ADVANCING RELIGION AS A HEAD OF CHARITY:
WHAT ARE THE BOUNDARIES?
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WHAT ARE THE BOUNDARIES? (Revised)†
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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

A. INTRODUCTION

All world religions, including Judaism, Hinduism, Buddhism and Islam, follow some equivalent to the “Golden Rule” for Christians: “Do for others what you would like them to do for you,” or “love your neighbour as yourself.”² This principle is also what forms the basis of tort law in common law jurisdictions, as reflected in Lord Atkin’s comment in Donoghue v. Stevenson that, “[t]he rule that you are to love your neighbour becomes in law, you must not injure your neighbour.”³

† This article has been updated by the authors as of October 2006 from an earlier version of the paper that was presented at the CBA/OBA 3rd National Symposium on Charity Law on May 6, 2005. The original paper was based, in part, on a Church Law Bulletin written by Carter, Terrance S. & Jacqueline M. Demczur (formerly Connor). “Advancing Religion as a Charity: Is it Losing Ground?” (2004) Church Law Bulletin No. 6, available at www.churchlaw.ca. The author would also like to recognize the contribution of Nancy Claridge who practices with Carters Professional Corporation, and Paula Thomas who is currently articling at Carters Professional Corporation, both of whom assisted in editing the final version of this paper. Any errors in this paper are solely those of the authors.

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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.

The majority of individuals who hold religious convictions would agree that participating in practical applications of their faith, such as teaching others about their religious experience in the practical context of everyday life, or relieving poverty and/or suffering by assisting in different forms of humanitarian relief as a demonstrative expression of their faith, is as important as engaging in regular religious worship. Thus, for most religious faiths, religious worship and practical applications of faith are not and cannot be made to be mutually exclusive in relation to determining the appropriate boundaries for advancement of religion as a head of charity, as they constitute two sides of the same coin.

It is the practical manifestations of faith in everyday life that makes religion of value 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 recently remarked that,

[it 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. What are the alternatives? Apart from religion, what is it that forms and sustains the moral basis upon which much of our law depends? How are community values developed and maintained in a pluralist society?]

The principle that religion should be broadly defined in order to include practical manifestations of religious beliefs was recently affirmed in the Supreme Court of Canada decision in Syndicat Northcrest v. Amselem.

This was the first opportunity the Supreme Court of Canada had to articulate the boundaries of freedom of religion. In that case, the court stated that religious practice is as important as religious belief in defining religion, and acknowledged that a broad definition should be afforded to the definition of religion. This approach was echoed in the Supreme Court’s decision in Reference re Same-Sex Marriage, in which the court confirmed that “[t]he protection of freedom of religion afforded by s. 2(a) of the Charter [of Rights and Freedoms] is broad and jealously guarded in our Charter jurisprudence.”

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6 Canadian Charter of Rights and Freedoms, 1982 s.2(a). [the “Charter”]
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 Canada Revenue Agency (“CRA”) functions in an administrative role as regulator in defining the boundaries of advancement of religion. CRA determines at first instance whether charitable status should be granted or denied to a religious organization that is applying for charitable status or is attempting to maintain its status as a result of an audit. CRA’s role in this regard arises from its administrative authority under the *Income Tax Act*\(^9\) to establish policies and procedures 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, the administrative decisions of CRA 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. the relief of poverty, the advancement of education and other purposes beneficial to the community) have generally been broadened in both their scope and application by the courts as well as by CRA, as is evident in the new policy issued by CRA, entitled *Assisting Ethnocultural Communities*.\(^{10}\) In this regard, it is the expectation of religious charities in Canada that the definition of advancement of religion should similarly be broadened in order to not only reflect the diversity of faiths in Canada, but also to facilitate the breadth in the practical manifestations of those faiths.

Given this context, the purpose of this paper is to provide an explanation of the historical perspective concerning advancement of religion as a head of charity by examining the case law that has been most influential in defining 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. Finally, an analysis is provided in connection with recent developments in Canada concerning advancement of religion compared with parallel developments in other jurisdictions, some of which have attempted to provide, or are currently in the process of providing a legislative definition of advancement of religion.

As a result of somewhat inconsistent judicial decisions over the years, it is difficult to predict what will happen in Canada concerning advancement of religion as a head of charity. Nevertheless, this paper

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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].
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 by CRA when determining whether religious organizations should be granted and/or allowed to retain their charitable status under the ITA.