balconies of the condominiums.

At issue was the appellants' ability to erect a "succah" (a small enclosed temporary hut or booth made of wood or other material and open to the heavens) on their individual balconies during the nine-day Jewish festival of Succot. When the appellants refused to remove the succahs, the respondent Syndicate applied for and was granted an injunction on the basis that the by-law did not violate the Quebec Charter.

The trial judge, Rochon J., granted the injunction on the basis that in order for a contractual clause to infringe on a person's freedom of religion,

the impugned contractual clause must ... either compel individuals to do something contrary to their religious beliefs or prohibit them from doing something regarded as mandatory by their religion.¹¹⁹

He based this conclusion on his opinion that

[f]reedom of religion can be relied on only if there is a connection between the right asserted by a person to practice his or her religion in a given way and what is considered mandatory pursuant to the religious teaching upon which the right is based. ... How a believer performs his or her religious obligations cannot be grounded in a purely subjective personal understanding that bears no relation to the religious teaching as regards both the belief itself and how the belief is to be expressed.¹²⁰

In this respect, Rochon referred to the evidence provided at trial by Rabbi Barry Levy that "[t]here is no religious obligation requiring practicing Jews to erect their own succahs."¹²¹

The Quebec Court of Appeal later upheld Rochon's decision, finding that "the impugned provisions were neutral in application since they affected all residents equally in prohibiting all construction on balconies" and, as such, "did not create a distinction based on religion."¹²²

However, on appeal to the Supreme Court of Canada, Justice Iacobucci rejected this "unduly restrictive" view of freedom of religion taken by the lower courts. Instead he found that the declaration of co-ownership infringed the appellants' religious rights under the Quebec Charter and concluded that freedom of religion includes:

freedom to undertake practices, and harbour beliefs, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials. This understanding is consistent with a personal or subjective understanding of freedom of religion. *As such a claimant need not show some sort of objective religious obligation, requirement or precept to invoke freedom of religion. It is the religious or spiritual essence of the action, not any mandatory or perceived-as-mandatory nature of its observance that attracts protection.*¹²³ [emphasis added]

The Court reiterated that there should be no legal distinction between “obligatory” and “optional” religious practices and “it is not within the expertise and purview of secular courts to adjudicate questions of religious doctrine.”¹²⁴

This decision resonates on two main points. First, it establishes that it is the spiritual essence of an action that is sincerely held, not the mandatory nature of its observance, that attracts protection. Second, it reinforces that it is inappropriate for courts to adjudicate questions of religious doctrine. These fundamental principles could expand the scope of protected freedom of religion to include all believers of a faith, even those who might be considered by some to be “on the fringes.”

In addition, the *Amselem* decision may impact on how broadly CRA will define advancing religion when reviewing applications for charitable status, especially those submitted by organizations whose members believe that their activities advance religion but which are not necessarily mandated by the doctrine, teaching, or practice of that particular faith. At the very least, the *Amselem* decision should provide guidance to CRA concerning decisions regarding charitable registration under advancement of religion.

In the Supreme Court of Canada decision of *Multani v. Commission scolaire Marguerite-Bourgeois*,¹²⁵ the principles developed in *R. v. Big M Drug Mart*¹²⁶ and *Anselem* were recognized, permitting another triumph for freedom of religion. In this case, an Orthodox Sikh student’s constitutional right to carry a kirpan (a ceremonial dagger) to school was unanimously confirmed, sending an unequivocal message that the country’s public education institutions must cultivate an educational culture which respects the right to freedom of religion.

As the child was being forced to choose between leaving his kirpan at home and leaving the public school system, the Court recognized that the intrusion was not an insignificant infringement of a right to freedom of religion. While taking into account the significance of safety concerns, the Court reasoned that such concerns must be clearly established for the infringement of a constitutional right to be justified.

The *Multani* decision also confirms that the Charter establishes a minimum constitutional protection for freedom of religion that must be taken into account by both the legislature and administrative tribunals. As such, the Court provided valuable guidance to administrative bodies dealing with Charter issues, declaring that administrative bodies must apply the principles of constitutional justification when dealing with a Charter right that has been infringed.

Multani was cited in *Hutterian Brethren of Wilson Colony v. Alberta*,¹²⁷ a recent decision of the Alberta Court of the Queen’s Bench in which the Court also considered whether reasonable accommodation could be provided for a religious group without creating undue hardship, in this instance for the Alberta government.

This decision considered a regulation under the *Operator Licensing and Vehicle Control Regulation* which requires individuals to be photographed in order to obtain an operator's license. The Hutterian Brethren community challenged the provincial regulation because their religion prohibited the willing capture of their image in photographs.

The Court accepted the sincerity of the Hutterites' belief without question, ruling that the required photograph violated a Charter right and that reasonable accommodation shall not require "individuals with *bona fide* religious objections to violate their religious beliefs."¹²⁸ Indeed, the court rejected the government's proposed accommodations because they still required the Hutterites to be photographed, which was "precisely their problem."¹²⁹

In these challenging times for many of the world's religions, recent case law demonstrates that the Courts remain prepared to acknowledge the value of protecting religious freedom from unjustifiable interference from state authorities. The Multani and Hutterian Brethren decisions strengthen this protection by confirming that religious observances must be accommodated to the point of undue hardship by the party responsible for providing the accommodation.

2. Charter Challenge to the Existence of Advancement of Religion as a Head of Charity

An argument advanced by proponents wishing to abolish or restrict advancement of religion as a head of charity is that "the freedom of religion and conscience is offended by the conferral of positive state benefits on the basis of religious status."¹³⁰ They point to the *Big M Drug Mart* decision where Justice Dickson stated that

[c]oercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others.¹³¹

It is also argued that since "indirect forms of control" by the state can constitute coercion by using tax dollars, which Canadian citizens have all been compelled by the state to pay in order to subsidize religious charities, the state is engaging in indirect coercion of its citizens who are not in agreement with supporting these charities.¹³²

This argument was rejected by the Manitoba Court of Appeal in *Re Mackay and Manitoba*,¹³³ wherein a scheme providing an expense rebate to politicians and political parties who succeeded in obtaining 10 percent or more of the vote was challenged on the basis it infringed the applicant's s. 2(a) and (b) rights. The appellant's argument was remarkably similar to that outlined above, as he was alleging he was being forced to contribute his tax dollars to political parties with whom he did not agree, which constituted state coercion that impinged on his freedom of conscience. In its decision, the court concluded:

The impugned provisions of the *Elections Finances Act*, in providing for state reimbursement of some election expenses of a minority group, do not impede the freedom of the applicants, or anyone else, to think what thoughts they will as to the good or evil of the policies the subsidized minority espouses; nor do they restrict the applicants from expressing their own views and incurring whatever expenditure they think appropriate for the purpose.¹³⁴

The court concluded that “[m]onetary support by the State for the expression of minority views, however distasteful to the majority or to another minority group, cannot offend the conscience of those opposed to the viewpoint.”¹³⁵

The conclusion reached in *Re Mackay* was further supported in *Edwards Books*, where the court explained that an infringement of s. 2(a) rights will only be found in situations where the religious practices or beliefs of a group are directly being interfered with by the government, as exemplified in the following passage: “For a state imposed cost or burden to be proscribed by s. 2(a) it must be capable of interfering with religious belief or practice.”¹³⁶

Accordingly, the courts have affirmed an indirect subsidy achieved through the granting of charitable status does not constitute an affirmation by the state that one religious view is superior to another, especially if charitable status is being granted indiscriminately to any religious organization meeting the criteria of “advancing religion.” It follows that the government is not infringing the s. 2(a) or 2(b) Charter rights of those opposed to the views espoused by religious groups granted charitable status. Furthermore, by granting charitable status to a particular religious group, the government is not imposing a cost or burden on anyone or interfering with any other party’s religious beliefs or practice.¹³⁷

3. *The Relationship Between Public Policy and the Freedom of Religion*

As broad as freedom of religion is, it is not unlimited. Courts have consistently held that an individual’s freedom of religion is limited by the rights of others.¹³⁸ As explained in *Ross v. New Brunswick School District No. 15*:

Freedom of religion ensures that every individual must be free to hold and to manifest without State interference those beliefs and opinions dictated by one’s conscience. This freedom is not unlimited, however, and is restricted by the right of others to hold and manifest beliefs and opinions of their own and to be free from injury from the exercise of the freedom of religion of others.¹³⁹

Both the case law and CRA have taken the position that a “charity’s activities must be legal and must not be contrary to public policy.”¹⁴⁰ It is therefore conceivable that a religious organization could be denied charitable status if CRA determined that its objects were contrary to public policy or inconsistent with Charter values.

In this regard, a charitable trust can be found to be void as being contrary to public policy. The most recent example of this is the decision in *Canada Trustco v. Ontario Human Rights Commission*,¹⁴¹ involving an educational trust estab-

lished in 1923 in which the testator expressed an intention to exclude from benefit “all who are not Christians of the White Race, and who are not of British Nationality or of British Parentage, and all who owe allegiance to any Foreign Government, Prince, Pope or Potentate, or who recognize any such authority, temporal or spiritual.”¹⁴²

The court concluded that this “trust was void on the ground of public policy to the extent that it discriminated on grounds of race, religion and sex.”¹⁴³ However, the Ontario Court of Appeal recognized that trusts should only be found void for public policy reasons “in clear cases, in which the harm to the public is substantially incontestable.”¹⁴⁴ Professor Donovan Waters suggests the reasoning behind this legal principle could be that

[t]he courts have always recognized that to declare a disposition of property void on the ground that the object is intended to contravene, or has the effect of contravening public policy, is to take a serious step. *There is the danger that the judge will tend to impose his own values rather than those values which are commonly agreed upon in society and, while the evolution of the common law is bound to reflect contemporary ideas on the interests of society, the courts also feel that it is largely the duty of the legislative body to enact law in such matters, proceeding as such a body does by the process of debate and vote.*¹⁴⁵ [emphasis added]

This issue of how to resolve the conflict occurring when the Charter rights of two people or two groups of people are apparently in conflict arose recently in conjunction with the Supreme Court of Canada’s *Reference Re Same Sex Marriage*.¹⁴⁶ The Court tried to address the conflict between the freedom of religion of those opposed to same-sex marriage and the right of same-sex couples to be equal before the law. The court rejected the notion that allowing same-sex couples to marry was an infringement on the religious freedom of those opposed to same-sex marriage. The Court took the position that “[t]he mere recognition of the equality rights of one group cannot, in itself, constitute a violation of the rights of another. The promotion of the equality rights of one group cannot in itself constitute a violation of the rights of another.”¹⁴⁷

Presumably, this principle could be applied in reverse, and it could be argued that the recognition of the freedom of religion, which includes freedom from state coercion concerning religious beliefs, cannot constitute a violation of the rights of those in agreement with same-sex marriage. More broadly, allowing individuals to practice in accordance with their religious beliefs is not a violation of the religious freedom of those who do not agree with the beliefs in question. This principle was affirmed in a case where the court rejected the application of a resident of a township who claimed that a non-denominational prayer that was regularly recited at a town council meeting that he occasionally attended violated his freedom of conscience and religion, contrary to s. 2(a) of the Charter.¹⁴⁸ The applicant was a secular humanist who did not believe in God and objected to the reference made to “Almighty God” in the prayer. In its decision, the court found that the purpose of the prayer was to “impose a moral tone on the proceedings

and to promote certain values, in particular good governance,”¹⁴⁹ agreeing with the applicant that “[t]he prayer clearly reflects the belief that God is the source of these blessings and that the requested wisdom, knowledge and understanding derives from God. In this limited respect there is a religious message.”¹⁵⁰

Despite finding that the prayer was religious and that the beliefs being expressed in the prayer were contrary to those of the applicant, the court explained that

[i]n a pluralistic society, religious, moral or cultural values put forward in a public governmental context cannot always be expected to meet with universal acceptance. ... In my view, it would be incongruous and contrary to the intent of the Charter to hold that the practice of offering a prayer to God per se is a violation of the religious freedom of non-believers.¹⁵¹

As such, the court acknowledged that it is acceptable and not contrary to the freedom of religion of non-believers for religious beliefs to be expressed in the public context in this way.

The Supreme Court in the Marriage Reference decision explained that even in the event a true “collision of rights” was found to exist due to the difference in belief systems of two groups of people, when attempting to reconcile these rights, “[t]he Court must proceed on the basis that the Charter does not create a hierarchy of rights and that the right to religious freedom enshrined in s. 2(a) of the Charter is expansive.”¹⁵²

Furthermore, any attempt by the courts to promote a version of “public policy” which is contrary to the central beliefs of many religious believers could be seen as constituting an infringement of the freedom of religion of those opposed to the public policy being promoted. This is especially true since

[r]eligion is (in part) an attempt to ascertain whether there is a universal order of reason and human freedom, and to align oneself with that order. If such an order exists, and a person does not conform his actions and thoughts to what he believes it requires, then that person’s integrity and moral character are harmed. For the state to force a person to carry out actions which are contrary to the order which a person is trying to bring to their life is to force the person to forego the benefits of acting according to conscience and instead to alienate that person from their actions. To force a person into this dis-integrity is to harm that person.¹⁵³

For example, in the Marriage Reference decision it was clearly stated that it would be discriminatory and an infringement of an individual’s or group’s freedom of religion for the state to force a religious official opposed to same-sex marriage on religious grounds to perform a same-sex marriage ceremony or to force a religious group opposed to same-sex marriage on religious grounds to allow its facilities to be used for the purposes of a same-sex marriage ceremony. More specifically, the Court stated that

*[t]he performance of religious rites is a fundamental aspect of religious practice. It therefore seems clear that state compulsion of religious officials to perform same-sex marriages contrary to their religious beliefs would violate the guarantee of freedom of religion under s. 2(a) of the Charter. It also seems apparent that, absent exceptional circumstances which we cannot presently foresee, such a violation could not be justified under s. 1 of the Charter.*¹⁵⁴ [emphasis added]

The Court once again recognized the importance of the practical manifestations of religious belief and acknowledged that the freedom to practice one's beliefs is at the core of the freedom of religion as guaranteed in s. 2(a). As a result, the Marriage Reference decision provides assistance for those advocating for a more expansive definition of religion, as it confirms that, in the event of a conflict between the freedom of religion and another Charter freedom, the courts should not read down the freedom to hold religious beliefs but, rather, should give s. 2(a) an expansive interpretation.

C. Recent Policies by CRA Affecting Advancement of Religion

CRA recently released two policies: *Applicants Assisting Ethnocultural Communities*,¹⁵⁵ and *Guidelines for Registering a Charity: Meeting the Public Benefit Test*,¹⁵⁶ both of which are relevant to various aspects of defining what constitutes advancement of religion. These policies are integral to current and potential charitable organizations, as they provide insights into the CRA standards to be met in order to maintain or acquire charitable status under the head of advancement of religion.

1. New CRA Policy: Applicants Assisting Ethnocultural Communities

The policy by CRA on *Applicants Assisting Ethnocultural Communities* sets out guidelines for registering community organizations that assist disadvantaged ethnocultural communities in Canada. CRA acknowledges that these groups represent a significant part of the Canadian demographic and that community organizations provide needed services to assist new Canadians in navigating the challenges they face. The CRA policy provides information for these community organizations concerning the framework within which they can attain charitable status for the purposes of the ITA.

Religious organizations that assist ethnocultural groups and wish to acquire charitable status must qualify under at least one of the four heads of charitable purposes established in *Pemsel*, including advancement of religion. According to the policy statement, an ethnocultural group is defined by the shared characteristics that are unique to, and recognized by, that group, which include ancestry, language, country of origin, national identity, and religion. However, religion is only considered to be a shared characteristic if it is inextricably linked to the group's racial or cultural identity.

A previous draft of this CRA policy suggested a narrowing of the definition of advancement of religion at common law by stating that

[i]n this category of charity, if the undertaking promotes the spiritual teachings of the religion concerned, public benefit is usually assumed. However, religion cannot serve as a foundation or a cause to which a purpose can conveniently be related. If the group's purposes are more secular than theological, it does not qualify as advancing religion. For example, opposing abortion and promoting or opposing same-sex marriage, while in keeping with the values of some religious believers and religions, cannot be considered charitable purposes in the advancement of religion category.

Section 36 of this draft provided some examples of both acceptable and unacceptable objects for religious worship based on a specific linguistic community. An example of an acceptable object was the promotion of spiritual teachings of the religion concerned and the maintenance of the spirit of the doctrines and observances on which it rests.

In contrast, the “pursuit of purposes that are more secular than theological” was listed as an unacceptable charitable object. This presumably would include those purposes previously listed in this policy statement, i.e., opposing abortion and promoting or opposing same-sex marriage.

Several groups expressed concern that these sections of the draft could be interpreted to mean that activities undertaken for the purpose of advancing religion, but which could also be viewed by some as having a secular purpose, would be characterized by CRA as not fitting within the category of activities that advance religion. Furthermore, the draft did not explain to what extent secular purposes can be pursued, how to distinguish between a secular purpose and a theological purpose, and what the implications would be if a purpose were identified as being both secular and theological in nature.

It is debatable whether secular and theological should be juxtaposed in this manner. Some argue that it is perfectly acceptable, and perhaps even desirable, for the secular world to be informed by religious beliefs.¹⁵⁷ In a recent case involving a Charter challenge to a school board's decision to disallow the use of books depicting same-sex families intended for use in the curriculum for children in kindergarten to grade 7, the British Columbia Court of Appeal noted that

[m]oral positions must be accorded equal access to the public square without regard to religious influence. A religiously informed conscience should not be accorded any privilege, but neither should it be placed under a disability.¹⁵⁸

This is the principle that Iain T. Benson advocates:

The often anti-religious stance embodied in secularism excludes and banishes religion from any practical place in culture. A proper understanding of secular ... will seek to understand what faith claims are necessary for the public sphere, and a properly constituted secular government ... will see as necessary the due accommodation of religiously informed beliefs from a variety of cultures.¹⁵⁹

The previous draft of this policy could have had the effect of narrowing the scope within which religion could be advanced and, therefore, might have resulted in a narrowing of the activities and ventures that current religious charities could undertake. It could also have provided an obstacle for new religious charities attempting to qualify for charitable status under the ITA. In response to these concerns, CRA advised that it would amend these passages of the policy by deleting the reference previously made concerning secular versus theological and omitting the abortion and same-sex marriage examples. The policy reads as follows:

42. This category refers to promoting the spiritual teachings of a religious body, and maintaining the doctrines and spiritual observances on which those teachings are based. A religious body is considered charitable when its activities serve religious purposes for the public good. An example of accepted wording for this category would be 'to advance and teach the religious tenets, doctrines, observances and culture associated with the (specify faith or religion) faith.

43. Religious worship focused on a specific linguistic community is acceptable.¹⁶⁰

2. *Can Religious Charities Meet the Public Benefit Test?*

As indicated, one of the advantages Canadian religious charities have had to date is that the courts and CRA have presumed that charities advancing religion inherently provide a public benefit. This "presumption of public benefit" can be challenged. Some argue that there should be no presumption of public benefit for religious charities so that, in order to qualify for charitable status, religious organizations would have to prove that they do, in fact, provide a public benefit. This could have a devastating effect on religious groups, such as cloistered nuns whose activities mostly involve private prayer and worship. How would they prove their prayer and worship has a beneficial effect on the community?

The new CRA *Guidelines For Registering a Charity: Meeting the Public Benefit Test* seeks to clarify the rules relating to "public benefit." The policy contains a two-part public benefit test that requires proof of tangible public benefit being conferred. Regarding the question of when proof of public benefit is required, CRA indicates:

The extent to which an applicant charity is required to meet the first part of the public benefit test will depend, in large part, under which category the proposed purposes fall. When the purposes fall within the first three categories of charity, a presumption of public benefit exists.¹⁶¹

In a previous draft of this policy, CRA indicated that the presumption of public benefit for the first three categories of charity could be challenged and used advancement of religion as an example of when this could occur:

The presumption however, can be challenged. So when the "contrary is shown" or when the charitable nature of the organization is called into question, proof of benefit will then be required. *For example, where a religious organization is set up that pro-*

notes beliefs that tend to undermine accepted foundations of religion or morality, the presumption of public benefit can be challenged. When the presumption is disputed, the burden of proving public benefit becomes once again the responsibility of the applicant organization.¹⁶² [emphasis added]

In indicating that the presumption of public benefit could be challenged when the “contrary is shown,” CRA cited the National Anti-Vivisection Society decision. An example was given of how the presumption of public benefit could be rebutted where a position is put forward by a religious organization that “*undermines accepted foundations of religion and morality*”¹⁶³ [emphasis added]. In contrast, in the *Re Watson* decision, the court stated that “a religious charity can only be shown not to be for the public benefit *if its doctrines are adverse to the foundations of all religion and subversive of all morality*”¹⁶⁴ [emphasis added]. The statement by the courts in this case with reference to the qualifier “of all” is significantly different in substance from the statement by CRA that does not include the same qualifier.

Some commentators expressed concern that the previous draft CRA policy statement, although likely unintentional, could have unnecessarily broadened the circumstances in which the presumption of public benefit under advancement of religion could be challenged, i.e., from a situation where a religious organization promotes beliefs that are contrary to the foundations of *all* religion and subversive to *all* morality to one where a religious organization promotes beliefs that are contrary to *any* accepted foundation of religion or morality. In recognition of this concern, CRA removed the example.

Given the range of religious beliefs on many different issues, it is possible that some religious organizations might sometimes be subject to a challenge of their presumed public benefit under advancement of religion because one or more of their promoted beliefs might be significantly different from those which are believed to be accepted societal norms dealing with morality, i.e., in accordance with the more broad-based standard of religion and morality set out in the previous draft CRA policy statement.

This issue was raised in the Catholic Bishops’ factum in the same-sex marriage reference.¹⁶⁵ The Bishops submitted that, once same-sex marriage was legalized, it would become a moral norm, thereby making it outside the norm to be opposed to same-sex marriage. Their concern was that

[o]nce this social and moral orthodoxy is established, it would be a small step to remove charitable status and other public benefits from individuals, religious groups or affiliated charities who publicly teach or espouse views contrary to this claimed orthodoxy.¹⁶⁶

This is essentially what happened to Alliance for Human Life (the “Alliance”), a pro-life group whose charitable status was revoked after many years because

CRA deemed that their activities were overly political. CRA explained in a letter to the Alliance that

[f]or activities to be deemed as being for the advancement of religion they must be directly related to the “promotion of spiritual teachings” and the “maintenance of doctrines” associated with the religion and that the fostering of ethical or moral standards would not be seen as satisfying this test.¹⁶⁷

CRA also stated that the Alliance’s objectives could not fit under advancement of education since, “[f]or an activity to be deemed educational, efforts must be directed toward the training of the mind and that materials used for the purpose must be presented in an unbiased manner so as to allow the reader to make up his or her own mind on the position being advocated.”¹⁶⁸ CRA emphasized that

[i]f the dissemination of information is directed at persuading the public to adopt a particular attitude of mind rather than to allow an individual to draw an independent conclusion on the basis of a reasonably full and unbiased presentation of the facts, the process is not regarded as charitable by the courts.¹⁶⁹

The Alliance tried to challenge CRA’s decision to revoke its charitable status on the basis that their freedom of expression was being infringed. The court rejected this argument, saying,

[e]ssentially its [the Alliance’s] argument is that a denial of tax exemption to those wishing to advocate certain opinions is a denial of freedom of expression on this basis. On this premise it would be equally arguable that anyone who wishes the psychic satisfaction of having his personal views pressed on his fellow citizens is constitutionally entitled to a tax credit for any money he contributes for this purpose. The appellant is in no way restricted by the *Income Tax Act* from disseminating any views or opinions whatever. The guarantee of freedom of expression in paragraph 2(b) of the Charter is not a guarantee of public funding through tax exemptions for the propagation of opinions no matter how good or how sincerely held.¹⁷⁰

CRA will not register, and in some cases will revoke, the charitable status of a charity that is overtly political in its activities. As explained in a recent CRA policy statement on political activities, “[a] charity may not take part in an illegal activity or a partisan political activity. A partisan political activity is one that involves direct or indirect support of, or opposition to, any political party or candidate for public office.”¹⁷¹ Alternatively, the policy statement notes that “[a] charity may take part in political activities if they are non-partisan and connected and subordinate to the charity’s purposes.”¹⁷²

CRA explains that it is appropriate for a charity to advocate for a change in the law, policy, or decision of government. However, charities must ensure these activities are related and subordinate to their charitable purpose and that the communications are “well-reasoned” and within the acceptable limits of expenditures established by CRA.¹⁷³

When determining whether the purpose of an activity is political or charitable, CRA will also consider whether a group limits the services it offers to a specific group of people and warns that “all types of limitations have the potential of offending the public benefit test.” Further, CRA states that “organizations that want an outright restriction of benefit or exclusions of services have a far greater burden of establishing public benefit than those organizations that want to focus attention on a specific group, but extend service delivery to the general public.”¹⁷⁴

Consequently, there is a danger that religious organizations engaged in activities other than religious worship and teaching doctrine, particularly if they involve political activities, may become more vulnerable to having their charitable status revoked or be denied charitable status in the first instance on the basis they are engaging in activities that are overly political or discriminatory. As Carl Juneau suggested:

If anything, the best way to deal with the problem is to ensure that any organization that alleges to be religious should have a primary purpose [that is] indeed religious; that any political pronouncements a religious charity makes are incidental, and that they are clearly tied to religious observance. Otherwise it would seem difficult to defend actions on the basis of advancement of religion.¹⁷⁵

Conclusion

One of the questions that many common law jurisdictions have struggled with is: who should decide what the boundaries of advancement of religion as a head of charity should be? Is it the role of the courts to continue to define religion for the purposes of charity law, or should the government intervene and pass legislation which provides a definition of religion?

In Canada, it will likely be left to the courts, as well as, to a certain extent, CRA in an administrative context, to decide the future of advancement of religion. In reviewing the approach that the Supreme Court of Canada has taken in the *Amselem* decision in relation to the interpretation of the scope of religious freedom and the definition of religion that has been articulated by courts in other jurisdictions, it appears that a broader definition of advancement of religion is warranted. While historically the case law has not been clear on how expansive advancement of religion is, recent decisions have made it clear that the state and the courts must not inquire into the validity of an individual’s religious beliefs or practices. Furthermore, if the definition of religion is too narrowly construed, Charter challenges could be brought against the government for discriminating against those religions that are not included in the charitable definition of religion.

From the case law and commentary noted in this article, it is apparent that “religion can and does have a significant role in identifying and promoting values that advocate and encourage personal attitudes towards others and conduct between

citizens which, even in a non-legal sense, is charitable.”¹⁷⁶ In order for religion to be effective, those who believe must be allowed to engage in practical manifestations of their faith. It is, therefore, appropriate for the state to provide broad support for religious organizations by granting them charitable status. In doing so, the state acknowledges the benefit that comes from advancing religion within a pluralistic society.

NOTES

1. Iacobucci, Justice Frank, “The Evolution of Constitutional Rights and Corresponding Duties: The Leon Ladner Lecture” (1992) U.B.C. Law Rev. 1 at 18. [“Justice Iacobucci”]
2. Gospel of Mathew 7:12, New Living Translation; see Appendix II of Sorensen, H.R. & A.K. Thompson. *The Advancement of Religion is Still a Valid Charitable Object in 2001* (Centre for Philanthropy and Non-Profit Studies, Queensland University of Technology, 2000) [“Sorensen”] which provides a list of world religions, including Confucianism, Hinduism, Judaism, Buddhism, Islam, Zoroastrianism, Bahai, Jainism and Sikhism which hold a similar belief.
3. *Donoghue v. Stevenson*, [1932] A.C. 562 at 580.
4. Gleeson, Chief Justice Anthony Murray. “The Relevance of Religion” (2001) 75 A.L.J. 93 at 95.
5. *Syndicat Northcrest v. Amselem*, [2004] S.C.J. No. 46; 2004 SCC 47. [“Amselem” decision] See *Church Law Bulletin* No 6, available at <www.churchlaw.ca>, which provides a case comment on the Amselem decision.
6. *Canadian Charter of Rights and Freedoms*, 1982 s.2(a). [the “Charter”]
7. *Reference re Same-Sex Marriage*, [2004] S.C.J. No. 75 at para. 53. [“Marriage Reference” decision]
8. *Special Commissioners of Income Tax v. Pemsel*, [1891] A.C. 531 (H.L.). [“Pemsel” decision]
9. *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.) [“ITA”].
10. CRA, Policy Statement ,CPS-023, “Applicants Assisting Ethnocultural Communities” (June 30, 2005). Available at: <www.cra-arc.gc.ca/tax/charities/policy/cps/cps-023.e.html>. [“Ethnocultural Communities” policy].
11. Pemsel decision, *supra* note 8.
12. *Statute of Elizabeth*, (1601) 43 Eliz 1 c.4. [“Statute of Elizabeth”] Also known as the *Charitable Uses Act*. The preamble of the *Statute of Elizabeth 1601* lists the following purposes as being charitable: *The relief of aged, impotent and poor people, the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars of universities; the repair of bridges, havens, causeways, churches, sea banks and highways; the education and preferment of orphans; the relief, stock or maintenance of houses of correction; marriages of poorer maids; supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoners or captives; and the aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.*

13. Some historians suggest that the Preamble was taken from a poem entitled: *The Vision of the Piers Plowman* written in 1377.
14. Picarda, Hubert. *Law and Practice Relating to Charities*, 3rd ed. (London, Butterworths, 1999) at 62. [“Picarda”]
15. *Thornton v. Howe* (1862), 54 E.R. 1042. [“Thornton” decision]
16. *Bowman v. Secular Society Ltd.*, [1917] A.C. 406. (H.L.). [“Bowman” decision]
17. *National Anti-Vivisection Society v. Inland Revenue Commissioners*, [1947] 2 All E.R. 217 at 220 (HL). [“National Anti-Vivisection” decision]
18. Pemsel, *supra* note 8, as explained by Bromley, Kathryn. “The Definition of Religion in Charity Law in the Age of Fundamental Human Rights” *Advancing The Faith In Modern Society* (Canadian Council of Christian Charities, 2000) [“Kathryn Bromley”]; also presented at the Canadian Bar Association Continuing Legal Education Program on Friday October 27, 2000.
19. *Ibid.* at 583 per Lord MacNaghten.
20. *Ibid.* at note 4 per Sir E. Clarke S.G. and Dicey Q.C.
21. *Vancouver Society of Immigrant & Visible Minority Women v. Canada (Minister of National Revenue)*, [1999] 1 S.C.R. 10 at para. 146. [“Vancouver Society” decision]
22. Statute of Elizabeth, *supra* note 12.
23. Vancouver Society decision, *supra* note 21 at 146.
24. *Ibid.* at 146.
25. *Ibid.* at para. 147.
26. *Ibid.* at para. 37.
27. Pemsel decision, *supra* note 8.
28. *Gilmour v. Coats*, [1949] A.C. 426 in the abstract. [“Gilmour” decision]
29. Vancouver Society decision, *supra* note 21 at para. 147.
30. *Ibid.* at para. 148.
31. *Ibid.* at para. 152.
32. *Ibid.* at para. 158.
33. *Ibid.* at para. 54.
34. Juneau, Carl. “Is Religion Passé as a Charity?” (1999) *Church and the Law Update* v.2 No.5 at 5, available at <<http://www.carters.ca/pub/update/church/volume02/chchv2n5.pdf>>. [“Is Religion Passé”] [emphasis in original].
35. *Ibid.* at 6.
36. Statistics Canada, catalogue 71-542-XIE, *Caring Canadians, involved Canadians, Highlights from the 1997 National Survey of Giving, Volunteering and Participating*, at 17.
37. Is Religion Passé, *supra* note 34 at 6.

38. Sorensen, *supra* note 2 at 3.
39. Justice Iacobucci, *supra* note 1 at 1.
40. Justice Iacobucci, *supra* note 1 at 18.
41. *R. v. Butler* (1992), 89 D.L.R. (4th) 449 at 477.
42. Justice Iacobucci, *supra* note 1 at 16.
43. *Re South Place Ethical Society* (also referred to as *Barralet et al. v. A.G.*), [1980] 3 All E.R. 918 at 77. [“Re South Place Ethical Society” decision]
44. *Ibid.* at 78.
45. Bourgeois, Don. *The Law of Charitable and Non-Profit Organizations*, 3rd ed. (Markham: Butterworths Canada, 2002) at 22.
46. Bowman decision, *supra* note 16.
47. National Anti-Vivisection Society decision, *supra* note 17 at 220 (H.L.).
48. Thornton decision, *supra* note 15.
49. Gilmour decision, *supra* note 28, per Lord Reid.
50. Ontario Law Reform Commission, *Report on the Law of Charities*, (Toronto, 1996). [“OLRC” report]
51. *Ibid.* at 191.
52. *Neville Estates v. Madden*, [1962] Ch.162, [“Neville Estates” decision] at 853 as cited in Waters, Donovan, *The Law of Trusts in Canada*, 2nd ed. (Toronto, The Carswell Co. Ltd., 1984). [“Waters, 2nd ed.”]
53. *Hanlon v. Logue*, [1906] 1 I.R. 247 (C.A.), as explained by Waters, Donovan. *The Law of Trusts in Canada*, 3rd ed. (Toronto: Thomson Carswell, 2005) at 705.
54. Vancouver Society decision, *supra* note 21.
55. *Ibid.* at para. 152.
56. Cullity, Maurice C. “The Myth of Charitable Activities” (1990), *Estates and Trusts Journal* 17, at 10.
57. *Ibid.* at 13.
58. *Re Compton*, [1945] Ch.123; [1945] 1 All E.R. 198 (C.A.).
59. *Oppenheim v. Tobacco Securities Trust Co.*, [1951] A.C.297.
60. *Re Caus*, [1934] Ch. 162, Gilmour decision, *supra* note 28; Nelville Estates Decision, *supra* note 52; *Re Watson*, [1973] 3 All E.R. 678, [“Re Watson” decision]; and U.K. Charity Commission, *Application for Registration as a Charity by the Church of Scientology* (England and Wales, November 1999). [“Application by Church of Scientology” decision]
61. *Re Watson* decision, *supra* note 60.
62. Thornton decision, *supra* note 15.
63. Application by Church of Scientology decision, *supra* note 60 at 13 ff.

64. Luxton, Peter. *The Law of Charities* (Oxford: Oxford University Press, 2001) at 130.
65. *Ibid.*
66. Gilmour decision, *supra* note 28, as explained in Waters, 2nd ed., *supra* note 52 at 578.
67. Waters, 3rd ed., *supra* note 53 at 711, referring to Neville Estates decision, *supra* note 60.
68. Dal Pont, Gino. *Charity Law in Australia and New Zealand* (Melbourne: Oxford University Press, 2000) at 167 taken from *Association of Franciscan Order of Friars Minor v. City of Kew*, [1967] VR 732.
69. *Jensen v. Brisbane City Council* (18 March, 2005), Brisbane BC200501276 (unreported) at para. 88. [“Jensen” decision]
70. *Ibid.* at para. 90.
71. Phillips, James. “Religion, Charity and Canadian Public Law” in *Between State and Market: Perspectives on Charities Law and Policy in Canada* (1999) at 14. Prof. Phillips does not provide us with a list of the cases accepting this principle, but instead refers us to Waters, 2nd ed., *supra* note 52 at 578, in which an analysis of some of these cases is provided.
72. *Ibid.* at 13.
73. OLRC report, *supra* note 50 at 200.
74. The term “discalced” means barefoot, unshod and is used to refer to a branch of the Carmelite order which underwent a reform and returned to its original rule, which required a stricter observance of the vow of poverty.
75. Phillips, *supra* note 71 at 16.
76. Stevens, David, “Advancing Religion: A Commentary on the Law’s Approach to Understanding Religion as a Charitable Good,” presented at the Third National Symposium on Charity Law hosted by the Canadian Bar Association (May 6, 2005) at 9–11.
77. *Bob Jones University v. United States*, 461 U.S. 574 (1983) [“Bob Jones University decision”] as cited in Hopkins, B. *The Law of Tax Exempt Organizations*, 8th edition (New Jersey: John Wiley and Sons, 2003). [“Hopkins”]
78. *Ibid.*
79. *Ibid.* at 592 as cited in Hopkins, *supra* note 77.
80. *Canada Trustco v. O.H.R.C.* (1990), 74 O.R. (2d) 481 (O.C.A.). [“Canada Trustco” decision]
81. *Ibid.* at para 36, citing *Re Millar*, [1938] S.C.R. 1 at 7.
82. *Civil Marriage Act*, 2005 c.33.
83. *Ibid.* For more information on the Civil Marriage Act and the new amendments to it, see Carter, T. “Update Regarding Same-Sex Marriage Legislation” *Church Law Bulletin* No. 8 (February 28, 2005) and Carter, T and Langan, Anne-Marie, “Implications of Recent Amendments to Civil Marriage Act for Religious Groups and Officials” *Church*

Law Bulletin No. 12 (September 6, 2005) full text of which is available at <www.church-law.ca>.

84. Phillips, *supra* note 71.
85. *Re Armstrong* (1969), 7 D.L.R. (3d) 36 (N.S.S.C.).
86. *Donald v. Hamilton Board of Education*, [1945] 3 D.L.R. 424 (Ont. C.A.).
87. *Keren Kayemeth Le Jisroel Ltd. v. Inland Revenue Commissioners*, [1931] 2 K.B. 465 (C.A.), at 477; on appeal [1932] A.C. 650, [1932] All E.R. Rep. 971 (H.L.). [“Keren Kayemeth” decision]
88. *Re Anderson* (1943), 4 D.L.R. 268 (Ont. H.C.).
89. *Ibid.* at para. 7, per Plaxton, J.
90. CRA, “Discussion Paper-Advancement of Religion: Common Law Definition of Charity” presented at Muttart Foundation Charity Law Consultation in Banff, Alberta (May, 2005). (“CRA Muttart Paper”)
91. *Walter v. A.G. Alta.*, [1969] 66 W.W.R. 513 at 521.
92. *Church of the New Faith v. Commissioner of Pay-Roll Tax*, 83 A.T.C. 4, 652. [“Church of the New Faith” decision]
93. *United Grand Lodge of Ancient Free and Accepted Masons of England v. Holborn Borough Council*, [1957] 1 W.L.R. 1080 at 1090; All E.R. 281 (Q.B.D.) at 285. [“United Grand Lodge” decision] Affirmed in *Wood v. R.*, [1977] 6 W.W.R. 273, 1 E.T.R. 285.
94. *Fletcher v. A.G. Alta.*, [1969] 66 W.W.R. 513 at 521.
95. OLRC report, *supra* note 50 at 193.
96. *Re Scowcroft*, [1989] 2 Ch. 638.
97. *Ibid.* at 638.
98. *Re Hood*, [1931] 1 Ch. 240. [“Re Hood” decision]
99. *Ibid.* at 244 to 245.
100. Picarda, *supra* note 14 at 214 and 216.
101. *IRC v. Temperance Council* (1926), 10 TC 748.
102. National Anti-Vivisection Society decision, *supra* note 17.
103. *Re Neville Estates* decision, *supra* note 60.
104. *Ontario (Public Trustee) v. Toronto Humane Society* (1987), 60 O.R. (2d) 236.
105. Justice Gleeson, *supra* note 4 at 95.
106. CRA Muttart paper, *supra* note 90 at 25.
107. *Ibid.* at 25.
108. *Ibid.* at 26–27.
109. See the World Vision website at: <<http://www.worldvision.ca/home/about-us/core-values/>>.

110. See list of Canadian Charities on CRA website: <<http://www.cra-arc.gc.ca/tax/charities/menu-e.html>>.
111. Vancouver Society decision, *supra* note 21.
112. *Fuaran Foundation v. Canada (Customs and Revenue Agency)*, [2004] F.C.J. No. 825. [“Fuaran” decision]
113. *Ibid.* at para. 3.
114. *Ibid.* at para. 15.
115. Vancouver Society decision, *supra* note 24.
116. For more details about this decision, see Carter, Terrance S. “Federal Court of Appeal Weighs in on Definition of Advancing Religion” (2004) *Charity Law Bulletin* No. 50, available at <www.carters.ca>.
117. Amselem decision, *supra* note 5.
118. *Ibid.*
119. *Ibid.* at 1905.
120. *Ibid.* at 1907.
121. *Ibid.* at 1909.
122. *Ibid.* at para. 29.
123. *Ibid.* at para. 46.
124. *Ibid.* at para. 67.
125. *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] S.C.J. No. 6. [“Multani” decision]
126. *R. v. Big M Drug Mart Ltd.* (1985), 18 D.L.R. 4th 321. [“Big M Drug Mart” decision]
127. 2006 ABQB 338. [“Hutterian Brethren” decision]
128. *Ibid.* at para. 29.
129. *Ibid.* at para. 24.
130. *Ibid.* at para. 33.
131. *Supra* note 140 at 354.
132. For a parallel discussion of the possibility of a taxed based challenge to the advancement of religion as a head of charity, see Boyle, Patrick J. “The Advancement of Religion and the Income Tax System: Current Issues” *Advancing The Faith In Modern Society* (Canadian Council of Christian Charities, 2000) at 129.
133. *Re Mackay and Manitoba* (1986), 24 D.L.R. 4th 587 (Man. C.A.). [“Re Mackay” decision]
134. *Ibid.* at 6.
135. *Ibid.* at 7.
136. *Edward Books and Art Ltd. et al. v. the Queen*, [1986] 2 S.C.R. 713 at 34.

137. See Kathryn Bromley's article, *supra* note 18, for a more in depth discussion on this point.
138. Kathryn Bromley, *supra* note 18.
139. *Ross v. New Brunswick School District no. 15*, [1996] 1 S.C.R. 825 at 866.
140. CRA, Employee Speech CES-001, "Registering a Charity for Income Tax Purposes" (30 January 1997). Available at <http://www.cra-arc.gc.ca/E/pub/tg/t4063/t4063eq.html#P265_23190> at 6.
141. *Canada Trustco v. Ontario Human Rights Commission* (1990), 74 O.R. (2d) 481 (O.C.A.). ["Canada Trustco" decision]
142. *Ibid.* at 1.
143. *Ibid.* at 2.
144. *Ibid.* at 13.
145. Waters 2nd ed., *supra* note 52 at 240.
146. Marriage Reference decision, *supra* note 7.
147. *Ibid.* at para. 47.
148. *Allen v. Corporation of the County of Renfrew*, [2004] O.J. No.1231. For a broader discussion of the implications of this case, refer to White, Mervyn. "Recent Ontario Decision Revisits Prayer in Government Proceedings" (2005) *Church Law Bulletin* No. 10. Full text can be found at <www.churchlaw.ca>.
149. *Ibid.* at para. 18.
150. *Ibid.* at para. 18.
151. *Ibid.* at para. 19.
152. Marriage Reference decision, *supra* note 7 at para. 52.
153. Centre for Cultural Renewal. "The Diminution of Freedom of Religion" (2000) LexView 38.0 at 7. Full text can be found at <<http://www.culturalrenewal.ca/lex/lex-38.htm>>.
154. Marriage Reference decision, *supra* note 7 at 58.
155. *Supra* note 10.
156. CRA, Policy Guidelines, "Guidelines for Registering a Charity: Meeting the Public Benefit Test" (March 10, 2006). ["Public Benefit" policy] Available at <<http://www.cra-arc.gc.ca/tax/charities/policy/cps/cps-024-e.html>>.
157. Benson, Iain T. "Why Religion is a Public Good" *Advancing The Faith in Modern Society* (Canadian Council of Christian Charities, 2000) at 103–106.
158. *Chamberlain v. Surrey School District No. 36*, [2000] B.C.J. No. 1875 at para. 28.
159. Benson, Iain T. "Notes Towards a (Re)Definition of the "Secular"" (2000) *U.B.C. Law Review*, 33:3 at 520.
160. *Supra* note 10.
161. Public Benefit policy, *supra* note 156 at s. 3.1.1.

162. CRA, Draft Proposed Policy, "Guidelines for Registering a Charity: Meeting the Public Benefit Test." No longer available at <www.cra-arc.gc.ca>. See note 179.
163. National Anti-Vivisection Society decision, *supra* note 17.
164. Re Watson decision, *supra* note 60.
165. Marriage Reference decision, *supra* note 7.
166. Sammon, William J., *Factum of the Intervener: The Canadian Conference of Catholic Bishops* (2004), available at <www.samesexmarriage.ca>
167. *Alliance for Life v. M.N.R.* (C.A.), [1999] 3 F.C. 504 at para. 11.
168. *Ibid.* at para. 11.
169. *Ibid.* at para. 11.
170. *Ibid.* at para. 87.
171. CRA, Policy Statement CSP-P02, "Political Activities" (25 October 2002) at 6.1. ["Political Activities" policy] Available at <<http://www.cra-arc.gc.ca/tax/charities/policy/cps/cps-022-e.html>>.
172. *Ibid.* at 6.2.
173. *Ibid.* at 7.3. For a full description of the expenditure limits on political activities, refer to section 9 of the Political Activities policy.
174. Public Benefit policy, *supra* note 156 at 3.2.2.
175. Juneau, Carl. *Defining Charitable Limits: Advocacy, Education and Political Activities* (LSUC Department of Continuing Legal Education, 1998).
176. Sorensen, *supra* note 2 at 15.