

1 Part I

2 CONCEPT AND PRACTICE OF PUBLIC BENEFIT

3

1 Chapter 1

2 HAVE A LITTLE FAITH: THE ADVANCEMENT OF 3 RELIGION AND PUBLIC BENEFIT

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5 Introduction

6 Charity has early origins in, and is often seen as sustaining, the healthy functioning of
7 society, filling the welfare openings that have been left exposed either as a result of
8 the government policies of the day, or shortfalls in government assistance. Thus, it
9 can be said that charity assists with decreasing many of the welfare encumbrances that
10 might otherwise be placed on states, whilst at the same time, performing essential
11 roles within a variety of communities. Charity should, therefore, not be
12 underestimated for its value within society.

13 As will be outlined, there are a number of legally recognised charitable
14 purposes, and the advancement of religion is one such purpose. However, against the
15 backdrop of societies becoming purportedly less religiously-inclined and the
16 seemingly growing religious terrorist threats, the relevance of the advancement of
17 religion within a charity context is being questioned. As a result, pressures grow to
18 address public concerns that revolve around granting charitable privileges to
19 organisations whose charitable endeavours are underpinned by intangible belief

1 systems, and indeed, whose religious moralistic stance may be contrary to the social
2 policies of the day.

3 This chapter demonstrates that religion is still just as relevant in contemporary
4 society as it was in ancient times, and further, that charity law is the perfect
5 instrument to enable the most fitting utilisation of religion, under the embrace of
6 advancement of religion.

7 In undertaking this analysis, this chapter considers the doctrine of public
8 benefit and its role within charity law to ensure the legitimacy of religious charitable
9 purposes, and specifically considers the approach of the Australasian courts to
10 evaluate critically the issues surrounding public benefit and the advancement of
11 religion.

12 Prior to considering the jurisprudence of Australia and New Zealand, we will
13 set out, briefly, the importance of religion generally within society, to contextualise its
14 relevance. Then we will outline the law relating to charitable purposes, and public
15 benefit, in order to underpin the discussions that follow.

16 Religion and Society

17 Religion is undoubtedly of ancient origins, as evidenced in worldwide cave and
18 escarpment paintings and carvings dating back millennia. The Australian Aboriginal
19 religions are tens of thousands of years old, and it is said that the Vedas, the Hindu
20 religious texts, date back 6,000 years.¹ As the notion of religion developed throughout

1 the world, so the numerous belief systems became associated with ceremonies, rituals,
2 sacred objects, and writings, as well as shaping and compelling cultural rules
3 regarding, *inter alia*, clothing, marriage, behaviour, food and diet. Indeed, the
4 influence of religions was so strong that it often buttressed or became consolidated
5 with the civil power as with the Pontifex Maximus, the Pharaohs, the Aztecs, and
6 many existing religions.² Its effect is still felt today in relation to civil power. For
7 instance, it was said that there was an evangelical surge that helped put Donald Trump
8 in the White House.³

9 With regard to religion and law, specifically Western law, the two concepts of
10 religion and law are indistinguishably interconnected; indeed, Western law cannot be
11 understood in isolation from its religious influences. Every aspect of social and
12 political life was pervaded by religion. With the revival of Roman Law in the 11th
13 and 12th centuries, the method of studying Roman Law texts was the same as
14 scholasticism, which was derived from Greek dialectical reasoning.⁴ This reasoning
15 was utilised to explain, harmonise, and reconcile the Scriptures.⁵ In addition, the
16 Christian theology of revelation was conjoined with Roman and Greek notions of
17 natural law, and these underpinned the Medieval legal system, as well as various
18 religious notions influencing the content of European civil law, and the common law,
19 in particular through canon law.⁶

20 It is likely unarguable that religion and law are closely connected, certainly in
21 relation to Western society, but religion within society goes deeper than that. It is

1 asserted that it is religion that underpins that which it means to be human. This is
2 because from early civilisations, humans have sought answers to the meaning and
3 purpose of life, and religion provides some of those answers.⁷ Indeed, religion has not
4 only provided answers to the existence and place of humans within the cosmos, but it
5 is also said to impact beneficially on certain aspects of society, over and above
6 spiritual benefits.

7 For instance, religion reduces the number of medical terminations; has a
8 lowering effect on divorce rates; and encourages timely payment of debts. There is
9 also further evidence that religiously-influenced people are more likely to give to
10 charities, and to undertake charity work.⁸ Interestingly, religious attendance of once or
11 more a week is also said to have health benefits. A number of studies have revealed
12 that such attendance may increase a person's life span by up to seven years, in
13 addition to boosting a person's immunity, on top of benefits that include decreasing a
14 person's blood pressure, lowering rates of depression, and lowering alcohol and
15 narcotic consumption and abuse.⁹

16 Religious participation also impacts in a positive manner with respect to youth
17 offending; and increases the possibility of completing school or college. Such
18 influences often result in improved financial circumstances for society generally, by
19 reducing imprisonment and reintegration expenses. This also then can result in lower
20 unemployment rates, which is likely to reduce state aid to individuals. It is not just the
21 youth who may be advantaged by religious influences. Religiously-involved adults

1 are also less likely to be criminally active, and in turn, consequently make fewer
2 demands on state aid and provisions.¹⁰ These many non-spiritual advantages provide
3 numerous benefits as a result of religious observances, not least of which are
4 economic gains for the community. These impacts of religion are said to benefit the
5 American economy to the tune of approximately \$2.6 trillion annually; this amounts
6 to about 1/6 of the total economic output.¹¹

7 The economics of charitable giving, and in particular, giving to religious
8 bodies, should therefore not be underestimated, and is a reflection of the importance
9 of religion in society generally. For instance, in 2016, the total given by Americans to
10 non-secular charitable organisations was \$122.9 billion (inflation adjusted dollars).
11 The next highest amount donated was to education charities, and that amounted to
12 \$59.8 billion (inflation adjusted dollars).¹² In addition, in the United States alone,
13 religion-related businesses and institutions, as well as places of worship, bring in
14 more revenue than Google, Apple, and Amazon combined, contributing an impressive
15 \$1.2 trillion annually to that nation's GDP. However, this is thought to be a
16 conservative figure; the amount may actually be more than that.¹³

17 The contribution to society by religion is not just related, however, to identity
18 or economics. Religion has impacted profoundly on the contribution of religious
19 organisations, throughout history, to building the constitutional infrastructure [...] of
20 contemporary society,¹⁴ and its impact is said to be beyond estimation.¹⁵ Indeed,
21 many jurisdictions, including New Zealand, Ireland, and Canada, are beholden to

1 religious organisations for their role in providing health and educational systems that
2 still exist today.¹⁶ The reality is, therefore, that religious institutions underpin and
3 support national infrastructures, many of which are closely linked to charitable
4 organisations. These include medical institutions and schools, and also religious
5 institutes themselves,¹⁷ all of which illustrates the essential role that religion plays
6 within society, and through its charitable connections.

7 What these benefits and relationships suggest, therefore, is that economically
8 and socially, humans would be poorer individually and collectively without the
9 influence of religion throughout society. Indeed, any exclusions of religion within
10 charity law may have adverse consequences for key sections of society, such as
11 hospitals and schools. This would not only be detrimental to the infrastructure of the
12 state generally, but it would also be detrimental to members of the community who
13 are reliant on such institutions and their support.

14 This brief foray into the relationship between religion, society, and the law has
15 illustrated the fundamental role of religion within society generally. Nonetheless,
16 religion remains the target of consistent and repeated attacks in the media and
17 communities. By way of example, one only has to look to actor and comedian Ricky
18 Gervais, with his millions of followers on Twitter and Facebook, to see the influence
19 of negative press in relation to religion. Mr Gervais is renowned for his criticisms of
20 religion, and has observed, in relation to the privileges granted to religions granted
21 charitable status that "[s]ame sex marriage isn't gay privilege, it's equal rights.

1 Privilege would be something like gay people not paying taxes. Like churches
2 don't.¹⁸ Further, he states that "[w]e shouldn't even need the word 'atheism'. If
3 people didn't invent ridiculous imaginary Gods, rational people wouldn't have to
4 deny them."¹⁹

5 Mr Gervais' views are not held in isolation. Famous critics such as Richard
6 Dawkins and Christopher Hitchens²⁰ are highly vocal in their public criticisms of
7 religion, and brief searches on social media outlets, such as Facebook and Twitter,
8 will reveal equally vociferous and sustained attacks on religion generally.

9 Against this backdrop, and in conjunction with the apparent darkening cloud
10 forming in relation to religious terrorism facing many communities, it is timely to
11 consider religion's place within society specifically within the construct of charity
12 law, which this chapter seeks to do.²¹ In order to begin this journey, this chapter now
13 sets out, in brief, some of the legal principles associated with charity and religion.

14 **Charitable Purposes and Public Benefit**

15 Whilst much has been written on this matter, it is still important to set out the
16 classifications of charitable purpose, which are rooted in the *Charitable Uses Act*
17 1601, otherwise known as the *Statute of Elizabeth*.²² The preamble of this long-
18 repealed²³ Act categorised those purposes that would be legally-recognised as
19 charitable, although that list of purposes was said not to be exhaustive.²⁴ This list of
20 charitable purposes is still recognised in contemporary times. This came about

1 because Lord Macnaghten, in the renowned case of *Income Tax Special Purposes*
2 *Commissioners v Pemsel*,²⁷ produced a classification of charitable purposes which
3 found their essence in the aforementioned Preamble. Thus, his Lordship confirmed
4 that charity comprises four principle divisions, as follows:²⁸

5 [REDACTED]

6 Trusts for the relief of poverty; trusts for the advancement of education; trusts for the
7 advancement of religion; and trusts for other purposes beneficial to the community,
8 not falling under any of the preceding heads.

9 [REDACTED]

10 Since the recognition of this famous classification, the law of charity has developed,
11 and a number of jurisdictions have added to this list of charitable purposes. For
12 instance, England and Wales now recognises 13 heads of charity;²⁹ and Australia has
13 similarly extended its list of recognised charitable purposes.³⁰ New Zealand, however,
14 retains the original *Pemsel* heads of charity, which are embedded in its Charities Act
15 2005.³¹ New Zealand is not alone in this approach. In the leading Canadian authority
16 of *Vancouver Society of Immigrant and Visible Minority Women v M.N.R.* the Court
17 observed that:³²

18 [REDACTED]

1 Canadian courts have consistently applied the *Pemsel* test to determine that question.

2 The *Pemsel* classification is generally understood to refer to the preamble of the

3 *Statute of Elizabeth*, which gave examples of charitable purposes.

4

5 What these statutory provisions confirm is a preservation of many of the common law
6 principles.

7 Of note is that, historically, the common theme that was seen to run through
8 the range of purposes was that they were all of public benefit,³³ even though the
9 *Statute of Elizabeth* does not refer unequivocally to specific public benefit.

10 Nevertheless, the Preamble was seen as recognising purposes that provided public
11 benefit, thus if there is any thread linking these crude judicial attempts to define
12 charity, it is in the conception of charity as a *public use*.³⁴ The effect, therefore, is
13 that for a purpose to obtain charitable status, it must be legally-recognised as a
14 charitable purpose, and further, it must be for the public benefit. We turn now to
15 setting out the requirements of public benefit.

16 In general, those purposes that fall within the first three heads of charity in
17 other words, those purposes that relieve poverty, and advance education and religion
18 were said to be presumed for the public benefit.³⁵ For purposes that fall within the
19 fourth *Pemsel* head that is, purposes that are beneficial to the community the
20 public benefit is not presumed, and must be demonstrated specifically. It should be

1 noted that the United Kingdom has made some considerable legislative modifications
2 to the public benefit doctrine, whereby it is now confirmed that in determining
3 whether the public benefit requirement is satisfied in relation to any purpose falling
4 within section 3(1), it is not to be presumed that a purpose of a particular description
5 is for the public benefit.³⁶ In other words, the presumption of benefit has been
6 removed for all heads of charity, including the advancement of religion. In New
7 Zealand, and for the most part in Australia, the presumption of public benefit
8 remains.³⁷

9 Thus, public benefit has been infused into charity law by the courts, and the
10 main concern of the courts is to ensure that an entity is not able to take advantage of
11 the favoured position of charities in order to carry out what is essentially a private
12 purpose.³⁸ In other words, it is the element of public benefit that justifies the legal
13 and fiscal concessions granted to charities.³⁹ It is generally accepted that there are
14 two components of the public benefit test. This is articulated in the New Zealand High
15 Court case, *Liberty Trust v Charities Commission*:⁴⁰

16

17 It is accepted that in order to have a charitable purpose the entity must be carrying
18 out its purposes for the benefit of the public. This means that the entity must confer a
19 benefit and that it does so in respect of the public or a sufficient section of it.

1

2 In other words, the purposes must demonstrate a public benefit, and that benefit
3 should be for the public, or a sufficient section of the public.⁴¹ In relation to the
4 advancement of religion, it is well settled⁴² that a gift for religious purposes is
5 prima facie charitable, the necessary element of public benefit being presumed unless
6 and until the contrary is shown.⁴³ Nonetheless, the doctrine of public benefit has been
7 subject to some criticism throughout the years, for instance:⁴⁴

8

9 The concept of public benefit is intangible and nebulous; its effects can only be
10 represented as variable and unpredictable. Imprecision has resulted in illogical and
11 capricious decisions, sometimes impossible to reconcile.

12

13 In addition, few would regard the [public benefit] and the manner in which it has
14 been applied as wholly coherent and satisfactory.⁴⁵ Such criticisms have done little to
15 assuage the concerns of the public in relation to the continued existence of the
16 advancement of religion as a charitable purpose. However, this chapter asserts that
17 even though this doctrine may be subject to criticism, public benefit provides a legally
18 justifiable and legitimate safeguard to ensure that purposes that fall under the
19 advancement of religion will benefit communities, within the confines of the law,

1 through the appropriate allocation of their assets from their charity endeavours. This
2 is so even if cases may be deemed controversial, or unpopular in the public view.
3 Therefore, it is argued that the public benefit doctrine, and its presumption, are an
4 effective method of ensuring that charitable religious bodies function as prescribed by
5 law, and as a result, the public will benefit. To illustrate this, we turn firstly to the
6 New Zealand High Court case of *Liberty Trust v Charities Commission*.⁴⁶

7 Liberty Trust

8 Liberty Trust was first registered under the *Charities Act 2005*, and its main activity is
9 to provide a mortgage-free lending scheme. This scheme was generally funded by
10 donations, and from that, interest-free loans were made to donors, and others. The
11 Charities Commission, as it was at the time,⁴⁷ removed the Trust from its charity
12 register, and the Trust subsequently appealed this decision to the High Court.

13 The Trust seeks:

14 [REDACTED]

15 to advance the Christian faith by teaching & demonstrating the Bible's financial
16 principles, to assist those in financial difficulty, relieve financial burdens and
17 advance the Kingdom of God. Part of our ministry is lending interest-free to enable
18 New Zealanders to own their own homes, churches, and ministries without long-term
19 debt, so they can be free to fulfill God's call upon their lives [sic].⁴⁸

1

2 The funds are available to all creeds and faiths, with the main message of teaching
3 Biblical financial principles through, amongst other matters, its loan scheme. Mallon
4 J, in this case, had no concern regarding whether or not the scheme advanced
5 religion;⁴⁹ therefore, the issue of interest to this chapter is that of public benefit in
6 relation to whether a mortgage scheme meets the requisite public benefit.

7 As has been noted, the Trust's purposes include relieving financial burdens, in
8 a hope that Christianity would be advanced as a result of having such burdens
9 alleviated. In other words, recipients of the loans can be free to fulfill God's call
10 upon their lives.⁵⁰ This a commendable approach, although it is not clear how a
11 person should fulfil this requirement. Thus, there may be an argument that the
12 purposes are focused too narrowly on its adherents,⁵¹ thereby creating a private
13 benefit, as opposed to a public benefit. Indeed, it might be argued that such a hope is
14 analogous to the circumstances discussed in the New Zealand High Court case of
15 *Canterbury Development Corporation v Charities Commission*. In this case, Ronald
16 Young J stated that:⁵²

17

18 The applicants' core activities and central focus were to assist and increase the
19 profitability of particular businesses in the hope that there would be an economic lift
20 for the Canterbury region. While the relief of unemployment could be a charitable

1 purpose under the relief of poverty ground, this outcome was too remote from the
2 purposes of the appellants, whose aims were to assist businesses to prosper. The
3 activities were not therefore of public benefit and of direct benefit to a significant
4 part of the public.

5

6 In essence, therefore, the purposes need to be more than hopeful, otherwise there
7 would only be an indirect benefit. In relation to the loan scheme, whilst the aim is to
8 enable borrowers to be released from financial burdens and to generously serve and
9 build God's Kingdom,⁵³ it is not clear precisely how borrowers should serve and
10 build God's kingdom. Therefore, it could be argued that Liberty Trust's loan scheme
11 has a strongly focused private benefit, making the public benefit too remote, and
12 making the private benefits perhaps not incidental to the overall public benefit.⁵⁴

13 However, in answer to this assertion, Mallon J stated that the private benefits
14 reaped from the loan scheme were, in fact, seen as part of living as a Christian. An
15 integral part of the scheme is that its benefits are to be shared with others,⁵⁵ ensuring
16 that the public benefit element is not rebutted. Indeed, as her Honour asserts:⁵⁶

17

18 These cases are therefore quite different from a private benefit conferred as part and
19 parcel of an activity directed at advancing religion [] all Christian teaching should

1 be beneficial in the long term for members of the faith so that personal benefit is a
2 necessary element but [redacted] that is not the end of it.

3 [redacted]

4 This suggests, therefore, that the purposes are not [redacted] focused too narrowly on its
5 adherents,⁵⁷ although leading a [redacted] Christian life free of the burdens of debt⁵⁸ does
6 suggest that the private benefits are not necessarily incidental. Certainly, this is a grey
7 area because it has been argued that:⁵⁹

8 [redacted]

9 there is a line to be drawn between the outworkings of a religious faith that, being
10 ancillary and incidental in nature, can be seen to manifest an organisation's religious
11 beliefs, and those that are disproportionate and unrelated to such an organisation and
12 its beliefs.

13 [redacted]

14 There could be grounds for asserting that an interest-free mortgage scheme is not
15 necessarily related to the outworkings of a religious faith. However, Mallon J
16 observed, significantly, that:⁶⁰

17 [redacted]

1 In terms of the private/public benefits it is difficult to distinguish it from a mass in a
2 Church which is open to the public. A mass in a church may have more ready
3 acceptance as being of a religious nature and for religious purposes than a mortgage
4 scheme that is set up as an example of the Bible's message but that is not the point.
5 On the evidence before me this mortgage scheme is a public example of what is
6 intended to be a Christian approach to money and part of propagating the Christian
7 faith.

8

9 Therefore, her Honour's assertions are persuasive as to why a mortgage scheme may
10 demonstrate the requisite public benefit, and importantly, why the public benefit
11 requirement should not be rebutted. Further, just because a purpose may not be
12 readily accepted in the public eye, this does not mean that the public benefit should be
13 rebutted. This point was raised by Elias CJ, for the majority, in the Supreme Court
14 case of *Re Greenpeace of New Zealand Inc*, where her Honour declared that
15 unpopularity of causes otherwise charitable should not affect their charitable
16 status,⁶¹ and neither should lack of controversy [...] be determinative.⁶²

17 If popularity, or lack of controversy, were requirements of public benefit, the
18 result would, in effect, exclude much promotion of change while favouring charitable
19 status on the basis of majoritarian assessment and the status quo.⁶³ Such an approach
20 would, surely, be contrary to the very spirit of charity law, which, in reality, should
21 be responsive to the way society works.⁶⁴ If charity fails to respond to the way in

1 which society works, then the law is actually likely to hinder the responsiveness of
2 this area of law to the changing circumstances of society.⁶⁵ For example, once upon a
3 time, it would have been inconceivable that purposes such as promoting the abolition
4 of the slave trade, promoting civil rights, or indeed the promotion of environmental
5 protection, would be construed as charitable.⁶⁶ Nonetheless, charity law has seen fit to
6 find such purposes charitable, even in the face of public criticism. This offers further
7 evidence that charity must evolve to meet the needs of the society of the time, and it is
8 able to do this appropriately through the doctrine of public benefit.

9 Certainly, it is acknowledged that the *Greenpeace* decision did not refer to the
10 advancement of religion; however, it is submitted that the principles in relation to
11 public benefit are analogous to the assertions in relation to the *Liberty Trust* case. As a
12 result, the latter case demonstrates that public benefit is a useful legal device by which
13 the judiciary may determine the overall benefit to the public, still contained by legal
14 parameters. It represents a rational and practical standpoint which sets public benefit
15 within a contemporary context, whereby financial burdens are of key concern to many
16 in today's society. Reducing such burdens is likely to have benefits overall for society
17 by lessening pressure on individuals, and thus mitigating the pressure on society to
18 alleviate those financial worries. As a result, charity law has demonstrated its practical
19 application in a real-world context, underpinned by, and within the confines of, the
20 public benefit doctrine.

1 Australian jurisprudence echoes New Zealand's pragmatic approach to the
2 utilisation of the public benefit doctrine in such a way as to justify the relevance of
3 religion in society but within the confines of charity law. We turn to two cases, both
4 controversial, to assess public benefit and its importance in ensuring that purposes
5 meet stringent charity law requirements, whilst at the same time providing valuable
6 benefit to communities. We begin with *Church of the New Faith v Commissioner of*
7 *Pay-Roll Tax (Scientology case)*.⁶⁷

8 The Scientology Case

9 The question for the High Court of Australia was whether Scientology is a religion. In
10 brief, Scientology was founded by L. Ron Hubbard, and as a self-prescribed religion,
11 it offers a precise path leading to a complete and certain understanding of one's true
12 spiritual nature and one's relationship to self, family, groups, Mankind, all life forms,
13 the material universe, the spiritual universe and the Supreme Being.⁶⁸ The High
14 Court, in the *Scientology* case, confirmed the fundamental importance of religion
15 within its legal framework, observing:⁶⁹

16

17 Protection is accorded to preserve the dignity and freedom of each man so that he
18 may adhere to any religion of his choosing or to none. The freedom of religion being
19 equally conferred on all, the variety of religious beliefs which are within the area of
20 legal immunity is not restricted.

1

2 I assert that charity law underpins this requirement through the judicious recognition
3 and application of the public benefit doctrine, and as will be addressed, the Court in
4 this case confirmed that public benefit legitimises Scientology. However,
5 interestingly, the Court makes little explicit reference, if at all, to the doctrine of
6 public benefit. Nonetheless, the doctrine can be implied throughout the judgements so
7 as to validate the legal recognition of Scientology.

8 It was observed by the Court that the law seeks to leave man as free as
9 possible in conscience to respond to the abiding and fundamental problems of human
10 existence.⁷⁰ This suggests that many people struggle with their existence within the
11 Universe. Some people are able to rationalise their existence through the natural
12 order, known or unknowable by use of man's senses and his natural reason,⁷¹ and this
13 provides an adequate answer to the concern of existence. However, not all people find
14 comfort or appeasement in this manner. In those circumstances, an adequate solution
15 can be found only in the supernatural order,⁷² and this offers a sense of reason for a
16 person's existence in the grand scheme of matters.

17 Herein lies the implicit recognition of public benefit. The benefit is found in
18 the comfort provided by religion in assisting humans to find their place within their
19 own environment, and within the world generally. Such a benefit may not be
20 explicitly measurable, but providing emotional and spiritual succour ensures, amongst

1 other matters, that humans have sufficient coping mechanisms to deal with life's
2 challenges, and are able to function appropriately within society. Charity law already
3 recognises that finding emotional pleasure in a purpose can be charitable because it
4 satisfies a public benefit.⁷³ The reason being, as asserted by Vaisey J in *Re Shaw's*
5 *Wills Trusts*, is that promoting and encouraging the arts and graces of life is the finest
6 and best part of the human character.⁷⁴ Such a reasoning can be aligned with the
7 benefit, therefore, of religion in promoting spirituality because it can develop,
8 beneficially, a human character.

9 This reasoning finds support in the *Scientology* case, whereby the Court noted
10 that faith in the supernatural provides a means of rationalising the sense of inadequacy
11 felt by many humans in relation to their place within mankind generally, and also
12 within the universe.⁷⁵ Further, religion relates a view of the ultimate nature of reality
13 to a set of ideas of how man is well advised, even obligated, to live.⁷⁶ The
14 implication being, therefore, that public benefit may be found in guidance that a
15 religion provides for the beneficial conduct of humans, as well as providing a sense of
16 reassurance as to humanity's place in the universe.

17 Certainly, there may be some scepticism in relation to the emergence of new
18 religions, such as Scientology, when legally recognised religious status confers
19 financial and other advantages. Such a scepticism has been prevalent within Australia
20 since European settlement, not least due to the progress of science. However, religion
21 still retained a foothold within Australia, perhaps in part because of the harsh

1 Australian climate and environment. Religion continued to provide answers and
2 comfort to the settlers in a new and challenging environment, offering relief and
3 guidance. Thus, the public benefit of religion in those circumstances was a pragmatic
4 result of the environment, and religion remains today just as important within
5 Australia as it was to the early European settlers. This, therefore, enables emerging
6 religions to find a place within society, even if there are questions as to the legitimacy
7 of the religion itself.⁷⁷

8 Indeed, it might be argued that any public benefit in Scientology may be
9 rebutted due to questions raised as to its hoax-like nature, or that charlatanism features
10 heavily within its construct. The *Scientology* case explored these issues and provided
11 some perhaps surprising answers to such questions raised.

12 Murphy J confirmed that the truth or falsity of religions is not the business of
13 officials or the courts.⁷⁸ If that were the business of such bodies, then all religions
14 might fail such a test.⁷⁹ Instead, religion is seen as giving people security and inner
15 strength not to be crushed by the monstrosity of the universe.⁸⁰ Scientology,
16 therefore, sits within the construct of a religion, regardless of whether or not a person
17 may question its truth, because many established religions may also have their truths
18 questioned.

19 The Court also confirmed that a test of public acceptability in relation to a
20 religion would not, implicitly, be a method of assessing the overall public benefit.
21 This is because nearly all religions begin as a minority interest group, often gathering

1 around the teachings of an inspiring leader. Any subsequent rise in public acceptance
2 is oftentimes slow and difficult. The Court confirmed that a test of public
3 acceptability would create a danger that a claim's chances of success would be
4 greater the more familiar or salient the claim's connexion with conventional
5 religiosity could be made to appear.⁸¹ It could be argued that the proliferation of
6 religions, and religious sects, would therefore create difficulties for any test based on
7 public acceptability.⁸² As a result, the public benefit is not to be found in popularity.
8 Rather, it is to be found in the overall benefit it brings to a group that is persuaded of
9 that religion's teachings. This echoes the earlier assertions made in relation to the
10 *Liberty Trust* case, as supported by the findings in the Supreme Court case of
11 *Greenpeace*. Public benefit cannot be assessed on popularity as this may retard the
12 law and cause the charitable sector to suffer overall. The provisions of charity are not
13 always popular, and indeed, oftentimes charity supports those who are sidelined, or
14 who are considered unworthy, by society. That charity provides assistance to such
15 members of society reflects the true nature of charity non-judgemental and open to
16 all, regardless of perceived worth, which is underpinned by public benefit.

17 Returning then to the *Scientology* case, it was further argued that Scientology
18 should be denied religious status because it was asserted that it displayed charlatan-
19 type tendencies, or was merely a sham.⁸³ If this was so, then its public benefit would
20 surely be rebutted. In response, however, the Court observed that charlatanism is a
21 necessary price of religious freedom, and if a self-proclaimed teacher persuades others

1 to believe in a religion which he propounds, lack of sincerity or integrity on his part is
2 not incompatible with the religious character⁸⁴ of the religion itself. Indeed, many
3 established religions might fail if faced with such a test.

4 Therefore, even in the face of stringent criticism and negativity, Scientology
5 found its place within the recognised religions of Australia. Whilst perhaps
6 controversial, it can be argued that the implied public benefit of Scientology ensures
7 that its purposes are constrained within the law, and the law has legitimised its
8 charitable status, and will continue to do so. Scientology is, perhaps, a product of
9 contemporary society, and therefore, as considered in the *Liberty Trust* case, this is
10 merely a reflection of the ability of charity law to adapt to new challenges and new
11 requirements, within the constraints of public benefit.

12 This chapter now considers the second Australian case, *Commissioner of*
13 *Taxation of the Commonwealth of Australia v Word Investments Limited*.⁸⁵

14 **The Word Case**

15 In this case, Word was established by Wycliffe Bible Translators, Australia, to
16 generate funds for Wycliffe, which is an evangelical body. It spreads the word of God
17 through international missionary work. One of the key questions for the High Court
18 was whether Word could be charitable when it does not engage in charitable activities
19 beyond making profits, which are then directed to charitable institutions that do
20 engage in charitable activities.⁸⁶ Such activities suggest that the public benefit may

1 then be rebutted because of the profitability of the organisation. In considering this,
2 the Court, *inter alia*, considered a submission by the Commissioner that that money
3 subject to charitable trusts is not applied for charitable purposes unless actually
4 expended in the field.⁸⁷ In answer to this, and implicit that the public benefit would
5 be met, is that such an approach would be unworkable, and indeed, would be
6 unacceptable. This is because many charities, large and small, operate on the basis of
7 raising money and then choosing other suitable charitable organisations to submit
8 those funds to,⁸⁸ thereby ensuring that the public benefit is met.

9 The High Court asserted that this was likely to be the position in Australia
10 because the charitable purpose [...] is often [...] to be found in the natural and
11 probable consequences of the trust rather than its immediate and expressed objects.⁸⁹
12 The public benefit is therefore implied within the natural and probable consequences
13 of the trust, which in application in the *Word* case, meant that the Court found that it
14 did advance religion.

15 It might be argued that such implicit recognition of public benefit would
16 extend the doctrine of public benefit beyond its original envisioned connotation.
17 Indeed, this decision has provoked criticism because it has been argued that this
18 decision may be utilised:⁹⁰

19



1 for abusive tax behaviour, as it would seem to open the floodgates for all manner of
2 creative business ventures by religious charities and others, which in future will not
3 need to relate to their charitable purpose.

4

5 I would argue, however, that public benefit still has an important role to play in
6 ensuring that charitable purposes are achieved, and if such purposes are not a natural
7 and probable consequence of an entity's activities, then the public benefit will likely
8 be rebutted. Therefore, the doctrine of public benefit may ensure that such abusive
9 tax behaviour does not come to fruition. The *Word* case further reflects the position
10 of charity law within a contemporary society, legitimised by public benefit, whereby
11 the courts now recognise that commercialism is, in reality, a very real part of religions
12 today. Indeed, [c]ommercialism is so characteristic of organized religion that it is
13 absurd to regard it as disqualifying.⁹¹ Operating on a commercial basis does not
14 negate public benefit, rather public benefit can ensure that a religious entity's
15 purposes do benefit the public, notwithstanding its commercial outlook.

16 Conclusion

17 I began this chapter by asserting that religion is just as relevant within modern society
18 as it was in ancient times, and in addition, that charity law provides the ideal vehicle
19 to ensure the appropriate function of religion within society, through the doctrine of
20 public benefit. This is because that doctrine legitimises religion and offers a method

1 of administering a religion so as to satisfy public concerns. The authorities discussed
2 in this chapter demonstrate the relevance of the doctrine in ensuring that, even in the
3 most controversial of circumstances, the charitable sector can benefit generally from a
4 variety of modern purposes.

5 Ensuring that public benefit is recognised and applied in such a variety of
6 circumstances ensures that charity law remains functional in contemporary society.
7 This assertion finds support in the *Greenpeace* case, wherein Elias CJ noted that:⁹²

8



9 Just as the law of charities recognised the public benefit of philanthropy in easing the
10 burden on parishes of alleviating poverty, keeping utilities in repair, and educating
11 the poor in post-Reformation Elizabethan England, the circumstances of the modern
12 outsourced and perhaps contracting state may throw up new need for philanthropy
13 which is properly to be treated as charitable. So, for example, charity has been found
14 in purposes which support the machinery or harmony of civil society[.]

15



16 To find otherwise would risk a rigidity in an area of law which should be responsive
17 to the way society works. It is likely to hinder the responsiveness of this area of law to
18 the changing circumstances of society.⁹³ It is acknowledged that this final point
19 relates specifically to the political purpose doctrine; however, I would assert that such
20 an statement does also relate to the advancement of religion because it has been

1 demonstrated how valuable religions are within society. Thus, to limit their function
2 within charity would be to the disadvantage of society overall.

3 Indeed, I would argue that religion may be seen as being a part of the
4 machinery and harmony of civil society because of its benefits to society generally,
5 as highlighted earlier in the chapter. Therefore, charity law should continue to
6 acknowledge the advancement of religion, and this can be done effectively through
7 the judicious and efficient utilisation of the public benefit doctrine. The doctrine
8 serves as a restraint on purposes that may not meet charitable requirements. Such
9 purposes may include unlawful purposes, or purposes that may be contrary to public
10 policy, thus the public benefit would be denied, and the purpose struck down. Where
11 the public benefit is rebutted, this is likely to be because the subsequent resultant
12 benefits were not established sufficiently.⁹⁴

13 Therefore, I assert that, overall, the public should feel reassured about the
14 authorities that have been considered in this chapter. This is because whilst modern
15 day society places challenges at the feet of charity law [...] [these] case[s] illustrate
16 [...] that the courts recognise that charity law is equally at home in the new
17 millennium as it was in the 1600s.⁹⁵ It could be argued that these decisions actually
18 illustrate the overarching philosophy of charity generally. That being to benefit
19 society overall, even though it might be argued that a mortgage scheme, nor an
20 unconventional religion, nor a commercial entity, could have been anticipated by
21 lawmakers back in the 1600s. Such divisive entities, however, should not

1 automatically be precluded from religious status because, as was evidenced, charitable
2 purposes change as society changes. What a society in the 1600s required was very
3 unlikely to be what a society in 2019 requires. Such contemporary purposes merely
4 reflect charity responding to the changing needs of society, under the effective
5 scrutiny of the public benefit doctrine, which in turn provides legal surety and clarity,
6 which underpins the requirements of the rule of law.⁹⁶

7 Therefore, the presumption of public benefit legitimises the advancement of
8 religion and ensures that a religion's charitable resources are distributed appropriately
9 to its beneficiaries. This chapter has demonstrated that charity law, through public
10 benefit, enables religious charities to operate for the public good, as required by law.
11 Therefore, charity law is an appropriate conduit to enable religion to operate for the
12 benefit of society generally, and that the doctrine of public benefit enables the
13 charitable resources from religions to be distributed effectively for the public. As a
14 result, the benefits of religion can be realised in multiple communities. Further, the
15 public can be reassured that whilst religious charities are subject to privileges
16 associated with charitable registration, the public benefit doctrine ensures that the
17 benefits provided by religions to communities is not outweighed by the privileges
18 obtained by being a registered charity.

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University of Waikato; Juliet.chevalier-watts@waikato.ac.nz. Note: this chapter is based on an early draft of a PhD thesis chapter, and further makes reference to earlier published articles written by the author.

¹ *Church of the New Faith v Commissioner of Pay-Roll Tax (Scientology case)* [1983] HCA 40, at para 10, *per* Murphy J [hereinafter *Scientology Case*].

² *Ibid.*, at para 11.

³ Brian J Grim, Religion may be bigger business than we thought. Here's why,

World Economic Forum (January 5, 2017), online:

<https://www.weforum.org/agenda/2017/01/religion-bigger-business-than-we-thought/> last accessed 8 June 2018.

⁴ Patrick Parkinson AM, Accommodating Religious Beliefs in a Secular Age: the Issue of Conscientious Objection in the Workplace (2011) 34:1 UNSW Law Journal 281.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Barry W Bussey The Legal Revolution Against the Place of Religion: The Case of Trinity Western University Law School (2016) 4 BYU Law Review, 1136.

⁸ Niclas Berggren & Christian Bjornskov Is the importance of religion in daily life related to social trust? Cross-country and cross-state comparisons (2011) 80:3 Journal of Economic Behavior & Organization 461-462, referring to LR

Iannaccone, 'Introduction to the economics of religion' (1998) 36 *Journal of Economic Literature*, 1465–1496; N Berggren, 'Rhetoric or reality? An economic analysis of the effects of religion in Sweden' (1997) 26 *Journal of Socio-Economics*, 571–596; and RD Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon & Schuster, 2000).

⁹ Jeffrey Dorfman, 'Religion is Good for All of Us, Even Those Who Don't Follow One', *Forbes* (December 22, 2013), online:

<<https://www.forbes.com/sites/jeffreydorfman/2013/12/22/religion-is-good-for-all-of-us-even-those-who-dont-follow-one/#713abffb64d7>>, last accessed 8 June 2018.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Una Osili, 'What influences American giving?' *The Conversation* (July 25 2017), online: <<http://theconversation.com/what-influences-american-giving-78800>> last accessed 8 June 2018.

¹³ Kelsey Dallas, 'Economic impact of religion: New report says it's worth more than Google, Apple and Amazon combined', *Deseret News* (September 14, 2016), online: <<https://www.deseretnews.com/article/865662454/Economic-impact-of-religion-New-report-says-its-worth-more-than-Google-Apple-and-Amazon-combined.html>> accessed 8 June 2018>; see also:

<<http://medfield.wickedlocal.com/news/20160921/economic-impact-of-religion-new-report-says-its-worth-more-than-google-apple-and-amazon-combined>> and <https://www.washingtonpost.com/news/acts-of-faith/wp/2016/09/14/study-religion-contributes-more-to-the-u-s-economy-than-facebook-google-and-apple-combined/?noredirect=on&utm_term=.6636b74ca66e>.

¹⁴ Kerry O'Halloran, 'Charity and Religion: International charity law reform outcomes and the choices for Australia' (2011) 17:2 Third Sector Review, 30.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ For example, the Catholic Church operates over 10,000 orphanages, 140,000 schools, 5,000 hospitals, as well as 16,000 other health clinics. Caritas, the umbrella organisation for Catholic aid agencies, estimated that spending by its associate organisations totalled circa £2-£4 billion, therefore this is one of the biggest aid agencies globally; see David Paton, 'The world's biggest charity', *Catholic Herald* (February 16, 2017), online:

<<http://www.catholicherald.co.uk/issues/february-17th-2017/a-worldwide-force-for-good/>>

accessed 8 June 2018. New Zealand reportedly has nearly 300 religious schools throughout the country; see Wikipedia, 'List of Christian Organisations in New Zealand', online:

<https://en.wikipedia.org/wiki/List_of_Christian_organisations_in_New_Zealand
and> accessed 8 June 2018.

¹⁸ Ricky Gervais (February 5, 2014 at 19:05), online: *Twitter*

<<https://twitter.com/rickygervais/status/431262322300952576?lang=en>>.

¹⁹ Gervais (March 3, 2012 at 05:17), online: *Twitter*

<<https://twitter.com/rickygervais/status/175932824518533121?lang=en>>

²⁰ Christopher Hitchens died in 2011, although many of his lectures are still publicly available on YouTube, for example:

<<https://www.youtube.com/watch?reload=9&v=MQox1hQrABQ>> accessed 8 June 2018.

²¹ Whilst it is not within the remit of this chapter to discuss the issues related to terrorism that have been said to be related to religion, that issue may be a key concern for a number of communities. However, what can be said is that most cases of sectarian violence attributed to religion are, in fact, an oversimplification of complex socio-political, geographic, economic, and cultural factors; see Elizabeth Shakman Hurd, *Beyond religious freedom: the New Global Politics of Religion* (Princeton: Princeton University Press, 2015) and also William T Cavanaugh *The Myth Of Religious Violence Secular Ideology And The Roots Of Modern Conflict* (OUP, 2009).

²² Act (43 Eliz I, c .4) of the English Parliament.

²³ Repealed by section 13(1) of the *Mortmain and Charitable Uses Act 1888* (c. 42).

However, as Halsbury's states that repeal expressly preserved the preamble (s. 13(2)). With the repeal of the 1888 Act by the *Charities Act 1960*, the preamble is no longer on the statute book, but the preamble never had any statutory operation, and its final repeal does not affect the authority of the cases decided on it nor the principles on which future cases are to be decided. See: *Halsbury's Laws of England*, 4th ed., 2001 reissue vol. 5(2): Charities, para 2, fn. 7, p. 8.

²⁴ Hubert Picarda QC, *The Law and Practice Relating to Charities*, 4th ed (Haywards Heath: Bloomsbury Professional Ltd, 2010) at 14-16.

²⁷ *Commissioners for Special Purposes of the Income Tax Act v Pemsel* [1891] AC 531.

²⁸ *Ibid*, at 583.

²⁹ *Charities Act 2006*, s 2(2) and also *Charities Act 2011*, s 3(1).

³⁰ *Charities Act 2013*, ss 12(1) and 14-17.

³¹ *Charities Act 2005*, s 5(1).

³² *Vancouver Society of Immigrant and Visible Minority Women v M.N.R.*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at 12, <http://canlii.ca/t/1fqmt>.

³³ Jonathan Garton *Public Benefit in Charity Law* (Oxford: Oxford University Press, 2013) at 1-3.

³⁴ *Ibid*, at 18, citing Gareth Jones *History of the Law of Charity 1532-1827*

(Cambridge: Cambridge University Press, 1969) at 121.

³⁵ It has been argued that this statement is erroneous. However, it is outside of the scope of this chapter to address that specific point. For further discussions, please see, for example, Mary Synge *The New Public Benefit Requirement Making Sense of Charity Law* (Oxford: Hart, 2015); *Independent Schools Council v Charity Commission for England and Wales* [2011] UKUT 421 (TCC); and Juliet Chevalier-Watts, *Charity Law International Perspectives* (Abingdon: Routledge, 2018) at 81 [*Charity Law*].

³⁶ *Charities Act 2011*, s 4(2).

³⁷ This chapter, therefore, considers the presumption of public benefit because it focuses on Australasian case law.

³⁸ Gino Dal Pont, *Charity Law in Australia and New Zealand* (Melbourne: Oxford University Press, 2000) at 13, citing *Perpetual Trustee Co (Ltd) v Ferguson* (1951) 51 SR (NSW) 256 at 263.

³⁹ *Ibid*.

⁴⁰ *Liberty Trust v Charities Commission* [2011] 3 NZLR 68 at para 99 [hereinafter *Liberty Trust*], referring to *Re New Zealand Computer Society Inc* HC Wellington CIV-2010-485-924, 28 February 2011 at para 14. This case will be addressed in detail later in the chapter.

⁴¹ Debra Morris, 'Charities and the Modern Equality Framework' Heading for Collision? (2012) 65 Current Legal Problems vol. 65 at 298; see also *Gilmour v Coats* [1949] AC 426 (HL) and *Verge v Somerville* [1924] AC 496 (PC).

⁴² *Liberty Trust*, *supra* note 38 at para 99.

⁴³ *Ibid*, referring to Jean Warburton, Debra Morris & NF Riddle, *Tudor on Charities*, 9th ed, (London: Sweet & Maxwell, 2003), at para 2-048; and included in the footnotes: In the United Kingdom in 2006, legislation was passed requiring charities to be demonstrably for the public benefit. (Refer to s 3 of the *Charities Act 2006* (UK), and also see UK Charity Commission *Analysis of the Law Underpinning the Advancement of Religion for the Public Benefit* (UK, 2008)). It should further be noted that since the decision of the Upper Tribunal Tax and Chancery Chamber in *Independent Schools Council v Charity Commission* [2011] UKUT 421 (TCC), some elements of the Charity Commission for England and Wales Guidance on Public Benefit has been rewritten.

⁴⁴ Andrew Iwobi 'Out with the old, in with new: religion, charitable status and the Charities Act 2006' *Legal Studies* (2009) 29 4 at 630-631, citing GHL Fridman, 'Charities and public benefit' (1953) 31 Can B Rev at 539; see also *Gilmour v Coats* [1949] AC 426 (HL) at 443.

⁴⁵ Andrew Iwobi 'Out with the old, in with new: religion, charitable status and the Charities Act 2006' *Legal Studies* (2009) 29 4 at 630, referring to M Freeland

Charity law and the public/private distinction in C. Mitchell and S. Moody, eds, *Foundations of Charity* (Hart, Oxford, 2000) at 111 and 121.

⁴⁶ *Liberty Trust*, *supra* note 38.

⁴⁷ The Charities Commission was disestablished on 31 May 2012 by the Charities Amendment Act (No 2) 2012. The Commission's core functions were transferred to the Department of Internal Affairs Charities Services; see Chevalier-Watts, *Charity Law*, *supra* note 33 at 156.

⁴⁸ Liberty Trust, Questions and Answers (last accessed 25 May 2018), online:

<<http://www.libertytrust.org.nz/questions>>.

⁴⁹ *Liberty Trust*, *supra* note 38 at paras 91–98.

⁵⁰ Liberty Trust, Questions and Answers, *supra* note 46.

⁵¹ *Liberty Trust*, *supra* note 38 at para 100.

⁵² *Canterbury Development Corporation v Charities Commission* [2010] 2 NZLR (HC) at para 2.

⁵³ Liberty Trust, Principles in Action (last accessed 28 May 2018), online:

<<http://www.libertytrust.org.nz/principles>>.

⁵⁴ Juliet Chevalier-Watts, Charitable Trusts and Advancement of Religion: On a Whim and a Prayer? (September 2012) 43 VUWLR, 19–422.

⁵⁵ *Liberty Trust*, *supra* note 38 at para 113.

⁵⁶ *Ibid*, at para 107.

⁵⁷ *Ibid*, at para 100.

⁵⁸ *Ibid*, at para 125.

⁵⁹ Juliet Chevalier-Watts, 'Charity law, the Advancement of Religion and Public Benefit' Will the United Kingdom be the Answer to New Zealand's Prayers? (2016) 47 VUWLR, 404, citing Kerry O'Halloran *Religion, Charity and Human Rights* (Cambridge: Cambridge University Press, 2014) at 447.

⁶⁰ *Liberty Trust*, *supra* note 38 at para 122.

⁶¹ *Re Greenpeace of New Zealand Inc* [2015] 1 NZLR 169 at para 75 [hereinafter *Greenpeace*].

⁶² *Ibid*.

⁶³ *Ibid*.

⁶⁴ *Ibid*, at para 70.

⁶⁵ *Ibid*.

⁶⁶ *Ibid*, at para 71, referring to, inter alia, *Jackson v Philips* (1867) 96 Mass 539 14 Allen 539 (Mass SC), and Charities Act 2006 (UK), s 2(2)(h).

⁶⁷ *Scientology Case*, *supra* note 1.

⁶⁸ 'What is Scientology?' online: *Scientology* <<https://www.scientology.org/what-is-scientology.html?q=>> accessed 7 June 2018.

⁶⁹ *Scientology Case*, *supra* note 1 at para 8, *per* Mason ACJ and Brennan J.

⁷⁰ *Ibid*, at para 13.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Royal Choral Society v Inland Revenue Commissioners* [1943] 2 All ER 101 and *Re Delius (deceased)* [1957] Ch 299 (Ch).

⁷⁴ *Re Shaw's Wills Trusts* [1952] Ch 163 (Ch) at 172.

⁷⁵ *Scientology Case*, *supra* note 1 at para 13.

⁷⁶ *Ibid*, citing Clifford Geertz *An Anthropological Study of Religion* in *International Encyclopedia of the Social Sciences* vol. 13 (1968) at 406.

⁷⁷ It should be noted that since the arrival of European migrants, and subsequent later migrants to Australia, the dominant religion remains a variety of forms of Christianity. Nonetheless, other religions are prevalent, including the Aboriginal Dreaming, as well as other non-Western centric religions, such as Hinduism, Islam and Buddhism.

⁷⁸ *Scientology Case*, *supra* note 1 at para 7, *per* Murphy J.

⁷⁹ *Ibid*

⁸⁰ *Ibid*, citing Carl Jung *Symbols of Transformation* (1956) at 231.

⁸¹ *Ibid*, citing *Gillette v United States* [1971] USSC 45 at 457.

⁸² *Ibid.*

⁸³ *Ibid*, at para 25, *per* Mason ACJ and Brennan J.

⁸⁴ *Ibid*, at para 26.

⁸⁵ *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited* [2008] HCA 55.

⁸⁶ *Ibid*, at para 34.

⁸⁷ *Ibid*, at para 37.

⁸⁸ *Ibid*.

⁸⁹ *Ibid*, at para 38, citing *Baptist Union of Ireland (Northern) Corporation Ltd v Commissioners of Inland Revenue* (1945) 26 TC 335 at 348.

⁹⁰ Juliet Chevalier-Watts, *Law of Charity* (Wellington: ThomsonReuters, 2014) at 214, citing Kerry O'Halloran 'Charity and Religion: International charity law reform outcomes and the choices for Australia' (2011) 17:2 Third Sector Review 29 at 36.

⁹¹ *Scientology Case*, *supra* note 1 at para 45, *per* Murphy J.

⁹² *Greenpeace*, *supra* note 59 at para 70.

⁹³ *Ibid*.

⁹⁴ *Registration Decision: The Jedi Society Incorporated* (JED494458) 14 September 2015 at paras 45-46.

⁹⁵ Juliet Chevalier-Watts, 'Charity Law and Religion – A Dinosaur in the Modern World?' (2016) NoFo 13 at 135-36.

⁹⁶ Kathryn Chan, *The Public-Private Nature of Charity Law Divide* (London: Bloomsbury, 2016) at 6.