Legal Developments

JAMES PHILLIPS, *Editor*
Faculty of Law, University of Toronto

No "Legal Developments" section appeared in either of the last two issues of *The Philanthropist*, so there is plenty to talk about on this occasion. As everybody in the charity community probably knows, in February 1999 the Supreme Court of Canada handed down its judgment in *Vancouver Society of Immigrant and Visible Minority Woman* v. *Minister of National Revenue*.[1] The decision is the subject of further comment in this journal [see pp. xx-xx] and therefore will not be discussed here in any detail. Suffice it to say that the Court, by a 4–3 majority, rejected the appeal against Revenue Canada's refusal to register the organization. More generally, all the judges rejected any suggestion that significant change to the definition of charity under the *Income Tax Act* could come from the courts; both the majority judgment of Iacobucci J. and the dissenting judgment of Gonthier J. upheld the existing reliance on the *Pemsel*[2] test and, to a lesser extent, the *Statute of Elizabeth*.[3]

There have been other decisions of significance to the charitable community since this column last appeared, and they are briefly reviewed here.

Vicarious Liability of Charitable Organizations for Employee Torts

Two major decisions were delivered by the Supreme Court of Canada in June 1999, dealing with the vicarious liability of charitable organizations for torts committed by their employees. The principal case is *Bazley* v. *Curry*,[4] which involved a suit launched by Patrick Bazley for sexual abuse committed by Curry while the latter was employed at a Vancouver residential facility for emotionally disturbed children run by the Children's Foundation (the Foundation). There was no question that the abuse had taken place; Curry, now dead, was convicted of 19 counts of sexual assault in 1992, two of them related to Bazley. The issue was whether Bazley could sue the Foundation, not on the grounds that it was negligent (that question was not litigated), but on the basis that, assuming it was not negligent, it was in any event vicariously liable for Curry's torts. This is the first time that the Court has dealt with vicarious liability for sexual abuse, although a number of cases have come before the lower courts.[5] The significance of the litigation for charities whose employees may commit such acts was exemplified by the fact that a large number of organizations obtained status as intervenors before the Supreme Court, including the Canadian Conference of Catholic Bishops, other church organizations, and First Nations' groups.

The Supreme Court divided the issues into two principal questions: could employers be held vicariously liable for employees' sexual assaults on people in their care and, if so, should there be an exemption for nonprofits? On the first question, McLachlin J. provided an extensive review of the prior law on employer liability for employee torts in general. It provided that employers were liable in two kinds of situations. First, where the employees' acts are authorized by the employer. There was no question that this was the case here. Second, where the employee commits "unauthorized acts" which are "so connected with authorized acts that they may be regarded as modes (albeit improper modes) of doing an authorized act".[6] McLachlin J. acknowledged that this was a test easy to state but very difficult to apply and formulated a two-part analysis to resolve the difficulty. She noted that the first stage should be an examination of the prior case law to "determine whether there are precedents which unambiguously determine on which side of the line" the case falls.[7] Not surprisingly, her review of employer liability cases concluded that no such determination could be made. Not only was there very little jurisprudence on vicarious liability for sexual assault torts,[8] there were no unifying principles to explain the kinds of situations in which liability had been imposed in the past.

Second, and this was the crucial departure from past law and the most important aspect of the case, she promulgated a second stage to resolve ambiguous cases: the courts "should determine whether vicarious liability should be imposed in light of the broader policy rationales behind strict liability".[9] These policy consideration were twofold. First, "the concern to provide a just and practical remedy to people who suffer as a consequence of wrongs perpetrated by an employee".[10] This general policy sought to achieve compensation but to do so in a fair way. What made it fair to impose liability on a non-negligent employer was the fact that "[t]he employer puts in the community an enterprise which carries with it certain risks" and when those risks "materialize and cause injury to a member of the public despite the employer's reasonable efforts, it is fair that the person or organization that creates the enterprise, and hence the risk, should bear the loss". McLachlin J. thought this proposition fair in itself but also noted that it was "buttressed" by the fact that "the employer is often in the best position to spread the losses through mechanisms like insurance and higher prices".[11]

The second major policy consideration was "deterrence of future harm". That is, even if the employer was not negligent, it was nonetheless "often in a position to reduce accidents and intentional wrongs by efficient organization and supervision".[12] Here McLachlin J. quoted with approval a passage from the trial judgment in *Jacobi* v. *Griffiths*,[13] the companion case heard by the Court on vicarious liability for sexual torts:

> If the scourge of sexual predation is to be stamped out, or at least controlled, there must be powerful motivation acting upon those who control institutions engaged in the care, protection and nurturing of children. That motivation will not...be sufficiently supplied by the likelihood of liability in negligence.

The Court summarized its rule on vicarious liability for unauthorized acts as follows:[14]

> The fundamental question is whether the wrongful act is sufficiently related to conduct authorized by the employer to justify the imposition of vicarious liability. Vicarious liability is generally appropriate where there is a significant connection between the creation or enhancement of a risk and the wrong that accrues therefrom, even if unrelated to the employer's desires. Where this is so, vicarious liability will serve the policy considerations of provision of an adequate and just remedy and deterrence... Once engaged in a particular business, it is fair that an employer be made to pay the generally foreseeable costs of that business. In contrast, to impose liability for costs unrelated to the risk would effectively make the employer an involuntary insurer.

This still left the issue of what constitutes a "significant connection" between the employment and the tort. The Court asserted that "[i]ncidental connections ... like time and place (without more), will not suffice"; there must always be "a connection or nexus between the employment enterprise and that wrong".[15] That connection, however, was "broad" – it was not necessary that the employer be actually negligent or even close to it.[16] McLachlin J. offered a non-exhaustive list of factors which could determine the sufficiency of the connections:[17]

(a) the opportunity that the enterprise afforded the employee to abuse his or her power;

(b) the extent to which the wrongful act may have furthered the employer's aims (and hence be more likely to have been committed by the employee);

(c) the extent to which the wrongful act was related to friction, confrontation or intimacy inherent in the employer's enterprise;

(d) the extent of power conferred on the employee in relation to the victim;

(e) the vulnerability of potential victims to wrongful exercise of the employee's power.

Finally, the Court expanded on how trial courts might apply these factors in a sexual assault case:[18]

> It is obvious that the risk of an employee sexually abusing a child may be materially enhanced by giving the employee an opportunity to commit the abuse. There are many kinds of opportunity and the nature of the opportunity in a particular case

must be carefully evaluated in determining whether it has, in fact, materially increased the risk of the harm that ensued. If an employee is permitted or required to be with children for brief periods of time, there may be a small risk of such harm...If an employee is permitted or required to be alone with a child for extended periods of time, the opportunity for abuse may be greater. If in addition to being permitted to be alone with a child for extended periods, the employee is expected to supervise the child in intimate activities like bathing or toiletting, the opportunity for abuse becomes greater still. As the opportunity for abuse becomes greater, so the risk of harm increases. The risk of harm may also be enhanced by the nature of the relationship the employment establishes between the employee and the child. Employment that puts the employee in a position of intimacy and power over the child (i.e., a parent-like, role-model relationship) may enhance the risk of the employee feeling that he or she is able to take advantage of the child and the child submitting without effective complaint. The more the employer encourages the employee to stand in a position of respect and suggests that the child should emulate and obey the employee, the more the risk may be enhanced. In other words, the more an enterprise requires the exercise of power or authority for its successful operation, the more materially likely it is that an abuse of that power relationship can be fairly ascribed to the employer.

Having delineated this general approach to vicarious liability, the Court dealt quite briefly with the second major question: should there be an exemption for nonprofits? It categorically rejected the notion. In response to the suggestion that it was unfair to impose liability on nonprofits which performed important public services, it offered sympathy and a simple assertion that as between the charity and the victim, the former should bear the loss. On this calculus, "fairness" to the organization was beside the point. In response to the argument that nonprofits are less able to control the conduct of volunteers, it simply asserted that a distinction between employees and volunteers was irrelevant and insisted that organizations had a duty to screen and supervise volunteers. Finally, in response to the suggestion that the practical consequences for the charitable sector would be devastating because organizations like the Foundation would be forced to suspend operations and that society would thereby be the loser in the long run,[19] the Court gave much the same answer as it gave to the first argument: it came back to the victim, and called "[t]he suggestion that the victim must remain remediless for the greater good" a "crass" one.[20]

This is not the place for an extensive commentary on *Bazley*, but three brief points may be made. First, the Court is to be applauded for acknowledging the policy rationales underlying vicarious employer liability and departing from a law that tended to conceal these in phrases like "unauthorized modes". Second, the test as formulated, especially the specific set of factors which go towards establishing a sufficient connection, appear to make it relatively easy to claim against all residential care facilities, especially those for young children. Factors (a), (d) and (e) in particular set up a stringent standard for those seeking to escape liability. Indeed in this instance the Court had little difficulty in

finding that, on the facts as established at trial, the Foundation was liable. However, it is also noteworthy that in the first case decided under the new test, *Jacobi* (discussed immediately below), the Court split on how it should be applied to a given set of facts.

Third, the Court is surely right to have rejected some kind of exemption or other special status for nonprofits. Our concern must focus on the victims.[21] Moreover, the sector is nothing without public trust and that trust will be soon destroyed by a sense that it wants this kind of immunity. If indeed sexual abuse claims are going to make it difficult for some organizations to operate, as has been claimed, there are at least two possible responses. First, one might say in the case of organizations against whom many claims are made, good. Second, perhaps it is time for governments to stop treating the charitable sector as a convenient and cheap way to evade their own responsibilities for the social safety net; either do the job themselves or fund (insure) the sector properly.

The second case, *Jacobi*, involved a claim against the Vernon Boys and Girls Club [the Club] for sexual abuse committed by one of its employees. The Club was a recreational one, not a residential facility as in *Bazley*, and the sexual abuse in question had almost all occurred during various sports and other outings, with Griffiths often able to lure his victims to his house. *Jacobi* is less interesting legally than *Bazley*, because it simply employs the test laid out in the latter case. However, while *Bazley* produced unanimity on the test and the result, *Jacobi* displays disagreements among the judges. To summarize briefly a lengthy debate, that disagreement revolved around the application of the factors going to whether there was a sufficient connection between the employment and the tort. McLachlin, L'Heureux-Dube and Bastarache JJ., dissenting, thought there was. Although all factors pointed to liability, they stressed in particular the third factor, that the Club was much more than a sports league, it "took as its function the goal of guidance and moral direction to youth" and "positively encouraged an intimate relationship to develop between Griffiths and his young charges".[22]

The four judges who made up the majority provided, per Binnie J., a much longer and more detailed judgment, in the course of which they worried that if the Club were held liable in this case "then it would be difficult to imagine many enterprises whose mandate includes mentoring or role models for children being able to escape vicarious liability...for criminal sexual abuse by an employee".[23] Although Binnie J.'s judgment expressed some mild reservations about the Bazley test, it accepted it, and departed from McLachlin J. largely on the application of the "sufficient connection" factors to the case. Binnie J. concentrated on the first – the provision of opportunity – and concluded that the chain of events which actually led to the abuse "constitute[d] independent initiatives on the part of the employee" and that therefore the "ultimate misconduct" was "too remote" to justify employer liability.[24] He also thought

that to find that Griffiths was in a position of "intimacy", one in which "trust and power" were given to him, was to stretch the meaning of those words too far. Griffiths' role required nothing more than a "rapport" with the children; it was very different to providing intimate parenting in a residential setting.[25]

Jacobi demonstrates that the new rules laid down by the Court on employer vicarious liability will not, in fact, amount to liability in all cases of sexual assault. While, as noted above, it seems likely that organizations which run residential facilities for the vulnerable will often be liable, others, who offer after-school or other forms of non-residential programs, especially those conducted largely in groups and in public, will often be able to argue that there was an insufficient connection between the employment and the abuse. The doomsday predictions voiced by some in the charitable community seem, therefore, rather exaggerated.

Abortion and Political Purposes – Again

Earlier this year the Federal Court of Appeal rendered judgment in *Alliance for Life* v. *Minister of National Revenue*.[26] Alliance for Life (AFL) had appealed Revenue Canada's decision to revoke its registration, and the Court (Stone J.A. for himself and Linden and McDonald JJ.A.) unanimously rejected that appeal. In many ways this is a companion decision to *Human Life International of Canada* v. *Minister of National Revenue*,[27] as both involved revocation of the charitable registration of essentially anti-abortion organizations and both involved the Court in discussions of whether the organization's purposes and activities came under a recognizable head of charity and of whether they were too political to be charitable. The Court held that AFL was not charitable under the second head of charity – advancement of education – nor under the fourth – other purposes beneficial to the community. The Court also held that AFL offended the political purposes doctrine and rejected a series of other arguments made by the appellant.[28] The decision is a long one, with fairly detailed facts, and involves a number of legal issues so cannot be given a full comment in a format like this. Four particular points are nonetheless worth noting.

First, the Federal Court of Appeal had to assess whether AFL's activities constituted education under the new meaning given to that term by the Supreme Court in *Vancouver*. The Supreme Court had held that previous Federal Court of Appeal decisions had employed too restrictive a definition of "education" in the category "advancement of education". Henceforth it should not be limited to the "formal training of the mind" or "the improvement of a useful branch of human knowledge". Rather, according to Iacobucci J.'s majority judgment.[29]

> There seems no logical or principled reason why the advancement of education should not...include more informal training initiatives, aimed at teaching necessary life skills or providing information towards a practical end, so long as these

> are truly geared at the training of the mind and not just the promotion of a particular point of view...[S]o long as information or training is provided in a structured manner and or a genuinely educational purpose...and not solely to promote a particular point of view or political orientation, it may properly be viewed as falling within the advancement of education...[T]here is no good reason why non-traditional activities such as workshops, seminars, self-study and the like should not be included alongside traditional, classroom-type instruction.

Much time was devoted by the Federal Court of Appeal to whether certain activities of AFL which Revenue Canada had objected to were educational under this revised definition. These cannot be fully summarized here and some were found unobjectionable by the Court. The principal concern was that APF put out, to schools and elsewhere, material propagating its opposition to abortion. Stone J.A. found that most of these were "clearly aimed at promoting the appellant's avowed viewpoints on such issues as abortion or euthanasia" and were one-sided. They did not therefore "genuinely advance[d] education", even in the expanded sense of the term mandated by the Supreme Court.[30] They put forward one side of the debate rather than providing information to educate Canadians engaged in that debate.

The second aspect of the case worth noting, related to the above, was the discussion of both the organization's purposes and its activities, again something newly-mandated by the Supreme Court. Both judgments in *Vancouver* discussed in detail whether Revenue Canada and the courts were required to look at the purposes or the activities of an organization. The majority held that both were relevant. Overall purposes should be looked at first and, provided they were charitable, activities will generally only be important if they show that the organization does things that are not in pursuit of those purposes.

In the Federal Court of Appeal, Stone J.A.'s judgment follows this method of analysis. He first discussed whether AFL's purposes, as listed in the organization's amended corporate objects,[31] were charitable. The amended objects read as follows:[32]

1. To educate Canadians on human development, human experimentation, reproductive technologies, adoption, abortion, chastity, euthanasia, and similar issues affecting human life;
2. To provide counselling and referral services to the public with respect to unforeseen pregnancies and post abortion trauma;
3. To provide educational services and materials for member groups.

Although it is not entirely clear, Stone J.A. seems to have been prepared to accept that these purposes were charitable, in part because Revenue Canada itself had accepted the amended objects. But he then engaged in the lengthy analysis of the activities of AFL discussed above, and concluded that many either did not contribute to the charitable purposes or were in pursuit of political

objects. The third issue in *Alliance for Life* noteworthy of comment was the political purposes doctrine. Stone J.A. held that AFL engaged in political activities. That is, the same one-sidedness that made AFL's material not educational also made it political. Here Stone J.A. drew on the Court's ruling in *Human Life International* that advocacy of opinions on important social issues is a political activity. Nor, in the circumstances, could such advocacy be considered ancillary or incidental to some primary charitable purpose; rather, it represented AFL's "true mission", which was "advocating its strongly held convictions on important social and moral issues in a one-sided manner to the virtual exclusion of any equally strong opposing convictions".[33] At the end of the day, AFL wanted to change the law in relation to a number of issues, especially abortion. This political objection applied equally to the discussion of whether AFL qualified under the fourth head of charity – other purposes beneficial to the community. As to the second, AFL's argument here, as summarized by the Court, was that it sought "to promote public health or to improve the moral or spiritual welfare of the community by informing the public that moral and spiritual principles are engaged in the debate about the use of contraception, sexuality and the termination of human life at any stage of its existence".[34] Stone J.A. accepted that the provision of health care services, broadly conceived, was charitable, and also that some of the services provide by AFL – a "helpline" for sufferers of post-abortion stress was specifically mentioned – might well be charitable. But the requirement was for exclusive charitability and AFL simply did not meet that test because so much of its activity was devoted to propagating its view of abortion law.

Fourth, and finally, it is worth noting that *Alliance for Life* raises again the issue of the consistency and transparency of Revenue Canada's administrative practice. The decision in *Alliance for Life* primarily rests on the finding that AFL pursued political purposes and it will obviously not please those who wish to see the political purposes doctrine done away with, or at least substantially eroded to permit something called "advocacy". But whether or not one agrees with the underlying rationale for a political purposes doctrine, it is surely uncontroversial to suggest that such a doctrine should be reflected in Revenue Canada practice with consistency. Yet *Alliance for Life* shows that it is not or, at least that it has not always been the case in the past. The initial 1973 objects of the organization, as laid out in its constituting documents, were in part:[35]

1) To promote respect for all human life from the moment of conception onwards;
2) To exemplify the right to life which is the basic human right on which all other rights depend;
3) To uphold and defend this right to life, both before and after birth;
4) To contribute to the understanding of Canadians that society has a duty to protect this right by legislation.

It is hard to escape the conclusion that AFL, like Human Life International, was devoted to the anti-abortion cause. Whether one agrees with that cause or not, it is surely a political cause, at least as much, if not more so, than the causes found wanting in other decisions of the Court.[36] Yet Revenue Canada registered the organization in 1973 and AFL operated as a charity, with all the attendant benefits, for almost 20 years, before any question of its suitability for charitable status was raised. Decisions like this, when they do come to light, surely make it difficult for Revenue Canada, or any other defender of the political purposes doctrine, to uphold it, whatever its theoretical validity – a point I recently made in a prior edition of *The Philanthropist* in relation to the *Human Life International* decision.[37] If some organizations are let in while essentially similar ones, by which I mean essentially political ones, are kept out, the system will lose its legitimacy.[38]

There is, therefore, reason to be concerned about the transparency of the registration process. Revenue Canada began to investigate AFL in the late 1980s, presumably because someone complained about its activities. Without such complaints and consequent investigations the fact that some political organizations are registered remains concealed. Knowledge leaks out, of course, when opponents put two and two together but the moves towards publicizing decisions and the reasons for them, which Revenue Canada is undertaking, are clearly welcome. It is to be hoped they will reduce the gap between perception (the law of charity as stated in Revenue Canada publications and the decisions of the Federal Court of Appeal) and reality (administrative registration decisions). Without this change, we have for the last 20 years operated with a system in which positive decisions by Revenue Canada are kept confidential, while negative ones see the light of day through the appeal process. This deeper understanding of what Revenue Canada does will not only be beneficial for the public and the charity community, it might also be educational for the judges of the Federal Court of Appeal. If one is only able to read Revenue Canada's views and the decisions of the Federal Court of Appeal on appeals from a refusal to register, one would get the impression that the boundary between charity and politics is a secure and well-guarded one. The *Human Life International* and *Alliance for Life* cases are disturbing for what they say about that boundary in its administrative, rather than judicial, guise. One suspects the Court might think differently about its appeal decisions if it had a fuller understanding of which organizations get registered as well as of which ones do not.

More on *Cy-Près* – Only in America

Recent "Legal Developments" have contained a number of items related to *cy-près* litigation in the USA. In 1909 Milton Hershey, of Hershey Chocolate fame, established a school for the "maintenance, support and education" of as many poor white orphan boys as could be accommodated and in 1918 he

endowed it with some $60 million worth of stock, almost his entire fortune.[39] The Milton Hershey School currently enrols just over 1,000 students, both boys and girls, from all racial groups but most of its students are from single-parent families rather than being orphans.

The problem, if one can call it that, is that the endowment is now some $5 billion and the trustees cannot come close to spending the income. They do manage to spend some $64 million a year, but currently have a $752 million surplus. They have tried to spend more. The school has 650 full-time employees and all the facilities one could wish for. Currently some $227 million is being spent on new construction projects, including a 100,000 volume library. Students wear the latest fashions, and altogether the school spends some $60,000 a year per pupil. Although enrolment is planned to increase to 1,500, administrators think that going higher than that would "jeopardize the close-knit atmosphere".

In these circumstances the school wants to use some of the money for other purposes. Specifically, they have proposed establishing a research institute to study the problem of teaching needy children. To bring this about they have, of course, gone to court to vary the terms of the original charitable trust – a *cy-près* application. In the USA, as in Canada, this requires a finding that those terms have become either impossible or impracticable to carry out. The argument is that the trust has failed because the money cannot all be spent on the purpose. This is therefore a case very similar to the well-known Buck Estate litigation, in which a large sum of money – some $300 million – was left for the needy of Marin County, California, a region that soon became one of the wealthiest areas of the country. The courts rejected an attempt to have it used for other parts of California where it was more needed.

Beyond its simply being an interesting story, there are three points worth noting about the Hershey trust case. First, an inability to spend money on the charitable purpose originally laid down is a fairly common reason for a *cy-près* type application; somebody might leave money for a hospital, for example, only to have the state take over the funding of all such institutions. What is unusual here, certainly in Canadian terms, is the amount involved, not the principle.

Second, the case raises an issue familiar to *cy-près* cases – the role that should be played by the donor's original intent. According to the newspapers there has been much argument among the trustees, and some considerable divisiveness in the community, about what Mr. Hershey would have wanted. Yet that, of course, is largely irrelevant, certainly in Canadian law. It will only become a matter of legal relevance if the trust is found to be impossible or impracticable and if it is considered to be an issue of "initial" rather than "subsequent" failure. But this trust has been dedicated to charity, the funding of a school for children from disadvantaged backgrounds, for over four decades. In those circumstances the law says simply that, absent exceptional circumstances such as a

prescribed gift, in the event of failure, the money will go to some similar purpose. Of course a donor's intent does sometimes enter into the discussion of what a similar purpose is, and that seems to be the case here. Some trustees think that establishing an institute would be very much against Mr. Hershey's wishes, since he apparently, and obviously quite unreasonably, once stated that he did not wish to "turn out a race of professors".

Third, like the Buck Estate litigation, this case also raises the question of whether it should be possible to vary charitable trusts so that they can be applied to purposes thought more pressing today than when the trust was created. Balancing fidelity to donors' wishes with social needs is not an easy task but the law does recognize that situations do arise where the former must give way to the latter – for example, the elimination of racial conditions, as was done earlier for the Hershey trust. Perhaps cases like this one will tilt the argument in favour of some broader variation jurisdiction. According to the newspaper account, this is what is being proposed by the U.S. National Conference of Commissioners on Uniform State Laws – a provision that would permit variation of charitable trusts if the purpose has become "wasteful".

FOOTNOTES

1. [1999] 1 S.C.R. 10 [hereafter *Vancouver*].
2. [1891] A.C. 531.
3. (1601), 43 Eliz. I, c. 4 (U.K.).
4. [1999] S.C.J. No. 35 [hereafter *Bazley*]. Future references are to paragraph numbers in the judgment.
5. In addition to the two judgments discussed here, see also *McDonald* v. *Mombourquette* (1996), 152 N.S.R. (2d) 109 (C.A.); *W.R.B.* v. *Plint* (1998), 161 D.L.R. (4th) 538 (B.C.S.C.); *Kaskiw* v. *Pornbacher*, unreported, January 9, 1997, British Columbia Supreme Court.
6. *Bazley, supra*, footnote 4, para. 10.
7. *Ibid.*, para. 15.
8. The only case cited from a court of high authority was *S.T.* v. *North Yorkshire County Council*, [1999] 1 I.R.L.R. 98 (C.A.).
9. *Bazley, supra*, footnote 4, para. 15.
10. *Ibid.*, para. 30.
11. *Ibid.*, para. 31.
12. *Ibid.*, para. 32.
13. [1999] S.C.J. No. 36 [hereafter *Jacobi*]. The quotation is at *Bazley*, para. 32.
14. *Bazley, supra*, footnote 4, para. 41.
15. *Ibid.*, paras. 37 and 41.
16. *Ibid.*, para. 39.
17. *Ibid.*, para. 41.
18. *Ibid.*, paras. 43-44.

19. This kind of concern has been voiced in the media and the charitable community also. See, for just one example, the "Cover Story" item on the Charity Village website for June 6, 1998: "Has BC Court Ruling Sounded the Death Nell [sic] for Kids' Programs".
20. *Bazley, supra*, footnote 4, para. 53.
21. Such people have often been victimized twice already: by the life circumstances that placed them in the institutions and by their abusers. An exemption for nonprofits would, in my view, make it three.
22. *Jacobi*, supra, footnote 13, para. 17.
23. *Ibid.*, para. 30.
24. *Ibid.*, para. 81.
25. *Ibid.*, para. 82.
26. Unreported, May 5, 1999; [hereafter *Alliance for Life*]. Future references are to paragraph numbers in the judgment.
27. [1998] 3 F.C. 202 (C.A.) [hereafter *Human Life International*]. For a detailed discussion see J. Phillips, "Case Comment: *Human Life International* v. *Minister of National Revenue*" (1999), 14 *Philanthrop.* No. 4, pp. 4-16.
28. These were essentially the same as were made in *Human Life International.* In particular, the argument that the political purposes doctrine offends the constitutional guarantee of freedom of speech was, as before, summarily rejected. For a discussion of it see Phillips, *supra*, footnote 27, pp. 10-11.
29. *Vancouver, supra*, footnote 1, pp. 116-117.
30. *Alliance for Life, supra*, footnote 26, para. 57.
31. The initial objects of AFL are laid out in detail at footnote 35. When it was audited in the late 1980s and early 1990s it agreed to amend those objects and alter some of its activities. For the detailed history of the dealings between Revenue Canada and AFL see *ibid.*, paras. 3-26.
32. *Ibid.*, para. 17.
33. *Ibid.*, para. 69.
34. *Ibid.*, para. 44.
35. *Ibid.*, para. 6.
36. See, in particular, *Positive Action Against Pornography* v. *Minister of National Revenue* (1988), 49 D.L.R. (4^{th}) 74 (F.C.A.) – in which an organization sought to change the laws relating to pornography.
37. See Phillips, *supra*, footnote 27.
38. Another recent example of what some see as inconsistency in this regard is the case of the Fraser Institute, a right-wing "think tank" which is charitable and, it might be argued, no less political than the organization refused status in *Briarpatch Inc.* v. *The Queen*, [1996] 2 C.T.C. 94 (F.C.A.). For newspaper coverage of the Fraser Institute's charitable status, see *National Post*, 31 August and 6 September 1999.
39. All the information here is from the *Wall Street Journal*, 12 August 1999.