

JEDI ORDER DENIED CHARITABLE STATUS FOR ADVANCEMENT OF RELIGION

*By Jennifer M. Leddy & Terrance S. Carter**

A. INTRODUCTION

On December 19, 2016, the Charity Commission for England and Wales (the “Commission”) [published its decision](#)¹ to reject an application for charitable registration by The Temple of the Jedi Order (“Jedi Order”). The application was made, in part, on the basis that Jediism is a religion. In its application, the Jedi Order cited its charitable purpose as “to advance the religion of Jediism, for the public benefit worldwide, in accordance with the Jedi Doctrine”. In England and Wales, advancement of religion is described as a charitable purpose in section 3(1)(c) of the [Charities Act, 2011](#)² and religion is partially defined in section 3(2) of the Act as including i) a religion which involves belief in more than one god, and ii) a religion which does not involve belief in a god. However, the *Charities Act, 2011* also preserved the common law meaning of religion for the purposes of charity law subject to the partial definition in section 3(2). It is the Commission’s treatment of the common law that is of particular interest to Canadian religious organizations, as there is no corresponding statutory definition of religion in Canada. The decision also sets out the elements of the charitable purpose of promoting moral or ethical improvement.

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¹ Charity Commission for England and Wales, “The Temple Of The Jedi Order - Application For Registration Decision Of The Commission,” 16 December 2016, online: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/578931/Temple_of_the_Jedi_Order_FINAL_DECISION.pdf>.

² 2011 c. 25.

B. DETERMINING ADVANCEMENT OF RELIGION

In determining whether the Jedi Order would be advancing religion, the Commission noted that “the definition and characteristics of religion are distilled from charity law and the partial statutory definition.” It quoted extensively from the recent United Kingdom Supreme Court decision in *R (on the application of Hodkin and another) v Registrar General of Births, Deaths and Marriages*,³ which is significant because it was not decided in a charity law context but rather in an application to register a Scientology chapel under the *Places of Worship Registration Act*⁴ and because it provided a broad description of religion. The Commission concluded that the Jedi Order failed to meet the following characteristics of religion required by charity law: (1) belief in one or more gods or spiritual or non-secular principles or things; (2) a relationship with the gods, principles or things which is expressed by worship, reverence and adoration, veneration, intercession or by some other religious rite or service; (3) cogency, cohesion, seriousness and importance in the form of the belief system; and (4) doctrines and practice of benefit to the public – capability of providing moral and ethical value or edification to the public.

1. Belief in One or More Gods, Spiritual or Non-Secular Principles or Things

The fact that Jediism does not does not involve belief in a god was not a factor in the Commission’s decision because, as it noted, the statutory definition of religion in England and Wales includes religions, such as Buddhism and Jainism, that do not include belief in a god or gods. However, the Commission did consider whether Jediism included the belief in spiritual or non-secular principles or things.

The Commission found that Jediism is “based on the observance of the Force”, described by the Order as “the ubiquitous and metaphysical power that a Jedi ... believed to be the underlying fundamental nature of the universe.”⁵ However, the Commission concluded that, while the Jedi Order was “open to spiritual awareness,” it lacked the “necessary spiritual and non-secular element” required of a religion because the Jedi Order acknowledged that “there is some scope for followers to simply view Jediism as a philosophy or way of life. ... Some Jedi prefer to avoid the word religion

³ [2013] UKSC 77 [*Hodkin*].

⁴ 1855 CHAPTER 81 18 and 19 Vict.

⁵ *Supra* note 1 at para 15.

to describe their theological beliefs, ethical framework and way of life. We do not insist that members use the word religion.”

The Commission noted the distinction drawn in *Hodkin* between secular belief systems and religion and quoted from Lord Toulson’s judgment at paragraph 57 as follows:

For the purposes of the PWRA, I would describe religion in summary as a spiritual or non-secular belief system, held by a group of adherents, which claims to explain mankind’s place in the universe and relationship with the infinite, and to teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system. By spiritual or non-secular I mean a belief system which goes beyond that which can be perceived by the senses or ascertained by the application of science. I prefer not to use the word “supernatural” to express this element, because it is a loaded word which can carry a variety of connotations. Such a belief system may or may not involve belief in a supreme being, but it does involve a belief that there is more to be understood about mankind’s nature and relationship to the universe than can be gained from the senses or from science. I emphasise that this is to be a description not a definitive formula.

2. Relationship with the Gods, Principles or Things which is Expressed by Worship, Reverence and Adoration, Veneration, Intercession or by Some Other Religious Rite or Service

As elaborated upon in *Hodkin*, the Commission examined whether the Jedi Order’s practices amounted to “religious worship” or, more broadly, a relationship with the gods, principles or things expressed by worship, reverence and adoration, veneration, intercession or by some other religious rite or service. The Commission found that the Jedi Order is an entirely web-based organization with a web-based community that posts online Live Services based upon the Jedi Doctrine, publishes sermons, and promotes meditation as a means of connecting with the Force.

The Commission was not satisfied that these practices amounted to a relationship with the Force expressed by worship, reverence and adoration, veneration, intercession or by some other religious rite or service. Instead, it found that Jediism could be adopted “as a lifestyle choice as opposed to a religion”, particularly as the Jedi Order’s website states that it provides “an online space for anyone to explore non-denominational spirituality.”⁶

⁶ *Ibid*, para 20.

3. Cogency, Cohesion, Seriousness and Importance in the Form of the Belief System

The Commission then considered whether the Jedi belief system was cogent, cohesive, serious and important, stating that “One may expect it to concern something relating to an important aspect of human life and it would require ‘a certain level of cogency, seriousness, cohesion and importance’.” It referred to *Campbell and Cosaus v UK*,⁷ in which the European Court of Human Rights held that religious “belief” extended beyond mere opinions or deeply held feelings, and that there must be a holding of spiritual convictions which have an identifiable formal content.

In its analysis of Jediism, the Commission found that it has no worldwide authority or structure, and it permits different interpretations, perspectives, and individual paths. It also borrows heavily from other world religions and philosophies, the aggregate of which does not amount to a cogent and distinct religion in and of itself.

The Commission in concluding that the Jediism was not sufficiently structured to constitute a religion as defined in charity law said, “[t]here is insufficient evidence of an objective understanding of Jediism as opposed to a self-defining system which may be pursued outside the confines of a religion and in a secular manner. It comprises a loose framework of ideas with some common ground which individuals may interpret as they see fit. In particular, it is not obligatory to interpret and follow the Jedi Doctrine as a religion.”

4. Doctrines and Practice of Benefit to the Public – Capable of Providing Moral and Ethical Value or Edification to the Public

For this characteristic of religion, the Commission relied on the case of *Cocks v Manners*,⁸ where the court stated, “[i]t is said, in some of the cases that religious purposes are charitable, but that can only be true as to religious services tending directly or indirectly towards the instruction or the edification of the public.”

The Commission found that, while some of the Jediism values might be capable of edifying the public, the same lack of formality and structure and individuality in Jediism, discussed above, prevent it from having this fourth characteristic of a religion. Additionally, the Commission found

⁷ *Campbell and Cosaus v United Kingdom*, (1982) 4 EHRR 1, [“*Campbell*”].

⁸ (1871) LR 12 Eq 585.

that the Jedi Order did not reach out to the community to make a positive impact, but rather had an inward focus on its members.

C. DETERMINING THE PROMOTION OF MORAL OR ETHICAL IMPROVEMENT FOR THE BENEFIT OF THE PUBLIC

The Commission also considered whether the purposes of the Jedi Order could meet the requirements of the charitable purpose of promoting moral and ethical improvement. The Commission noted that the case law and judicial reasoning in this area is sparse but cited all the relevant cases. The Commission summarized its understanding of the law related to the charitable purpose of promoting moral and ethical improvement as requiring the Jedi Order to evidence the following:

- Clear and certain objects relating to the promotion of Jediism which incorporate a coherent definition identifying the beliefs, principles and practices.
- The beliefs, principles and practices are accessible to the public and capable of being understood and accepted and applied or rejected by individuals according to their individual choice or judgment from time to time.
- Moral improvement is central to the beliefs and practices.
- Evidence of directly promoting moral improvement within society generally.
- Evidence of a positive beneficial impact on the wider society, not simply the followers.
- Evidence to show that it is not an inward focussed organisation benefitting the members only.

The Commission concluded that there were insufficient evidence that the purpose of the Jedi Order is to promote moral or ethical improvement for the benefit of the public, largely because of the fluidity and informal nature of its beliefs.

D. THE PUBLIC BENEFIT TEST

Having established that the purposes of the Jedi Order did not have the characteristics of the charitable purpose of advancing religion or the elements of the charitable purpose of the promotion of moral or ethical improvement, the Commission did not have to consider whether the Order met the public benefit test, but nonetheless decided to consider it for the sake of completeness.

In Canada, as well as in England and Wales, an organization must not only be established for exclusively charitable purposes but also be for the public benefit. This requirement has two components: 1) there must be an identifiable benefit and 2) the benefit must be for the public or a sufficient segment of the public. However, there is an important distinction between charity law in Canada and in England and Wales with respect to the public benefit. The *Charities Act, 2011* specifically provides that no charitable purpose is to be presumed to provide a public benefit, thus removing the common law presumption, still applicable in Canada, that the charitable purposes of advancing religion, advancing education and relieving poverty are presumed to have a public benefit unless the presumption is rebutted by evidence to the contrary. The *Charities Act, 2011* does, however, preserve the common law understanding of public benefit, except to the extent that the presumption has been removed.

In addressing this issue, the Commission stated that “the demonstrable benefits of a religion/belief system are generally identified within the belief system to include doctrines and practices and the moral and spiritual values and how they will be promulgated and the general effect on their promulgation.” Once again, the lack of formality and clarity of Jediism prevented the purposes of the Jedi Order from being able to meet the public benefit test.

E. CONCLUSION

There are important differences between charity law in Canada and England/Wales as a result of the *Charities Act, 2011* and its predecessors. However, the *Charities Act, 2011* preserves the pre-existing common law except to the extent that it is varied by the Act.

The Commission’s decision highlights and summarizes a number of key common law principles that courts may consider when determining whether or not a belief can be considered a “religion” and, in turn, whether an entity can therefore be advancing that religion. It is also significant the extent to which the Commission relied on the *Hodkin* case, which was not decided in a charity law context. This reliance should provide some authority, if any is needed, to do the same in Canada. In particular, Justice Iacobucci in the Supreme Court of Canada case of *Syndicat Northcrest v. Amselem*,⁹ a case on freedom of religion, provided the following very helpful “outer definition” of religion which is similar in some respects to the description of religion in *Hodkin* and the four characteristics of religion outlined by the Commission. In

⁹ 2004 SCC 47.

Amselem, the Supreme Court of Canada stated, “[w]hile it is perhaps not possible to define religion precisely, some outer definition is useful since only beliefs, convictions and practices rooted in religion, as opposed to those that are secular, socially based or conscientiously held, are protected by the guarantee of freedom of religion. Defined broadly, religion typically involves a particular and comprehensive system of faith and worship. Religion also tends to involve the belief in a divine, superhuman or controlling power. In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual’s spiritual faith and integrally linked to one’s self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.”¹⁰

While the cases and principles that the Commission referred to in arriving at its conclusion are drawn from common law cases from England and Wales, Canadian courts have historically relied on the common law of England and Wales in determining cases in charity law. It will be interesting to see how this case affects the development of the common law in Canada and the application of the case in requests for charitable registration, particularly in applications by “new” religions.

¹⁰ *Supra* note 1 at para 39.