
**NEW U.K. CHARITY COMMISSION POLICY ON
THE ADVANCEMENT OF RELIGION FOR
THE PUBLIC BENEFIT**

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A. INTRODUCTION

In December 2008, the Charity Commission for England and Wales (the “Charity Commission”), released its publication on the advancement of religion for charitable purposes (the “Policy”).¹ The title of the Policy, “The Advancement of Religion for the Public Benefit”, is a reflection of new statutory requirements under the *Charities Act 2006* (the “Act”)² that require all registered charities in England and Wales to be established for “charitable purposes” only.³ The term “charitable purpose” is defined in the Act as any purpose that (1) falls within a category of purposes listed in the Act, one of which is “the advancement of religion”; and (2) is for the public benefit.⁴

At common law, it is well-established that there are four heads of charity: relief of poverty, advancement of education, advancement of religion, and other purposes beneficial to the community not falling under the preceding heads.⁵ However, whereas the common law presumes that the first three heads of charity are for the benefit of the public, the Act requires all charities in England and Wales to explicitly demonstrate that

¹ Charity Commission, *The Advancement of Religion for the Public Benefit* (December 2008, Crown copyright), online: <http://www.charitycommission.gov.uk/Library/publicbenefit/pdfs/pbreligiontext.pdf>

² (U.K.), 2006, c. 50.

³ *Ibid.* at s. 1.

⁴ *Ibid.* at s. 2.

⁵ *Special Commissioners of Income Tax v. Pemsel*, [1891] A.C. 531 (H.L.).

their purposes are for the public benefit. This though, is not the case in Canada as the common law still prevails. As explained in the Policy, the public benefit requirement is “the legal requirement that every organisation set up for one or more charitable aims must be able to demonstrate that its aims are for the public benefit if it is to be recognised and registered as a charity in England and Wales.”⁶ In this regard, this new Policy by the Charity Commission provides guidance on how charities, in England and Wales, which seek to advance religion as a charitable aim,⁷ can also demonstrate that they are benefiting the public.

This *Charity Law Bulletin* summarizes the Charity Commission’s Policy, the content and timing of which should be of interest to Canadian religious charities, since it is anticipated that by the end of March 2009, the Charities Directorate of Canada Revenue Agency (“CRA”) will be releasing a draft policy in Canada on advancement of religion.⁸

B. ADVANCEMENT OF RELIGION

The Charity Commission Policy begins by providing an overview of what “advancement of religion” generally entails, which is necessary in order to understand how advancement of religion can be demonstrated to be of benefit to the public.

1. Defining Religion

The Policy summarizes the common law and the statutory definitions of “religion” in England and Wales. In this regard, the Charity Commission describes religion as a system of beliefs that can be identified by certain characteristics, including: (1) belief in and focus on a supreme being or entity (which includes god(s), goddess(es), a divine/transcendental being or entity or spiritual principle); (2) a relationship between the believer and the supreme being/entity though worship, reverence or veneration; (3) a degree of cogency, cohesion, seriousness and importance; and (4) an identifiable *positive, beneficial, moral or ethical* framework. The Policy particularly stresses that the definition of

⁶ Charity Commission, *supra* note 1 at p. 4.

⁷ The Charity Commission’s Policy uses the term “aims” as a reference to the purposes of an individual charity, as opposed to charitable purposes in general. In the Policy, the term “purpose(s)” refers to the broad categories of “purposes” in the Act, such as “the advancement of religion”.

⁸ For a detailed review of how “advancement of religion” has been discussed at common law and by the CRA, see Terrance S. Carter, “Advancing Religion as a Head of Charity: What Are the Boundaries?” (2006), 20 *The Philanthropist* 257, online: http://www.carters.ca/news/2006/philanth/tsc_dec06.pdf. See also Terrance S. Carter & Jacqueline M. Connor, “Advancing Religion as a Charity: Is it Losing Ground?” in *Charity Law Bulletin* No. 58 (November 24, 2004), online: <http://www.carters.ca/pub/bulletin/charity/2004/chylb58-04.pdf>.

religion can include a system of belief that is rooted in multiple gods or no god, so that the concept of religion is not limited in any way to belief in one god. The Charity Commission elaborates on the third criterion by explaining that in the context of charity law, religion must be “a sincere belief system of substance or significance, *capable of benefiting society*... as opposed to a self-promoting organisation set up to promote one or two persons... (emphasis added).”⁹

2. Defining Advancement

According to the Charity Commission, to advance a religion is “to promote or maintain or practice it and increase belief in the supreme being or entity that is the object or focus of the religion.” The Charity Commission makes it clear that advancement does not necessarily require proselytizing or converting non-believers (the example of Sikhism is given, where adherents are born into the religion), nor does it prohibit a charity from promoting a particular tenet of a religion, provided that such tenet is not so narrow as to have insufficient public benefit (the example given of an acceptable practice would be a charity advancing Islam by trying to enable hospitalized Muslims to observe Halal, i.e. having food that is ritually fit for consumption).

C. PUBLIC BENEFIT

In essence, there are two principles within the concept of “public benefit”. Firstly, there must be some kind of identifiable benefit that is generated by the aims of the charity and secondly, that benefit must be sufficiently broad and accessible to be considered “public” in nature.

1. Defining “Benefit(s)”

The Charity Commission enunciates the first principle as follows: “There must be an identifiable benefit or benefits.”¹⁰ Three sub-principles are utilized to assist in determining whether or not an identifiable benefit exists: Firstly, it must be clear what the benefits are; secondly, the benefits must be related to the aims of the charity; and thirdly, the benefits must be balanced against any detriment or harm.

In explaining the first two sub-principles, the Charity Commission identifies the general requirement that “it is the existence of an identifiable, positive, beneficial moral or ethical framework that is

⁹ Charity Commission, *supra* note 1 at p. 23.

¹⁰ *Ibid.* at p. 11.

promoted by a religion which demonstrates that a religion is capable of impacting on society in a beneficial way.”¹¹ Thus in general terms, if a charity is accepted to be advancing a religion as recognized by the Charity Commission, those who believe and follow that moral or ethical framework will necessarily be benefited. It is specifically recognized in the Policy that the greatest benefit for adherents may be the spiritual well-being and meaning provided by the religion. As such, the benefit does not have to be quantifiable or physically experienced.

With regard to the third sub-principle, the Charity Commission also assesses the existence of benefit in a charity’s aims by accounting for any harm or detriment generated by those aims. Where supported by evidence, some legitimate examples of harm include environmental damage, danger to physical or mental health, promoting violence or hatred, and unlawfully restricting a person’s freedom.

2. Defining “Public”

The second principle of public benefit is that the “benefit must be to the public, or a section of the public.”¹² This is explained by four sub-principles: Firstly, the beneficiaries must be appropriate to the aims; secondly, where the benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted by the ability to pay any fees charged, geographic or other restrictions; thirdly, people in poverty must not be excluded from the opportunity to benefit; and fourthly, any private benefit must be incidental.

The first sub-principle encourages charities to consider who benefits from the charity’s aims. The Charity Commission makes it clear that for the purposes of advancing religion, it is insufficient to demonstrate that only the adherents of religion are benefited by the charity. However, if the charity is advancing a religion which encourages adherents to be socially responsible in the wider community, the benefit may be wide enough to be considered “public”.

The next two sub-principles deal with reasonable and unreasonable restrictions. The provision allowing benefit for only a section of the public is tempered by a requirement for reasonableness. For example, the Charity Commission states that it is reasonable for a charity’s aims to benefit only a class of people

¹¹ *Ibid.*

¹² *Ibid.* at p. 14.

when the size of the class is sufficiently wide in nature and reflective of the charity's objects and resources.

Lastly, defining the concept of *public benefit* requires a corresponding reference to the concept of *private benefit*. Private benefits are defined as any benefits received by an individual or organization, other than as a beneficiary of the charity. The Policy states that private benefit will only be acceptable to the extent that it is incidental to the public benefit. For example, reasonable living expenses and remuneration for the services of religious leaders would be acceptable by the Charity Commission's standards.

D. COMMENTARY

The challenge in defining terms such as "benefit" and "public" is in the abstract and relative nature of those concepts, which often require additional concepts and examples to support the definition. For example, the Policy indicates that a benefit will be "public" only if any private benefit is incidental, which requires a further definition of the concept of "private". While the Charity Commission does not provide explicit and quantitative thresholds to measure what does or does not constitute a public benefit (e.g. how much remuneration paid to a religious leader would be unreasonable), there are general principles established. It should be noted that the Policy includes three helpful appendices that are devoted solely to providing examples of religions, ways of advancing religion and what may constitute detriment and harm.

Aspects of the Charity Commission's Policy may foreshadow some of the content of the anticipated CRA policy on advancement of religion, a draft of which is expected to be made available by March 31, 2009. At present, based on a presentation made by the CRA Charities Directorate at the recent Ottawa Region Charity Law Seminar held on February 11, 2009, hosted by Carters Professional Corporation,¹³ there are indications that the CRA policy may reflect some principles that are similar to those found in the Charity Commission's Policy, such as defining and explaining *religion*, *advancement*, *public benefit* and *private benefit*. However, the CRA Ottawa presentation made it clear that in Canada, advancement of religion continues to be a presumed public benefit at common law unless evidence rebuts that presumption, as opposed to having to establish a public benefit as is now the legislative norm in England and Wales.

¹³ Neil Cochrane, "CRA Guidelines on Advancement of Religion as a Charitable Purpose" (Presentation at the Ottawa Region Charity Law Seminar, February 2009), online: <http://www.carters.ca/pub/seminar/chrchlaw/ott/09/nc0211.pdf>.

It will therefore be interesting in the future to compare the policies of the two jurisdictions and examine any divergence in the Canadian approach from that of the Charity Commission.