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CARTER & ASSOCIATES
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Volume 2, No. 5 *March 22, 1999*

CHURCH & THE LAW UPDATE

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Updating churches and religious charities on recent legal Developments and risk management considerations

IN THIS ISSUE

This issue of *Church & the Law Update* contains the following articles:

EDITORS NOTE

Church & The Law Update is published without charge for distribution to churches, charities and not-for-profit organizations across Canada and internationally. It is published approximately 3 times a year as legal developments occur. The format is designed to provide a combination of brief summaries of important developments as well as feature commentaries. Where a more lengthy article is available on a particular topic, copies can be obtained from our website at www.charitylaw.ca. The information and articles contained in this *Church & The Law Update* are for information purposes only and do not constitute legal advice and readers are therefore advised to seek legal counsel for specific advice as required.

1. IS RELIGION PASSE AS A CHARITY?

By: Carl Juneau, Assistant Director, Technical Interpretations and Communications Section, Charities Division, Canada Customs and Revenue Agency

A. INTRODUCTION

My presentation today dwells on religion - more particularly, on whether the advancement of religion is a charitable pursuit at law, and thus allows religious organizations to issue tax receipts for donations.

Some have suggested that the charitable donation tax incentives should be directed at those organizations which serve the community-at-large rather than their own membership. These people say that there is something wrong with religious organizations getting tax-receipting privileges[(1)].

I propose to address this issue from a historical and a contemporary perspective, and to allow myself some gazing into the future.

B. HISTORICAL DEVELOPMENT OF CHARITY LAW

A lot has been said recently about the definition of charity at law, and whether this definition is suitable. This is of particular importance since, by being recognized as charities, community organizations gain access to certain tax advantages.

In this context, people have been reminded of late how the legal concept of charity evolved from a XVIth Century statute, the *Statute of Charitable Uses*, enacted under Elizabeth I, in 1601[(2)]. The Statute itself has died a death by degrees, finally being put to rest in England, by the *Charities Act*, 1960. But its preamble - which enumerated a series of purposes that were considered charitable - has survived as an example, guiding the courts in the process of analogy to determine what is charitable and what is not.

The relief of aged, impotent and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in universities; the repair of bridges, ports havens, causeways, churches, sea-banks and highways; the education and preferment of orphans; the relief, stock or maintenance of houses of correction; the marriages of poor maids, the 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.

Detractors of the current definition of charity highlight the anachronism of the *Preamble*, and conclude that its venerable antiquity is the root of problems the sector faces today. The *Preamble*, they say, is not "in sync" with contemporary needs, it talks about things we don't relate to as Canadians, and in particular it does not support the consideration of certain types of organizations as charitable. Foremost among these types of excluded organizations are advocacy organizations, for instance.

Somewhere, the critics of the common-law definition of charity seem to have forgotten the fact that the partial restriction on advocacy activities by charities does not come from the *Preamble*, but from subsequent decisions by the courts - principally in the XXth Century.

When these detractors make their claim for tax assistance on behalf of the particular category of organizations they support, they neglect to consider the spirit of the law and its evolution through four centuries following the *Preamble*'s enactment. They conveniently use the origins of the law in isolation, to convince the public of its anachronism, when in reality, what is at issue today is not whether something is charitable or "good", but whether, on a tax policy level, a given type of organization should be tax-subsidized by the state. The question we have to ask ourselves today and in the current debate is "Where does that leave religion?"

Needless to say, the detractors of the definition of charity as applied currently, are very much in favour of statutory intervention to re-orient the concept of tax-assisted charity in Canada. But given the breadth of the charitable sector, given the bread-and-butter issues that most community organizations have to face, given the lack of general knowledge and

understanding of the sector, and given the range of emotions that people attach to personal charity, I can just imagine the kinds of debates that such statutory amendment could provoke in the sector, in Parliament, and in the press.

Well, I have news for the detractors of the current definition of charity: the legal concept of charity has much stranger and much older origins. It is likely found it in a poem - a poem written long before Christopher Columbus, long before the Reformation, long before the religious conflicts under the Tudor monarchy, and long before the *Statute of Charitable Uses* 1601. The first version of the poem apparently dates from 1362. The poem is by William Langland, and it is called *The Vision of Piers Plowman*[(3)]. *In it, a plowman has a dream in which he searches for Truth, and in one part of the poem, Truth personified advises anxious and rich merchants to obtain the remission of their sins by devoting their wealth to charitable purposes in the following manner:*

But under his secret seal, Truth sent them a letter

That they should buy boldly, what they liked best;

And afterwards sell again; and save their profits

Therewith to amend hospitals; and miserable folk help;

To repair rotten roads, where plainly required;

And to build up bridges that were broken down;

Help maidens to marry, or make of them nuns;

Poor people and prisoners, to find them their food;

And set scholars to school, or some other craft;

Relieve poor religious, and lower rents or taxes.[(4)]

For those of you who are familiar with the *Preamble* to the *Statute of Charitable Uses* 1601, the *Preamble* bears an uncanny resemblance to the verses above. The enumeration of charitable objects is indeed so close that it is difficult to believe that the draftsmen of the *Preamble* did not draw on them.[(5)]

What is interesting from a religious perspective however is that, with the exception of the repair of churches in the *Preamble* and assistance to mendicant religious orders in *Piers Plowman*, religion is not mentioned. Doomsayers mention this as a harbinger of things to come. Students of the *Preamble* have suggested that the notable absence of religion from the list is because of turbulent background of Tudor England, where the monarchy vacillated in terms of its religious support, and where religious lands and assets of the former church were confiscated into the Royal Treasury at the whim of the King[(6)]. But that does not explain the near-absence of religion in the excerpt from *Piers Plowman*, written at least a full century before Henry VIII and the English Reformation, at a time when the profile of religious giving was much higher. Indeed, in the Middle Ages, as now, gifts to religious institutions were commonplace. This is likely why they were essentially left out of the enumeration in *Piers Plowman* and, together with the aforementioned concern about the monarchy's ability to confiscate the holdings of religious institutions, also out of the *Preamble*. It was acknowledged implicitly that giving for pious purposes to religious institutions was

an already long-established form of charity. The exhortation found in *Piers Plowman* is that, in addition to the support given to religious institutions, rich people should try to improve the lot of those less fortunate than them, or of the community in general, through other avenues. This appeal for a particular kind of giving, with more emphasis on social needs, parallels the first faint stirrings of the secular Renaissance and the increasing prosperity and the growth of the merchant classes in the later Middle Ages, along with the community concerns that came with it.

C. *CANADA TODAY*

Canada today also faces social change. However, the situation is very different from William Langland's time. Our society has evolved through the past century from being a relatively homogeneous one, tied essentially to a Western-European, Judaeo-Christian heritage, to a heterogeneous mix of very different cultures. The passage from one type of society to the other was marked in particular by human rights legislation which guarantees among others, religious freedom[(7)].

And now the courts are confronted with all manner of religions and purported religious activity.

And in step with the courts, the Canada Customs and Revenue Agency is registering a whole range of religious organizations, from every persuasion. As an example, the following organizations are registered…

The Emissaries of the Divine Light

The Khalsa Diwan Society

The Hindu Society of Manitoba

The Alpha and Omega Order of Melchizedek

The Victoria Buddhist Dharma Society

The Zoroastrian Society of Ontario

The Islamic Society of Niagara Peninsula

New Age International

The Universal Cosmic Light Society

The Spiritualist Church of Divine Guidance

And we know there are many other organizations out there which consider themselves to be religious bodies and which may or may not qualify for registration. A recent *Globe and Mail* article mentions the Temple of Priapus; the Hermetic Order of the Silver Sword, and the Congregationalist Witchcraft Association[(8)]. We also remember the now infamous Order of the Solar Temple[(9)].

In dealing with this increase in religious diversity, the authorities of necessity have also had to address what does not constitute religion or religious activity.

For instance, the courts have had to rule on whether having to burn raw deer meat in a religious ceremony allowed people to hunt out of season. In this particular case, two Coast Salish Indians from British Columbia, Jack Anderson and George Louie Charlie, were charged with hunting out of season contrary to the B.C. *Wildlife Act*. The case was appealed all the way to the Supreme Court of Canada which dismissed the matter. Apparently killing the deer did not form part of the ceremony, and as such the religious ceremony had no bearing on the legal responsibility for committing the offense.[(10)]

Many cases, like the above, deal with human rights legislation, property tax assessments or value-added tax, rather than the law of charity. But registration as a charity is not without its challenges.

In terms of cases that seem somewhat out of the ordinary, we've dealt for instance with the Edmonton Grove of the Church of Reformed Druids, whose adherents claimed to be able to communicate telepathically. They publicly acknowledged that they used animal sacrifices as part of their ceremonies, but after a public outcry in the local media, they recanted and said that in the future, they would be sacrificing cabbages[(11)]. They appealed our refusal to register them as a charity to the Federal Court of Appeal, but eventually abandoned the appeal[(12)].

And we've had to deal with the Raelian Movement whose founder claims to have been abducted by extraterrestrials who revealed to him that humanity was the product of a test-tube experiment, and that the *elohim* of the Bible were nothing more than visitors from another planet[(13)]. This case too was never substantively addressed on appeal, because it was dismissed on procedural grounds.

D. *WHY IS RELIGION TAX-ASSISTED TODAY?*

In December 1993, there were 29,676 religious charities of every denomination and of every type, in a total of 69,606 registered charities. In April 1999, there were 31,810 religious charities, out of a total of 77,958 registered charities. While this looks like an increase of 2,134 religious charities over the course of slightly more than five years, proportionately, it actually shows a shrinkage of the religious sector in relation to other types of charities, from 42.6% of the sector, down to 41%. What this represents in fact is a gradual secularization of charity. And one is left to wonder what is the role of religion in charity, and why should it continue to have a role?

In all this diversity of religious belief, what in terms of the law, is the common thread? What places Odin and Jehovah on the same footing, so to speak? Why is *any bona fide* religion charitable?

The recent National Survey of Giving, Volunteering and Participating[(14)] provides a clue. Canadians who stated that they were affiliated with a community of worship, regardless of what the particular religious affiliation was, were much more likely to be donors than were those without such affiliation. 82% of those who had a religious affiliation were donors, compared with 67% of those without a religious affiliation. There was also an association between religious affiliation and the amount that people contributed: on average, donors with a religious affiliation contributed $271 per year, compared with $126 for donors without religious affiliation. Presented from a different perspective, people with a religious affiliation (73% of all Canadians) contributed 88% of all charitable donations. And it is worth noting that only 45% of donors with a religious affiliation gave to religious organizations; the remaining donors with a religious affiliation gave to other types of organizations.

Likewise, active participation in a community of worship, defined in terms of frequency of attendance at religious services, is a trait associated with higher rates of giving, and higher donation levels. Those who attended religious services weekly were more likely to make charitable donations than those who did not attend services weekly (90% versus 75%, respectively). Donors who attended services weekly also had higher average donations ($551) than those who did not ($148). Similarly, those who described themselves as "very religious" were more likely to make financial donations and also to give more than those who did not describe themselves as "very religious". They accounted for 33%

of all donations while comprising only 12% of the population.

Another clue as to why the advancement of religion should remain within the realm of tax-assisted organizations is provided by the courts. I became more aware of it when we were faced with a charter challenge from a humanist group, on the mistaken premise that charity law discriminated between *a*-religious organizations based on materialism as a value, and religious ones, giving tax privileges only to the latter. In fact, there is a growing stream of case law that recognizes certain organizations as charitable, if the organizations are not religious but still tend toward the mental and moral welfare of the community. The charter challenge we faced was dropped at the investigation level because organizations that intended to advance religion are similar in many respects to organizations that improve the moral welfare of the community[(15)], and organizations that approached the mental and moral improvement of the community from an *a*theistic standpoint could still become registered[(16)]. The point of course is that advancing religion promotes the moral welfare of the community at large.

E. *LIMITS TO THE CONCEPT OF ADVANCEMENT OF RELIGION*

While religion generally is good, it is not every activity or every purpose impressed with a religious motive that is charitable.

There are many cases where gifts to a bishop or a vicar for instance were held void, because the instrument witnessing the gift was made in such general wording that the recipient could ostensibly apply it for purely personal purposes rather than for charitable ones[(19)].

As well, we might justify the tax exemption for religious organizations based on the social welfare services or good works that some churches perform for parishioners and others - family counseling, aid to the elderly and infirm, and to children[(17)]. But churches vary substantially in the scope of such services; programs expand and contract according to resources and need. As public-sponsored programs enlarge, private aid from the church sector may diminish. The extent of social services may vary depending on whether the church serves an urban or rural, a rich or a poor constituency[(18)]. But if, for the sake of argument, religion's tax-assisted status does not depend on the delivery of these social programs, where does it come from?

The clue I think is within us. Think about it. What has religion taught us? Beyond faith, it 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. 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

Similarly, to be acceptable, a religious organization can't flout public policy, for instance, by advocating the break-up of families or the wanton murder of people whose lifestyle does not happen to agree with the tenets of a particular faith.

An example of issues that can be borderline is the question of religious recreation camps. In an American case, one organization attempted to be recognized as a religious organization by virtue of its operation of a retreat facility. The facility was a mountain lodge called Christ Haven Lodge, located in Teller County, Colorado; the activities available at the lodge - being religious, recreational or social - were not regularly

scheduled or required. The United States Internal Revenue Service said that the organization's substantial role was the operation of a vacation resort. Conversely, the organization claimed it was providing a religious retreat facility where Christian families could come and reflect upon and worship the Lord in a setting free from the outside interferences of daily life. The Court sided with the IRS and held that the organization had failed to sustain its burden of proof that its facilities were not used in a more than an insubstantial manner for recreational purposes. It added that wholesome family recreation or just sitting on a rock contemplating nature may well provide a family or an individual with a religious experience, but not any more so than the experience one would have at any lodge in the Rockies.[(20)]

In comparison, the Canadian position taken in a recent GST case, *Camp Kahquah Corporation v. The Queen*[(21)], where the court held the recreational facilities to be incidental, may appear markedly liberal at first glance, but seemed to turn likewise on the fact that attendance at prayer meetings and other religious functions was more rigorously followed than in the aforementioned American case.

A religious organization can't operate primarily for private profit. In another reported American case, the *Southern Church of Universal Brotherhood Assembled v. Commissioner of Internal Revenue*[(22)], the founder of the Church contributed most of the income of the Church, and in turn, the Church paid all his living expenses. The IRS and the courts viewed the organization not as a religion but as serving the private interests of its pastor and notably his apparent passion for SCUBA diving. Indeed, the Church's mission was allegedly oriented toward demonstrating the bounty of God by collecting material from Chesapeake Bay. The Church was also affiliated to the Acquarian Church of the Brothers and Sisters of Jesus Christ which advocates affiliation with it as a way of protecting one's own tax freedom and leading a holy, tax-free life.[(23)]

F. *ARE CHARTER CHALLENGES LIKELY?*

And there are Charter issues. I mentioned them in passing a few moments ago.

There are two provisions of the Charter[(24)] that apply:

The first of them is s. 2, which states

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association

The second one is s. 15(1), which states

15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

If a challenge was based on s. 2(a) of the *Charter,* it would be difficult for an organization or its supporters to provide evidence that our registration decisions have interfered with their freedom of religion or conscience. This is because the CCRA

registers all organizations that have demonstrated they advance religion. And it also registers organizations whose purposes may not include theism, but who nevertheless promote the mental and moral improvement of the community.

If a disaffected group were to allege that the *Income Tax Act* infringes s. 15(1) of the *Charter*, the courts would likely take the position already expressed in the recent Supreme Court case, *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*[(25)], namely that the operation of the charitable registration scheme in the *Income Tax Act* does not violate the equality rights of an organization's beneficiaries. The interplay of the common-law definition of charity and the *Act* result in a scheme whereby an organization, by restricting itself to charitable purpose and activities can qualify for registration. This requirement applies uniformly to every organization that seeks to be registered as a charity.

The point I think needs to be made is that once an organization is judicially recognized as "advancing religion" with the limits on the term that are alluded to above, it must be registered as a charity.

Disaffected groups would likely not succeed in a charter challenge unless they establish that they are indeed advancing religion as that term is understood at common law. If the groups in question claim that they meet the test of religion, but that this test is not being applied correctly at the point of registration, it is up to the courts to correct us, and we welcome their guidance. The issue then becomes one of defining the advancement of religion at common law rather than a charter issue.

G. *DEFINITION OF ADVANCEMENT OF RELIGION AT LAW*

But what is the advancement of religion at law? The courts have stayed clear of questioning the articles of faith of a particular religion, because these are not susceptible of material proof and because the right to religious freedom guaranteed in the Charter gives people the right to entertain notions of life, death and the hereafter which may be rank heresy to others[(26)]*. This doesn't mean that the CCRA will recognize everything that chooses to call itself a religion. But once a religion is recognized as being such, the CCRA will register an organization that advances it. In the United States, the approach is the same, and the U.S. Supreme Court has said: "It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants interpretations of those creeds."*[(27)] *In Church of the New Faith v. Commissioner of Pay-Roll Tax*[(28)]*, the Australian High Court wrote:*

Putting to one side the case of the parody or sham, it is important that care be taken, in the exercise of [determining whether an organization is advancing religion], to ensure that the question is approached and determined as one of arid characterization not involving any element of assessment of the utility, the intellectual quality, or the essential "truth" or "worth" of the tenets of the claimed religion.[(29)]

But we still have to examine the doctrines of the claimed religion to see whether they are "religious" doctrines or some other kind. What are the criteria for this?

There is no single characteristic which can be laid down as constituting a formal legal criterion of what constitutes religion[(30)].

And there is some reluctance in the law to apply a rigorous definition.

Nevertheless, the courts have provided the following indicia to determine whether an organization is religious:

First of all, a key element of religion is identified in the following passage from a British case, *Re South Place Ethical Society; Barralet v. A.G.*[(31)] in which the court attempted to distinguish between religion and ethics:

Religion… is concerned with man's relation with God, and ethics are concerned with man's relation with man. The two are not the same and are not made the same by sincere inquiry into the questions: what is God? …It seems to me that two of the essential attributes of religion are faith and worship; faith in a God and worship of that God.

In this passage, the worship of God is identified as core to the meaning of religion. This requirement, by insisting on a higher power external to the individual and accessible only through faith, usefully distinguishes religion from philosophies, ideologies and systems of ideas that focus on human development[(32)].

The belief is manifested in part by worship. Taking worship as an indicator of the requirement for a God reinforces the centrality to religious charities of the concept of a controlling, transcendent power. An organization would normally meet the criterion of worship if the belief in God found its expression in conduct indicative of reverence or veneration for God. Worship may manifest itself in particular activities which include acts of submission, veneration, praise, thanksgiving, prayer or intercession, or perhaps as in some Eastern religions, silent attempts to place oneself in direct communion with this transcendent reality. It would not be possible to worship in this way a mere ethical or philosophical ideal[(33)].

In a recent case dealing with the Church of Scientology, the U.K. Charity Commission suggested that the concept of a supreme being was an acceptable indicia even though it was broader than the theistic concept of a personal, creator God, but otherwise it would not be proper to further specify the precise nature of the concept or require it to be analogous to the deity or supreme being of any particular religion[(34)].

But also essential to religion is the need for an established doctrine and an element of doctrinal propagation - both within and sometimes outside the church membership - and a need for practices and observances. The established doctrines and observances are understood as contributing to or as facets of the knowledge and the worship of God [(35)]. The teaching of canons of conduct to adherents gives effect to the belief in God. These teachings relate to Man's place in the universe, and his relation to things supernatural.

The religious charity should advance religion, that is, not only focus on primarily secular issues such as non-traditional marriages, or village life in India, but promote a religion's spiritual teachings and encourage observation of the rituals that manifest its beliefs[(36)]. To advance religion means to promote it, to spread its message ever wider and to take some positive steps to sustain and increase religious belief.

Finally, the argument I mentioned a few moments ago regarding religion as mental and moral improvement of mankind seems to apply: Any bona fide religion teaches people principles and values that makes them better functioning members of society. This rationale for treating the advancement of religion as charitable has not been discussed in any of the English cases. But it

is evident in a number of American decisions which described religion as a "valuable constituent in the character of our citizens" (37), *or indeed "as fostering the mental and moral improvement of the community"* (38). *To be religious and charitable, an organization should strive toward the mental, moral and spiritual improvement of the community. This is how a religious organization provides the public benefit required by law* (39)

. This is why religion remains in the charitable realm as pursuing a purpose of value to society that justifies all the privileges of charitable status.

ENDNOTES FOR "IS RELIGION PASSE AS A CHARITY?"

1. [1] See for instance, "Taxing Churches is a Matter of Justice", The Ottawa Citizen, September 26, 1999, page A-17; also Ian Hunter, "A Church Beleaguered" in The National Post, December 23, 1999; and "B.C. City Repeals religious Land Tax", in the Ottawa Citizen, January 16, 2000.

2.

3. [3] H.A. Moe, "The Vision of Piers Plowman and the Law of Foundations", in Proceedings of the American Philanthropic Society, Vol. 102, No. 4, 1958, pp. 371-375.

4. [4] William Langland, *Piers Plowman*, Passus VII.

5. [5] H. Picarda, *The Law and Practise Relating to Charities,* London, Butterworths, 1977, p. 9

6. [6] This explanation was apparently given by Sir Francis Moore, a member of the Parliament which enacted the Statute of 1601. See H. Picarda, *op. cit.*, 2nd ed., p. 62.

7. [7] See in particular, Canadian Charter of Rights and Freedoms, *Constitution Act*, 1982, s. 2(a)

8. [8] "Gimme that any-time religion", *Globe and Mail,* November 8, 1999.

9. [9] See a case study on the Order of the Solar Temple in Canadian Security and Intelligence Service, "Doomsday Religious Movements", in *Perspectives*, Report # 2000/03, pp. 5-6.

10. [10] *Anderson, Jack, and George Louie Charlie v. Her Majesty the Queen*, Supreme Court of Canada, October 31, 1985.

11. [11] See "An Unbewitched Taxman" in *The Alberta Report*, August 26, 1985, p. 36

12. --

13. [13] *Mouvement raelien canadien v. M.N.R.*, F.C.A., appeal denied from the bench.

14. [14] *Caring Canadians - Involved Canadians*, Highlights from the 1997 National Survey of Giving, Volunteering and Participating, Statistics Canada, catalogue 71-542-XIE, p. 17.

15. [15] *Re Price*, (1943) Ch. 422

16. [16] Note however that promoting atheism itself is not charitable at law. See H. Picarda, *op. cit.*, p. 72-73.

17. [17] See in particular F. Handy and R. Cnaan, "Religious Nonprofits: Social Service Provision by Congregations in Ontario" in K. Banting, *The Nonprofit Sector in Canada - Roles and Relationships,* McGill-Queen's University Press, 2000, pp. 69-105.

18. [18] *Walz v. Tax Commission of City of New York*, (1970) 397 U.S. 664. On a somewhat different interpretation and on the role of the Catholic Church is U.S. civil society, see National Conference of Catholic Bishops, *In All Things Charity: A Pastoral Challenge for the New Millenium,* United States Catholic Conference, November 18, 1999, 25 pages.

19. -

20. " "

21. [21] T.C., June 17, 1998, file 96-2348(GST)G.

22. [22] *74 U.S.T.C.R. 1223.*

23. [23] Ibid. p. 1225.

24. [24] Constitution Act (1982): Canadian Charter of Rights and Freedoms.

25. [25] Docket no. 25359, judgement dated January 28, 1999.

26. [26] Ontario Law Reform Commission, Report on the Law of Charities, 1996, p. 191.

27. [27] Hernandez v. Commissioner for Internal Revenue, (1989) 490 U.S. 680.

28. [28] 83 A.T.C. 4652.

29. [29] at p. 4682.

30. [30] Church of the New Faith v. Commissioner of Pay-Roll Tax, 83 A.T.C. 4652

31. [31] (1980) 1 W.L.R. 1565, at 1571 and ff.

32. [32] It is tempting to raise the issue of Buddhism, Taoism and certain other generally recognized religions which for some practitioners do not include the idea of a God. It can only be said at this point that the courts have viewed these as exceptions to the rule. Interestingly, in the United Kingdom, the Charity Commission did not deem it necessary to deal with the anomaly in reaching its decision on the Church of Scientology (November 17, 1999, at page 21). The CCRA is not an expert on comparative religion. The only thing I can say at this point is that we have retained outside experts to study the matter as it would apply to Canadian cases. I should point out that the CCRA has already registered some Buddhist and other similar organizations. It should be noted though that not all forms of Buddhism are atheistic.

33. [33] U.K. Charity Commission, Application for Registration as a Charity by the Church of Scientology (England and Wales), November 17, 1999, page 13.

34. [34] Loc. cit.

35. [35] Ontario Law Reform Commission, op. cit., pp. 193-194.

36. [36] Keren Keyemeth Le Jisroel, (1931) 3 K.B. 465, at p. 477 (affirmed (1932) A.C. 650. The case dealt with the settlement of Jews in Palestine, and whether this was a charitable purpose for the advancement of religion. Rowlatt Jj. also specified some limits on the advancement of religion as a purpose, stating " But if a religion enjoins the pursuit of some ulterior aim in itself secular, so that people not of that religion might, for either reasons of private sentiment or views of public policy, or what not, support the same aim, then it seems to me that the pursuit of that aim, the promotion or achievement of that aim, is not the promotion of religion for this purpose." (p. 477).

37.

38. [38] Walz, v. Tax Commission of the City of New York, (1970) 397 U.S. 664.

39. [39] It is clear that the benefit must be public and not private. See the decision of the U.K. Charity Commissioners on the Church of Scientology, *op. cit.*, at p. 44; also *Gilmour v. Coats*, (1949) 1 All E.R. 848, at p. 853. Whether an organization for religious purposes benefits the public is a question of fact which must be answered by the courts in the same manner as any other question of fact, *i.e.*, through evidence. In the absence of evidence to the contrary, public benefit is presumed; see the decision of the Commissioners at pp. 13 and 24. Indications that there is no public benefit would include whether there was evidence that the organization's purposes were adverse to religion, were subversive of morality, failed to confer recognizable charitable benefits, focused too narrowly upon its adherents or extended to too limited a beneficial class. In the Scientology case, the Commissioners also considered that this was a relatively new movement, that benefits were only conferred based on pre-payment of fees, and that there was both significant public and judicial concern about the actions of the Church (see pp. 40 and ff.) The Church has said in the media that it intends to appeal the Commissioners' decision.

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