

## Under Charity or **Beyond** Charity

### Symposium on Charity Law



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## Donations from Jimmy Lai to Cardinal Zen



- Cardinal Joseph Zen (the former head of the Catholic Church in Hong Kong) confirmed that he had indeed received HK\$20 million from Mr. Lai (founder of Next Media Ltd)

## Cardinal Joseph Zen's Reply (Oct 21, 2011)

<http://www.digitaljournal.com/article/313155>



- "First, I gave scholarships to 170 students from the official and underground Church to go abroad.
- I have often had to travel to Rome and around the world. Since I've never asked for any financial aid to pay for such trips, I pay my own way.
- When I was the city's bishop, we helped dioceses hit by floods, tsunami, earthquakes, both in China and in other parts of the world.
- Then there is a long list of priests, nuns and bishops in China and elsewhere who received aid. If they come to Hong Kong, they can buy books as well as religious items and furnishings at my expenses."

## Under Charity or Beyond Charity

- 2007 charitable organizations total 5,123

Relief of poverty	1,037
Advancement of education	1,790
Advancement of religion	1,773
Others	523

- Public Donations or Private Gift

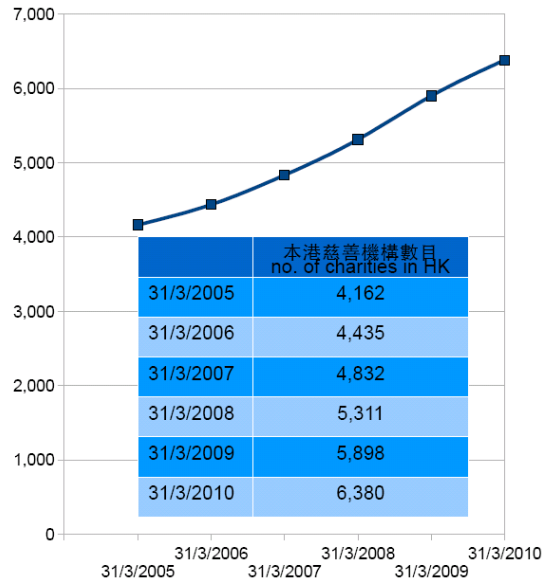
5.15 A gift for religious purposes has to satisfy two conditions in order to come within the meaning of Lord Macnaghten's third head of charity. First, the gift must contribute to the advancement of religion as that word is interpreted by the courts. Secondly, the gift must promote the religious instruction or education of the public.<sup>21</sup>

source :  
www.idonate.com.hk

## ■ The increase of charities in Hong Kong

No. of charities with s.88 status in 2010 has increased 53% comparing to 2005

### 你知道香港有多少間慈善機構嗎？ How many charities in Hong Kong?

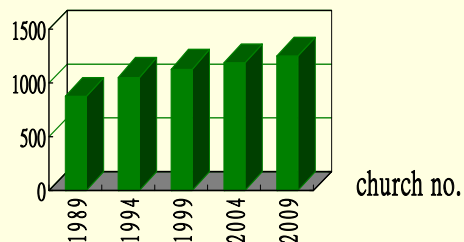


## Protestant churches in Hong Kong

- 1994 1,056
- 1999 1,129
- 2004 1,181
- 2009 1,250

2004-09

- increase 69 churches
- average annual growth 1.14%



■ church no.

## Educational Services provided by Churches

- It also runs more than 639 schools (260 kindergartens, 199 primary schools and 180 secondary schools) and 127 nurseries (*Hong Kong Year Book, 2010*)



## Social Services - 63.9% of churches providing different types of social services 2009

	church ratio		
	1999	2004	2009
child care /nursery	17.2%	18.8%	19.7%
services to the poor			16.1%
study centers	12.4%	12.8%	15.2%
community centers		6.0%	14.7%
elderly centers	10.4	6.8%	14.2%
primary schools	8.9%	10.1%	14.1%
family service	4.2%	6.0%	10.7%
secondary schools	7.1%	10.7%	10.7%
after-school services to kids	5.2%	6.8%	8.6%
services to new arrivals	8.3%	8.9%	8.6%
finding employment		2.4%	5.1%
youth centers	4.1%	3.0%	3.7%

## Social Services provided by Churches

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- It runs 7 hospitals and 17 clinics.
- 107 multi-social centres provide a wide range of services at more than 109 community (family/youth) service centres, 11 children's homes, 169 elderly services and centres/nursing homes, 59 rehabilitation centres for mentally handicapped, disabled and drug addicts.
- There are at least 50 hospital chaplaincies, one airport chaplaincy and 3 prison chaplaincies, and also 23 campsites. (*Hong Kong Year Book, 2010*)

## Services to Christian community and the Public

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- It operates more than 35 theological schools, 81 Christian publishing houses and 114 Christian bookstores. There are 53 media, audio-visual production and art groups.
- More than 725 para-church agencies and different Christian action groups attend to the needs of the Protestant community. (*Hong Kong Year Book, 2010*)

## Christian Organizations 2011

TYPE		
	Denomination offices	35
	Ecumenical organizations	6
	Para-church organizations	225
	Mission agencies	65
	Chaplaincy services	23
	Publishing & Media companies	54
	Book stores	119
	Camp sites	21
	Social services	677
	Medical services	33
	Others	3
<b>Total</b>		<b>1,261</b>

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## Case : Christian Zheng Sheng College (正生書院事件)

- In Aug, 2009, local magazine published allegations that the (Zheng Sheng Association 正生會) had investments valued at HK\$35.2 million in the mainland and Japan, some of which are said to be "questionable".
- The Association said that its investments in restaurants, tea houses, and farms serve as employment venues where its students can obtain work experience.
- Later, the school separated its accounts from its parent organisation (ZSA).
- On 22 March 2010, ICAC wrote a written statement to the college informing that ICAC didn't find any evidence of fraud or corruption. ICAC had ceased further investigation and closed the case.

## Existing laws deal with corruption and fraud

### (2) *Referring criminal offences to the appropriate law enforcement agencies*

8.47 In case of possible criminal acts involved in the misconduct or mismanagement in the administration of the charity which come to light in the course of an inquiry, the future charity commission should have power to refer the case to appropriate law enforcement agencies.

9.24 In October 2009, the Independent Commission Against Corruption published its *Best Practice Checklist: Management of Charities and Fundraising Activities*.<sup>14</sup> In issuing these best practice guidelines, the Commissioner for the ICAC stressed that "*despite the relatively small number of complaints, the risk of corruption and other crimes involving management of charities and fund-raising activities should not be underestimated in view of the substantial donations made each year.*"<sup>15</sup>

## Under Charity vs. Beyond Charity



# 1. Charity Correct over Religion Right

5.57 Section 2(3) offers further explanation of some of these purposes in section 2(2) as follows:

"(a) in paragraph (c) 'religion' includes —

- (i) a religion which involves belief in more than one god, and
- (ii) a religion which does not involve belief in a god;

- Attempts to reduce the language of religion and belief into a purely secular/sociological terminology or the lowest common language denominator of “non-religious belief systems”
- Attempts to force it into a ‘one size fits all’ secular mould that may be unsuited to the particular nature and characteristics of religion

## How can we reach a legal definition of Religion ?

### The Complexity of Religion and the Definition of “Religion” in International Law

T. Jeremy Gunn\*

When I mention Religion, I mean the Christian Religion; and not only the Christian Religion, but the Protestant Religion; and not only the Protestant Religion, but the Church of *England*.  
—Mr. Thwackum (1749)<sup>1</sup>



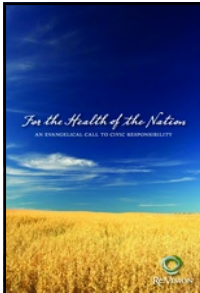
## Case : Is Scientology a religion ?

- In 1999, the Charity Commission of UK refused its status as religion.
- In 2000, the Italian Supreme Court ruled that Scientology is a religion for legal purposes.
- In recent years, religious recognition has also been obtained in Sweden, Spain, Portugal, [Slovenia](#), [Croatia](#), Hungary, Kyrgyzstan.
- Other countries, notably Canada, France, Germany, Greece, Belgium refuse to grant Scientology religious recognition.

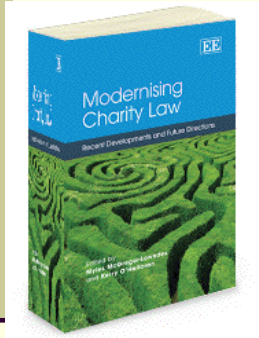


## For the Health of the Nation: An Evangelical Call to Civic Responsibility

- Religion is **not just an individual matter**, but also refers to rich communal traditions of ultimate belief and practice.
- We **resist the definition of religion** becoming either radically individualized or **flattened out to mean anything that passes for a serious conviction.**



## 2. The Public Benefit Test ?



- Charitable organisations with tax exemption privileges should be accountable to the public
- Better board governance and transparent quality is needed
- “the benefit to the public should be capable of being proven, whether the nature of that benefit is tangible or intangible”

## NO Presumption of public benefit



- There is no longer a presumption of public benefit for charities whose aims include advancing religion. (*The Charities Act 2006*)
- The Commission is under a statutory duty to consider the specific aims of an organisation and to assess whether the way in which it carries out those aims meets the public benefit requirement.

## Christian Charities under Attacks

*(The Advancement of Religion for the Public Benefit)*

- “It is possible that a charity existing exclusively to promote **traditional Christian views in a particular area – such as marriage and sexual ethics** – could have its **charitable status questioned**, or where proselytism is involved, especially overseas, evangelism methods may come under scrutiny.”
- “Interpretation of the new guidelines cannot be easily divorced from developments in public policy generally and pressure is still likely to be encountered for faith based organisations **to restrict their religious character and distinctives when they are seen to come into conflict with secular attitudes.**” *(The Evangelical Alliance)*

Charities regulatory regime  
慈善組織規管機制



## Unchecked power of Charity Commission

### Recommendation 9

We recommend that the future charity commission should be vested with the power to investigate any alleged mismanagement and misconduct of charitable organisations with regard to its charitable objects.

In the exercise of this power to investigate alleged mismanagement and misconduct of a charitable organisation, the future charity commission should have power, in respect of a particular charity under investigation, to investigate the charity's funding, property and activities and to obtain relevant information, including documents, records, books and accounts from the charity. During the course of such investigations, there should be appropriate safeguards to ensure confidentiality.

### 3. Interference into Religion ?

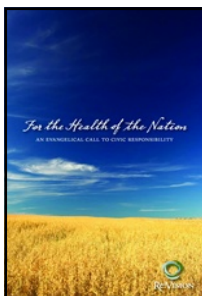
- Normally financial control confers power (“Those who pay decide”) and there is much scope for using conditions of negative regulation to require religious bodies to adhere to particular principles and practices under the guise of quality control.
- Historically, the government has not intruded into the religious activities of religious charities. However, the Charity Law paved the way for the direct interference of the government in the activities and conduct of religious associations.



## Case : Churches Together In England

Date of Review : 15 November 2006

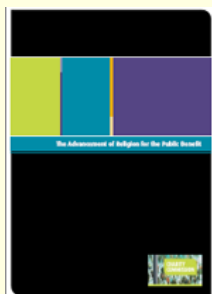
1. Clarifying the Trustees Role in relation to the Forum and Enabling Group.
2. Distinguishing when the enabling group is acting as a stakeholder forum and general meeting.
3. Review of the rules.
4. Trustee role descriptions.
5. Continuation of Strategic Plan.
6. Formalised endorsement of the use of the charity's brand and logo.
7. Contingency plans for churches leaving CTE added to risk register.
8. Widening Impact measurement.



## For the Health of the Nation: An Evangelical Call to Civic Responsibility

- When government assists nongovernmental organizations as part of an evenhanded educational, social service, or health care program, **religious organizations receiving such aid do not become “state actors”** with constitutional duties.
- Courts should respect church autonomy in matters relating to doctrine, **polity, the application of its governing documents**, church discipline, **clergy and staff employment practices**, and other matters within the province of the church.

## Conflicting moral views



- “The Commission recognises that in many areas, including religion, **opinions can be divided.**”
- “There will also be occasions where the moral views of organisations will conflict but it is possible for each to be charitable for the public benefit.
- e.g. The Right of Abode to foreign domestic helpers, 2011

## Emerging issues

- Charities carry out missionary activities internationally or mainland China ?
- Some religious practices dangerous or damaging to mental or physical health ?
- Some religious practices encourage or promote intentional threats of violence or hatred towards others ?
- Can a charity that provides a place of worship restrict access?

## Conclusion

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- Definitions of terms : charity, religion, public benefit etc.
- Fear of control from the powerful Charity Commission
- Loss of the Third Place
- Regulations make religious organizations losing vitality to serve the community (e.g. lump sum grant from SWD)

## G.K. Chesterton *Orthodoxy*

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- When a religious scheme is shattered, it is not merely the vices that are let loose. The vices are, indeed, let loose, and they wander and do damage. But the virtues are let loose also; and the virtues wander more wildly, and the virtues do more terrible damage.
- The modern world is full of the old Christian virtues gone mad. The virtues have gone mad because they have been isolated from each other and are wandering alone. Thus some scientists care for truth; and their truth is pitiless. Thus some humanitarians only care for pity; and their pity (I am sorry to say) is often untruthful.

