
**THE 2009 ANNUAL
CHURCH & CHARITY LAW™ SEMINAR**

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**CRA's Proposed New Guidance on
Advancement of Religion and Its Implications
for Churches and Religious Charities**

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A. INTRODUCTION

- Since at least 2005, the Charities Directorate of the Canada Revenue Agency (CRA) has been preparing a Guidance on the requirements for registration and maintaining registration as a charity that advances religion
- There have been informal consultations but the Proposed Guidance has not yet been released by CRA for formal consultation

- This workshop is primarily based on a text dated March 27, 2009, and the companion Power Point released by the Director General of the CRA Charities Directorate during a presentation he made at a conference on “Modernizing Charity Law” at Queensland University of Technology, in Brisbane, Australia on April 17, 2009
- The text is available at:
<https://wiki.qut.edu.au/display/CPNS/DAY+2+-+MCL+Conference+Papers>

B. OUTLINE OF WORKSHOP

- **General Requirements for Charitable Registration**
- **Definition of Religion**
- **Meaning of “Advancement”**
- **Examples of Advancement of Religion**
- **Public Benefit**
- **Private Benefit**

C. GENERAL REQUIREMENTS FOR REGISTRATION

- **The courts and CRA recognize four heads of charity: relief of poverty, advancement of education, advancement of religion, and “other purposes” beneficial to the community**
- **In order to obtain charitable status in Canada an organization must fit its objects and activities within one or more of these heads**
- **In order to fit under the third head of advancement of religion, it is necessary to show that the organization is both (1) practicing a “religion” and (2) that is involved in “advancing” that religion**

D. DEFINITION OF RELIGION

- **Intention of donors or founders is irrelevant**
- **Legal rather than a theological definition**
- **CRA does not assess the truth or value of a particular religion**
- **No precise legal definition, only a general description of characteristics or attributes as set out below**

1. Attributes of Religion

- **The courts have identified three key attributes of religion:**
 - **Faith in a “higher unseen power” such as God, a Supreme Being or Entity;**
 - **Worship/ reverence; and**
 - **A particular and comprehensive system of doctrines and observances**

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2. Worship/Reverence

- **Through worship the faithful reach beyond themselves to express their belief and deepen their relationship with the Supreme Being or Entity**
- **The terms are broad enough to include a range of religious observances or devotions directed towards or inspired by the Supreme Being or Entity**

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- **According to the case law, worship must have at least some of the following characteristics: submission to the object worshipped, veneration of that object, praise, thanksgiving, prayer or intercession**
- **Worship includes formal services at places of worship, and informal worship at meetings, offices of religious organizations, as part of church meetings, during rites of passage, or in the course of religious festivals, processions or pilgrimages**

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- **Examples of acts of worship are: chants, hymns, petitions, fasting, meditation, use of symbols, offering of flowers or incense, liturgical dance, prostration, reading from sacred texts**
- **While service of others could be included as an element of worship, it cannot under the case law constitute worship by itself**

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3. A Particular and Comprehensive System of Faith

- **Religion in the charitable sense requires some form of structure, community and public identity**
- **Established doctrine, practices and observances are required**
- **Should include some of the following components: creed, statement of faith, teachings, pastoral programs, forms of worship or ritual, regular services, a form of leadership**

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E. ADVANCEMENT OF RELIGION

- **Not everything done in the name of religion necessarily advances religion within the meaning of charity law**
- **A religion must be advanced in order for it to be charitable**
- **Advancement of religion involves promoting and manifesting spiritual teachings, doctrines, observances, and practices**

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1. A Religion Must be Advanced

- There is a difference between an organization without any visible religious identity providing a social service and an organization doing pastoral work/outreach which is expressly linked to a religion
- The key attributes of religion must to some degree be manifest in the organization

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2. Advancement Can Be Done In a Wide Variety of Ways

- The case law has decided that religion may be advanced in a “wide variety of ways”
- It involves both the sustaining the faith of adherents and/or seeking new followers
- Advancement relates to both internal and exterior works, to faith and worship and practical expressions of the religion’s doctrines

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3. Advancement Through Separate Organizations

- A religious organization need not advance all aspects of the teachings of the religion
- Separate organizations may exist to focus on
 - Certain demographics (e.g. youth, seniors, women/men); or
 - On a particular pastoral program (e.g. scripture study, visiting the sick); or
 - There may be liability concerns (e.g. food bank, residences)

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- **However, the organization will need to make the connection between the activities and the religion by demonstrating how it is a means of advancing the religion**
 - **i.e. Part of a program to promote and manifest doctrine, observances and practices**
- **The organization will also have to provide evidence of faith and practice**

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4. Indicia of Faith and Practice

- **Elements of worship built into the activities**
- **Published statement of faith**
- **Public mission statements that express beliefs**
- **Identification with a religion**
- **Faith based resources**
- **Involvement by people of faith in governance and operation**

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- **Links to other religious organizations**
- **Provision in governing documents for assets to go to another organization on dissolution**
- **It is not expected that the worship be as elaborate as what might be done in a weekly service at a house of worship or that promotion of doctrine be as direct as it might be in a weekly worship service**

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5. Promoting One or Two Tenets of a Religion

- It is also possible for an organization to focus on one or two tenets or precepts of religious belief
- The more narrow the focus in relation to the wider teachings the greater the expectation for a clear connection between its activities and the stated religious purpose

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6. Pastoral/Religious Work – Social Work/Secular Work – Is there a difference?

- While there are no inherently religious or secular activities, it can be said that some activities are more explicitly or obviously religious or secular than others
- Many religious organizations advance their religion through programs that are similar to those performed by non religious or secular groups (e.g. humanitarian work, health care)

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- Where such activities are undertaken in a way that advances religion, what might otherwise appear to be secular activities may be done to advance a religious purpose
- If the organization wishes to be registered under the category of advancing religion, there must be a clear connection between its activities and the stated religious purpose
- The means chosen to advance the religion need not be a precise obligation of the religion but must have a reasonable connection with the religion in the sense that they can be seen as a practical expression of the religion

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7. Religious Motivation

- Religious motivation by itself will not transform an apparent secular pursuit that is not directed to advancing religion into the charitable purpose of advancing religion
- However, SCC in *Amselem* would suggest that sincere belief of an individual is in fact a factor with regard to freedom of religion issues
- Religion may be advanced by what might seem like secular activities (shelters, services for prisoners, health care), provided the religious purposes are clearly stated, the activities are connected to those purposes, and evidence of faith and religious doctrine is present

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8. Unstated Non-charitable Collateral Purpose

- Registered charity must be constituted exclusively for charitable purposes
- The nature of its activities may indicate whether the charity has other unstated or collateral purposes
- This is particularly the case where the organization may be preoccupied with a single activity or ancillary activities to the extent that these have become an end in themselves
- Religious camps may be considered as advancing religion, provided that the sports and recreation programs are incidental and ancillary to advancing religion

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- Query, however, whether the traditional approach of evangelical Christian camping that entices young people to Christian camping through excellence of sports activities will now be permitted by CRA
- Tours to the Holy Land may be considered as advancing religion if the religious aspect is an integral part of the program offering worship and teaching
- Organizations that become preoccupied with opposing or changing a law however could lose their registration even if their position is based on religious belief

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9. Religions That Have Met the Definition

- CRA has an established practice of recognizing several religions, including Baha'i, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Sikhism and Zoroastrianism
- It is not necessary for each organization that advances one of these religions to show that it meets the definition
- However, it is necessary for each organization to show that it is genuinely associated with the recognized religion

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10. Ecumenical and Interfaith Activities

- Ecumenical activities typically involve several denominations of Christianity coming together for dialogue on matters of faith (e.g. sacraments) or action on common issues (e.g. family violence)
- These activities advance the Christian faith
- While many religions (Christianity, Judaism, Islam) are involved in inter-faith initiatives, each religion may still be advancing its own religion through the dialogue (fasting) or other activity (low income housing) and therefore is recognized as advancing religion

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11.Examples of Ways Religion May Be Advanced When Applying for Charitable Status

- Applicants for charitable registration should set out the religious basis for the methods for advancing religion
 - e.g. Statement of faith, doctrine, practical application
- The examples that follow are sometimes expressed as charitable purposes or activities depending on the context

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- **Places of worship (e.g. church, mosque)**
- **Worship**
- **Religious cemeteries**
- **Preaching, evangelization, propagation of faith**
- **Religious communication – broadcasting, films, publishing**
- **Religious arts – film, theatre, music, art**

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- **Religious education – adult formation, theological seminaries, schools,**
- **Religiously based service of others, outreach and support of the poor and vulnerable**
- **Pastoral care and visitation of the sick, elderly, prisoners, victims of violence**
- **Chaplaincy services in hospitals, prisons, universities**
- **Promotion of human rights**

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- **Promotion of healing and reconciliation**
- **Ecumenical and interfaith dialogue and activities**
- **Religious camps**
- **Religious retreats and pilgrimages**
- **Support of religious orders, including pensions and retirement accommodation**

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F. PUBLIC BENEFIT

- A registered charity must not only have exclusively charitable purposes but also be established for the public benefit
- The public benefit has two components: 1) there must be an identifiable benefit and 2) the benefit must be to the public or a sufficient section of the public

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1. Presumed “Benefit”

- Under a number of court cases organizations relieving poverty, advancing education or advancing religion are presumed to confer a benefit unless the presumption is rebutted by evidence to the contrary
- Rationale for presuming a benefit is that religion provides people with a moral and ethical framework and plays an important role in building social capital and social cohesion

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Examples of Rebutting the Presumption

- Doctrines are “adverse to the very foundations of all religion” or “subversive of all morality”
- Evidence of significant private benefit
- Objective and informed evidence that the organization incited hatred or violence against other groups

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- Objective and informed evidence of significant potential physical or mental harm to adherents
- Objective and informed evidence of unlawfully restricting a person's human rights or freedoms
- Simple disagreement with a religion's beliefs or practices alone would not be enough to rebut the presumption of benefit

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2. The "Public" Element of the Public Benefit Test

- Celebration of a religious rite in public confers public benefit because of the edification and instruction of members of the public who attend
- Where access to services is limited to a restricted class or membership, such as members of a synagogue, the benefit to the public is more indirect and flows from adherents putting their beliefs into practice in the wider world after the services

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- Where practice of religion is essentially private and not extended to the public generally the element of public benefit is missing
 - A gift for religious services in a private chapel of an individual's house was held not to be charitable
 - Charitable status has been denied in England to closed orders of contemplative nuns but granted to contemplative orders who offer or open some services to the public

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- **Public element will be satisfied even though the number of people actually benefiting might be quite small as long as the opportunity to benefit is open to a sufficient section of the public**
 - **Places of worship may be locked for security reasons when not in use**
 - **Fees charged for services should not be so high as to make the overall program unavailable to people of limited means**

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G. PRIVATE BENEFIT

- **Private benefit means any benefits to a person or organization that is not a beneficiary of a charity**
- **There are many examples of private benefit that occur in the normal operations of a charity: salaries, office expenses, fees for services**
- **Private benefits are acceptable, provided they further the charitable purpose, and are necessary and reasonable**

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- **The sorts of benefits people receive as a result of being an adherent of a religion are also acceptable**
- **Looking after the needs of retired religious personnel or aging members of a religious order could be an incidental benefit or a religious charitable purpose in its own right**
- **Religious orders have an obligation to look after the needs of their retired members who have been carrying out the mission of the order on the understanding their needs would be met**

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