Michaelmas Term
[2013] UKSC 77
On appeal from: [2012] EWHC 3635

JUDGMENT

R (on the application of Hodkin and another) (Appellants) *v* Registrar General of Births, Deaths and Marriages (Respondent)

before

Lord Neuberger, President
Lord Clarke
Lord Wilson
Lord Reed
Lord Toulson

JUDGMENT GIVEN ON

11 December 2013

Heard on 18 July 2013

Appellant	*Respondent*
Lord Lester of Herne Hill QC Naina Patel (Instructed by Withers LLP)	James Strachan QC (Instructed by Treasury Solicitors)

LORD TOULSON (with whom Lord Neuberger, Lord Clarke and Lord Reed agree)

1. Louisa Hodkin (the first appellant) and her fiancé, Alessandro Calcioli, would like to be married in the church which they regularly attend at 146 Queen Victoria Street, London. The minister would be pleased to perform the ceremony, but there is a legal obstacle. The church to which they belong is part of the Church of Scientology. In *R v Registrar General, Ex p Segerdal* [1970] 2 QB 697 the Court of Appeal held in a similar case that a different church within the Church of Scientology was not a "place of meeting for religious worship" within the meaning of section 2 of the Places of Worship Registration Act 1855 (18 & 19 Vict c 81) ("PWRA"), with the result that a valid ceremony of marriage could not be conducted there. The central question on this appeal is whether the decision in *Segerdal* should be upheld.

2. Miss Hodkin was born and brought up in a family of Scientologists. Her brother, David, was married at the Church of Scientology in Edinburgh. This was a valid marriage under Scots law because the Registrar General for Scotland authorises ministers of Scientology to perform marriages in Scotland, but the law in England is different from that in Scotland.

The proceedings

3. The proprietor of the church at 146 Queen Victoria Street is the second appellant. On 31 May 2011 a trustee of the church applied on behalf of the congregation to the Superintendent Registrar of Births, Deaths and Marriages at the Islington and London City Register Office to register the church as a "place of meeting for religious worship" under PWRA and as a building "for the solemnization of marriages therein" under the Marriage Act 1949. The application was supported by statutory declarations made by Miss Hodkin and by the minister of the church, Mrs Laura Wilks. It was also supported by a certificate signed by 24 householders stating that it was their usual place of worship (as required by section 41 of the Marriage Act, to which I refer below). The application was referred to the Registrar General and rejected. The refusal letter stated that the Registrar General was bound by the decision in *Segerdal* and therefore unable to proceed with the application.

4. The appellants' claim for judicial review of the Registrar General's decision was dismissed by Ouseley J for reasons set out in a reserved judgment: [2012] EWHC 3635 (Admin), [2013] PTSR 875. It is apparent from his analysis that he

was sympathetic to the appellants' claim but considered himself bound by *Segerdal* to reject it. He concluded on the evidence that Scientology is a religion (a point which in *Segerdal* had not been explicitly decided), but that the stumbling block for the appellants was the way in which the Court of Appeal had defined "religious worship" as requiring an object of veneration to which the worshiper submitted. He said at [84] that it might now be that a different approach should be taken to "religious worship", but that he remained bound by the Court of Appeal's decision. He did not feel that he could "slip free on the basis of better evidence", as he put it at [87], although he recognised that a higher court might come to a different decision on the evidence, since he did not consider that the evidence showed there to have been any essential change since *Segerdal* in the nature and practices of Scientology. Nor was he persuaded by arguments that articles 9, 12 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms or the provisions of the Equality Act 2010 made any difference.

5. Ouseley J certified that his judgment involved a point of law of general public importance which satisfied the conditions for a leapfrog appeal to the Supreme Court, namely "the meaning and application of section 2 of the Places of Worship Registration Act 1855 to the beliefs and practices of the Scientologists at the London Church Chapel and to other religions which may practise in similar ways". Leave to appeal was given by this court.

The legislation

6. During the period from the reformation until the mid-eighteenth century, apart from occasional legislative interventions, it was left to the Church of England to lay down the rules about how marriages could be solemnised and what records were to be kept. The rules of the Church permitted extreme informality. A valid marriage could be contracted by simple words of consent in a church or elsewhere and with or without witnesses. The laxity of the law led to uncertainty and abuse until Lord Hardwicke LC persuaded Parliament to pass the Clandestine Marriages Act 1753 (26 Geo 2, c 33). The Act laid down procedures for the solemnisation and recording of marriages, over which the Church of England was given a virtual monopoly. There were exceptions for the marriages of Quakers and Jews, but others such as Roman Catholics could only be married in an Anglican church in accordance with the Anglican rite. Russell Sandberg aptly comments in *Law and Religion* (2011), p 25, that the law mirrored the approach of Parson Thwackum in Henry Fielding's *Tom Jones*, published in 1749:

> "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."

7. Discrimination against other forms of religion was not limited to the marriage laws. Under section 19 of the Toleration Act 1688 (1 Will & Mary, c 18) no congregation for religious worship was permitted unless the place of the meeting was certified to the bishop of the diocese, the archdeacon or to quarter sessions, and was registered in the bishop's or archdeacon's court or recorded at quarter sessions.

8. However, by degrees toleration came to prevail. Under the Places of Religious Worship Act 1812 (52 Geo 3, c 155) registration for places of worship of Protestants was required only for meetings of more than 20 persons, other than the immediate family or servants of the person in whose house the meeting was to be held. The Births, Deaths and Marriages Registration Act 1836 (6 & 7 Will 4, c 86) was an important step because it established the office of Registrar General and set up a scheme for state registration of marriages under the Registrar General's direction. At the same time the Marriage Act 1836 (6 & 7 Will 4, c 85) laid down the formalities for a valid marriage. Section 18 of that Act for the first time permitted a building which had been certified according to law as a place of religious worship to be registered as a place for the solemnisation of marriages.

9. Drawing on the Parliamentary debates, Professor Stephen Cretney has described the philosophy underlying the 1836 legislation in *Family Law in the Twentieth Century: A History* (2003), p 9:

> "The 1836 Act was based on a very clear analysis of the respective interests of the Church and State in marriage. The State had a proper interest in preventing clandestine marriages and in being able to determine whether or not a person was married, with all the legal consequences which followed from that status; and the state was therefore entitled to insist on a universal and efficient system for the registration of marriages. But so far as the actual celebration of the marriage, the state's concern was limited to ensuring that the ceremony be recognised by both parties as binding."

10. In 1852 the Places of Religious Worship Act 1812 was modified by substituting the Registrar General for the bishop, archdeacon or quarter sessions, for purposes of certification and registration. In 1855 came the PWRA with which we are concerned and which remains largely in force.

11. Section 2 provides:

> "Every place of meeting for religious worship of Protestant Dissenters or other Protestants, and of persons professing the Roman Catholic religion, … not heretofore certified and registered or recorded in manner required by law, and every place of meeting for religious worship of persons professing the Jewish religion, not heretofore certified and registered or recorded as aforesaid, and every place of meeting for religious worship of any other body or denomination of persons, may be certified in writing to the Registrar General of Births, Deaths and Marriages in England, through the superintendent registrar of births, deaths, and marriages of the district in which such place may be situate; … and the said superintendent registrar shall, upon the receipt of such certificate in duplicate, forthwith transmit the same to the said Registrar General, who, after having caused the place of meeting therein mentioned to be recorded as hereinafter directed, shall return one of the said certificates to the said superintendent registrar, to be re-delivered by him to the certifying party, and shall keep the other certificate with the records of the General Register Office."

12. Section 3 requires the Registrar General to keep a book recording all places of meeting for religious worship certified to him under the Act. Section 5 requires that on the delivery of every certificate to the superintendent registrar for transmission to the Registrar General, for the purpose of being recorded under the Act, the person delivering it is to pay a fee. The fee was originally set at 2s 6d. Since April 1998 it has been £28.00 (under the Registration of Births, Deaths and Marriages (Fees) Order 1997 (SI 1997/2939) Sch 1, para 1). Section 7 provides for a list of places registered under the Act to be published. Section 6 provides for the Registrar General to be notified if a certified place of worship has ceased to be used as such. Section 8 provides for the cancellation of any record of certification of premises which have ceased to be used as a place of meeting for religious worship, and for the removal of the premises from the list kept under section 7.

13. The current provisions for giving legal effect to marriages in places of worship registered under PWRA are contained in the Marriage Act 1949, as amended.

14. Section 26(1), as amended by section 161(3) of the Immigration and Asylum Act 1999, provides:

> "Subject to the provisions of this Part of this Act the following marriages may be solemnised on the authority of two certificates of a superintendent registrar –

(a) a marriage in a registered building according to such form and ceremony as the persons to be married see fit to adopt …"

Section 41 (enacting in substance section 18 of the Marriage Act 1836) makes provision for a building which has been legally certified as a place of religious worship to be registered for the solemnisation of marriages upon an application made by the proprietor or trustee of the building and supported by a certificate signed by at least 20 householders verifying that the building is used by them as their usual place of public religious worship.

Section 44(1), as amended by section 169 of, and para 23 of Schedule 14 to, the Immigration and Asylum Act 1999, provides:

> "Subject to the provisions of this section, where the notices of marriage and certificates issued by a superintendent registrar state that a marriage between the persons named therein is intended to be solemnised in a registered building, the marriage may be solemnised in that building according to such form and ceremony as those persons may see fit to adopt;
>
> Provided that no marriage shall be solemnised in any registered building without the consent of the minister or one of the trustees, owners, deacons or managers thereof, or in the case of a registered building of the Roman Catholic Church, without the consent of the officiating minister thereof."

Evidence

15. Mrs Wilks has been a minister of the Church of Scientology since 1995 and the minister of the church at 146 Queen Victoria Street since 2006. She has conducted many congregational services in its chapel. In her statutory declaration she gives an account of the history, beliefs and practices of Scientology. Her evidence was not challenged and so may be taken as accurate for present purposes. In the judicial review proceedings the appellants also filed other evidence about the history, nature and practices of Scientology, but it is sufficient to refer to the evidence of Mrs Wilks, as the minister of the chapel which the appellants wish to have registered as a place of religious worship.

16. The first Church of Scientology was founded in 1954 in the United States by L Ron Hubbard, and the doctrine of the church is based on his writings and recordings. There are now thousands of Scientology churches in over 160

countries. Scientology involves belief in and worship of a supernatural power, also known as God, the Supreme Being or the Creator. Understanding of the Creator is attainable only through spiritual enlightenment, and the goal of Scientology is to help its members to obtain such enlightenment. Scientology holds that the accomplishment of spiritual salvation is possible only through successive stages of enlightenment. In this respect it bears some similarity to Buddhism. Ascent through these spiritual states brings the believer closer to God.

17. L Ron Hubbard identified eight human impulses which he termed dynamics of existence. In ascending order they are the urge of survival as an individual, the urge of survival through one's family, the urge of group survival, the urge of survival for all humankind, the urge of survival for all life forms, the urge of survival of the physical universe, the urge of survival for all spiritual beings and lastly the urge of existence as infinity. God is infinity but Scientologists do not describe God in anthropomorphic terms. All Scientology practices are aimed ultimately at complete affinity with the eighth dynamic or infinity.

18. Congregational services are described by Mrs Wilks as follows:

> "Congregational services are an important feature in Scientology Churches. These are what occurs in our chapel. Such services are occasions where we commune with the Infinite and reach with reverence and respect towards the Supreme Being. They always include a prayer to the Supreme Being in which the whole congregation joins. There is also a reading of the Creed of the Church of Scientology, in which the pre-eminent position of God is affirmed. All congregational services are open to the public. Scientologists also perform naming ceremonies, funerals and weddings and these occasions are open to Scientologists, their families and the public."

19. The creed states in part:

> "We of the Church believe:
>
> That all men of whatever race, colour or Creed were created with equal rights;
>
> That all men have inalienable rights to their own religious practices and their performance;

…

That all men have inalienable rights to think freely, to talk freely, to write freely their own opinions and to counter or utter or write upon the opinions of others;

That all men have inalienable rights to the creation of their own kind;

That the souls of men have the rights of men;

…

And that no agency less than God has the power to suspend or set aside these rights, overtly or covertly.

…

And we of the Church believe:

That the spirit can be saved and

That the spirit alone may save or heal the body."

20. The prayer for total freedom begins:

"May the author of the universe enable all men to reach an understanding of their spiritual nature.

May awareness and understanding of life expand, so that all may come to know the author of the universe.

And may others also reach this understanding which brings Total Freedom."

21. The prayer goes on to elaborate on various freedoms and concludes:

> "Freedom to use and understand man's potential – a potential that is God-given and God-like.
>
> And freedom to achieve that understanding and awareness that is Total Freedom.
>
> May God let it be so."

22. Other standard features of congregational services are a sermon based on the works of L Ron Hubbard and a practice known as group auditing. This is led by the minister. Its aim is to help Scientologists to free themselves from material influences of the physical universe and so attain greater spiritual awareness.

Segerdal

23. In *Segerdal* the Church of Scientology challenged the refusal of the Registrar General to register its chapel at East Grinstead as a place of meeting for religious worship. The challenge was rejected by the Divisional Court (Lord Parker CJ, Ashworth and Cantley JJ), [1970] 1 QB 430, and their decision was upheld by the Court of Appeal (Lord Denning MR, Winn and Buckley LJJ) [1970] 2 QB 697.

24. The first argument for the Church was that the Registrar General's function in registering places certified to him was purely ministerial, and that he was not entitled to withhold registration on the ground that the premises were not in truth a place of meeting for religious worship. The argument was rejected on three grounds. First, as a matter of grammar, section 2 of PWRA did not provide that every place which was certified as a place of meeting for religious worship should be registered; but instead that every place of meeting for religious worship which was certified should be registered. This meant that the jurisdiction to register was dependent on the certificate being correct.

25. Secondly, this construction was consistent with the requirement under section 8 of PWRA for the Registrar General to cancel a record of certification if it should appear to his satisfaction that any certified place of meeting for religious worship had wholly ceased to be used as such. It would not make sense that the Registrar General should be obliged to register the premises in the first place if they were not truly being used as a place of meeting for public worship.

26. Thirdly, registration of a building as a place of meeting for public worship opened the door to other advantages, and Parliament could not be supposed to have intended that they were to be obtained merely upon the certificate of the persons interested in obtaining them, without any power on the part of the Registrar General to consider the accuracy of the certificate. I agree with Lord Wilson that the decision reached in *Segerdal* about the nature of the Registrar General's function was right for the reasons which he gives.

27. Dealing with the question whether the chapel was a place of meeting for religious worship within the meaning of the Act, Lord Denning said [1970] 2 QB 697, 707:

> "We have had much discussion on the meaning of the word "religion" and of the word "worship", taken separately, but I think we should take the combined phrase, "place of meeting for religious worship" as used in the statute of 1855. It connotes to my mind a place of which the principal use is as a place where people come together as a congregation or assembly to do reverence to God. It need not be the God which the Christians worship. It may be another God, or an unknown God, but it must be reverence to a deity. There may be exceptions. For instance, Buddhist temples are properly described as places of meeting for religious worship. But, apart from exceptional cases of that kind, it seems to me the governing idea behind the words "place of meeting for religious worship" is that it should be a place for the worship of God. I am sure that would be the meaning attached by those who framed this legislation of 1855."

28. Applying that test to the evidence before the court about the nature of Scientology, Lord Denning commented:

> "Turning to the creed of the Church of Scientology, I must say that it seems to me to be more a *philosophy* of the existence of man or of life, rather than a *religion.* Religious worship means reverence or veneration of God or of a Supreme Being. I do not find any such reverence or veneration in the creed of this church. … When I look through the ceremonies and the affidavits, I am left with the feeling that there is nothing in it of reverence for God or a deity, but simply instruction in a philosophy. There may be belief in a spirit of man, but there is no belief in a spirit of God."

29. Winn and Buckley LJJ gave concurring judgments. Winn LJ said that he did not feel well qualified to discuss whether Scientology could properly be called

a religion, but the evidence did not show to his mind that its adherents observed any form of worship. He explained what he meant by worship at pp 708-709:

> "… by no "worship", if I am bound to define my terms, I mean to indicate that they do not humble themselves in reverence and recognition of the dominant power and control of any entity or being outside their own body and life."

30. Similarly, Buckley LJ said, at p 709:

> "Worship I take to be something which must have some at least of the following characteristics: submission to the object worshipped, veneration of that object, praise, thanksgiving, prayer or intercession."

Discussion

31. As Lord Denning observed, "religious worship" in section 2 is a composite expression. Nevertheless, Ouseley J was in my view right to begin by considering whether Scientology is properly to be regarded as a religion. As he said, the question whether the services performed in the chapel are properly to be regarded as a form of religious worship is inevitably conditioned by whether Scientology is to be regarded as a religion. Indeed, Lord Denning's definition of religious worship carried within it an implicit theistic definition of religion. It was because the Church of Scientology's services did not contain reverence for God, as Lord Denning understood the meaning of God, that he concluded that the services did not amount to religious worship.

32. Religion and English law meet today at various points. Charity law protects trusts as charitable if they are for the advancement of religion. Individuals have a right to freedom of thought, conscience and religion under article 9 of the European Convention. They enjoy the right not to be discriminated against on grounds of religion or belief under EU Council Directive 2000/78/EC and under domestic equality legislation.

33. In *Re South Place Ethical Society* [1980] 1 WLR 1565, 1572, a case about charity law, Dillon J held that religion requires "faith in a god and worship of that god", quoting Buckley LJ's definition of religious worship in *Segerdal.* More recently Parliament provided partial definitions of religion in section 2 the Charities Act 2006 (now section 3 of the Charities Act 2011) and section 10 of the Equality Act 2010 for the purposes of those Acts.

34. There has never been a universal legal definition of religion in English law, and experience across the common law world over many years has shown the pitfalls of attempting to attach a narrowly circumscribed meaning to the word. There are several reasons for this – the different contexts in which the issue may arise, the variety of world religions, developments of new religions and religious practices, and developments in the common understanding of the concept of religion due to cultural changes in society. While the historical origins of the legislation are relevant to understanding its purpose, the expression "place of meeting for religious worship" in section 2 of PWRA has to be interpreted in accordance with contemporary understanding of religion and not by reference to the culture of 1855. It is no good considering whether the members of the legislature over 150 years ago would have considered Scientology to be a religion because it did not exist.

35. From the considerable volume of common law jurisprudence, I would select two cases for particular attention – the judgment of Adams CJ in *Malnak v Yogi* 592 F.2d 197 (1979) concurring in a per curiam opinion of the US Court of Appeals, 3rd Circuit, and the judgment of the High Court of Australia in *Church of the New Faith v Comr of Pay-Roll Tax (Victoria)* (1983) 154 CLR.

36. In *Malnak v Yogi* the issue was whether the teaching in a public school of a course entitled the "Science of Creative Intelligence – Transcendental Meditation" was a religious activity violating the first amendment of the US Constitution. According to Judge Adams, religion bore the same meaning in that context as in the free exercise of religion clause of the Constitution. He contrasted older authorities (such as the decision of the Supreme Court in *Davis v Beason* 133 US 333 (1890)), which adopted a strictly theistic definition of religion, with more recent jurisprudence (including the decisions of the Supreme Court in *United States v Seeger* 380 US 163 (1965) and *Welsh v United States* 398 US 333 (1970)), which had moved towards a broader approach in recognition of the fact that adherence to the traditional definition would deny religious identification to the faiths adhered to by millions of Americans.

37. Judge Adams noted that although the old definition had been repudiated, no new definition had yet been fully formed. Instead, the courts had proceeded by a process of analogy, looking at familiar religions as models in order to ascertain, by comparison, whether the new set of beliefs served the same purposes as unquestioned and accepted religions. He observed, however, at p 208, that it is one thing to conclude "by analogy" that a particular group of ideas is religious; it is quite another to explain what indicia are to be looked at in making such an analogy and justifying it. He identified three such indicia.

38. The first was that the belief system is concerned with the ultimate questions of human existence: the meaning of life and death, mankind's role in the universe, the proper moral code of right and wrong. The second was that the belief system is comprehensive in the sense that it provides an all-embracing set of beliefs in answer to the ultimate questions. The third was that there were external signs that the belief system was of a group nature which could be analogised to accepted religions. Such signs might include formal services, ceremonial functions, the existence of clergy, structure and organisation, and attempts at propagation. These indicia were not to be thought of as a final test for a religion. Rather, they were features which recognised religions would typically exhibit.

39. The significant contribution of the judgment to the development of the jurisprudence in this area lay in Judge Adams's attempt to adopt a comparative approach to the identification of a religion, rather than a traditional definition based on the Judeo-Christian religions. However, the approach had its shortcomings. Professor Sarah Barringer Gordon identified them in *The Spirit of the Law: Religious Voices and the Constitution in Modern America* (2010), at p 150, where she observed that "it invested extraordinary power in the judiciary to decide where religion begins and secular life ends" and created such uncertainty as to make the category of religion unstable. Professor Gordon has provided a fuller critique in a chapter entitled *The New Age and the New Law: Malnak v Yogi and the Definition of Religion in Constitutional Law* in a multi-authored book *Religion and Law Stories* (2010), edited by Professor Leslie Griffin. In it she has described the decision as influential but controversial and now somewhat dated. Judge Adams's suggested indicia were also subjected to critical analysis in the *Church of the New Faith* case cited above.

40. The appellant in that case was the Church of Scientology going by its name in Victoria. The case arose under the Victoria Pay-roll Tax Act 1971. There was an exemption from tax payable under the Act for wages paid by a religious institution. The question considered by the High Court, as formulated in the judgment of Mason ACJ and Brennan J at p 130, was "whether the beliefs, practices and observances which were established by the affidavits and oral evidence as the set of beliefs, practices and observances accepted by Scientologists, are properly to be described as a religion." The court held that they were. There were three judgments, each of which set out a somewhat different route to the same conclusion.

41. Mason ACJ and Brennan J rightly observed, at p 132, that freedom of religion being equally conferred on all, the variety of religious beliefs which were within the area of legal immunity was not restricted. There could be no acceptable discrimination between institutions which took their character from religions which the majority of the community recognised as religions and institutions that took their character from religions which lacked that general recognition.

42. On the other hand, they observed that "the mantle of immunity would soon be in tatters if it were wrapped around beliefs, practices and observances of every kind whenever a group of adherents chose to call them a religion", and that a more objective criterion was required. That criterion had to be found in the indicia exhibited by acknowledged religions. (In this respect the influence of Judge Adams can be seen at work.) They then posed the question what was the range of acknowledged religions from which the criterion was to be derived. They observed at pp 132-133:

> "The literature of comparative religion, modern means of communication and the diverse ethnic and cultural components of contemporary Australian society require that the search for religious indicia should not be confined to the Judaic group of religions – Judaism, Christianity, Islam – for the tenets of other acknowledged religions, including those which are not monotheistic or even theistic, are elements in the contemporary atmosphere of ideas. But the task of surveying the whole range of Judaic and other acknowledged religions is daunting… "

They cited with approval Latham CJ's observation in *Adelaide Company of Jehovah's Witnesses Inc v The Commonwealth* (1943) 67 CLR 116, 123:

> "It would be difficult, if not impossible, to devise a definition of religion which would satisfy the adherents of all the many and various religions which exist, or have existed, in the world."

43. Their critical conclusion was at p 136:

> "We would therefore hold that, for the purposes of the law, the criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion."

44. They considered, at pp 139-140, the test propounded by Judge Adams and rejected the appellants' submission that the court should apply his indicia. They were critical of the first of his indicia, ie that the beliefs addressed issues of ultimate concern, because they said that to attribute a religious character to one's views by reference to the questions which the views addressed, rather than by reference to the answers propounded, was to expand the concept of religion

beyond its true domain. Such an approach was capable of sweeping into the category of religious beliefs philosophies that rejected the label of a religion and which denied or were silent as to the existence of any supernatural Being, Thing or Principle. The second of the criteria, ie comprehensiveness, was defective because although a set of religious ideas will frequently be comprehensive, a religion need not necessarily set out to answer all fundamental questions. The third of the suggested indicia, ie the existence of rituals or the like, was defective because rituals might or might not be religious in nature.

45. They rejected Dillon J's test in *In re South Place Ethical Society* [1980] 1 WLR 1565, based on *Segerdal*, because it limited religion to theistic religions. This was too narrow a test because it would exclude Buddhism (or at least a part of Buddhism) and possibly other acknowledged religions. As to *Segerdal* itself, they observed that "the statutory reference to worship suggested that Parliament had in mind a theistic religion": p 140.

46. They concluded on the evidence that belief in a Supreme Being was part of Scientology, although there was no tenet of Scientology which expressed a particular concept of a Supreme Being; and that Scientology's adherents accepted and followed its practices and observances because they perceived themselves to be giving effect to their supernatural beliefs. Accordingly, Scientology met the two criteria which they had identified.

47. Murphy J, at pp 150-151, reiterated that religious discrimination by officials or by courts was unacceptable in a free society. His preferred approach was to state what was sufficient, even if not necessary, to bring a body which claimed to be religious within the category of religion. Some claims to be religious were merely a hoax, but to reach that conclusion required an extreme case. He considered that any body which claimed to be religious and believed in a supernatural Being or Beings, whether physical and visible or an invisible god or spirit, or an abstract god or entity, was religious; and any body that claimed to be religious, and offered a way to find meaning and purpose in life, was religious.

48. Wilson and Deane JJ began in a similar way to Mason ACJ and Brennan J, and Judge Adams in *Malnak v Yogi*, saying at p 173 that there was no single characteristic which could be laid down as constituting a formularised legal criterion for determining whether a particular system of ideas and practices constituted a religion. The most that could be done was to formulate the more important of the indicia or guidelines by reference to which that question fell to be answered. Those indicia should be derived by empirical observation of accepted religions. They were liable to vary with changing social conditions and the relative importance of any particular one would vary from case to case. They observed that, of necessity, the field into which they were venturing was more the domain of

the student of comparative religion than that of the lawyer. They identified the important indicia, at p 174, as follows:

> "One of the more important indicia of 'a religion' is that the particular collection of ideas and /or practices involves belief in the supernatural, that is to say, belief that reality extends beyond that which is capable of perception by the senses. If that be absent, it is unlikely that one has 'a religion'. Another is that the ideas relate to man's nature and place in the universe and his relation to things supernatural. A third is that the ideas are accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in specific practices having supernatural significance. A fourth is that, however loosely knit and varying in beliefs and practices adherents may be, they constitute an identifiable group or identifiable groups. A fifth, and perhaps more controversial, indicium (cf *Malnak v Yogi*) is that the adherents themselves see the collection of ideas and/or practices as constituting a religion."

49. They added that none of these indicia was necessarily determinative of the question whether a particular collection of ideas and and/or practices should be characterised as a religion. They were no more than aids in determining that question and the assistance to be derived from them would vary according to the context in which the question arose. However, all of those indicia were satisfied by most, if not all, leading religions. They considered that the view which they had expressed about the meaning of "religion" accorded broadly with the newer, more expansive, reading of that term that had developed in the United States in recent decades as particularly described in the judgment of Judge Adams. They considered that Scientology satisfied all five indicia which they had identified.

50. In the present case Ouseley J's conclusion that Scientology is a religion was not challenged by a respondent's notice and counsel for the Registrar General preferred to confine his submissions to arguing that, whether or not Scientology is a religion, the Registrar General was properly entitled to conclude that its ceremonies and practices do not amount to religious worship for the reasons given by the Court of Appeal in *Segerdal.* I consider that Ouseley J's conclusion was right for a number of reasons.

51. Unless there is some compelling contextual reason for holding otherwise, religion should not be confined to religions which recognise a supreme deity. First and foremost, to do so would be a form of religious discrimination unacceptable in today's society. It would exclude Buddhism, along with other faiths such as Jainism, Taoism, Theosophy and part of Hinduism. The evidence in the present

case shows that, among others, Jains, Theosophists and Buddhists have registered places of worship in England. Lord Denning in *Segerdal* [1970] 2 QB 697, 707 acknowledged that Buddhist temples were "properly described as places of meeting for religious worship" but he referred to them as "exceptional cases" without offering any further explanation. The need to make an exception for Buddhism (which has also been applied to Jainism and Theosophy), and the absence of a satisfactory explanation for it, are powerful indications that there is something unsound in the supposed general rule.

52. Further, to confine religion to a religion which involves belief in a "supreme deity" leads into difficult theological territory. On the evidence of Mrs Wilks, Scientologists do believe in a supreme deity of a kind, but of an abstract and impersonal nature. Ideas about the nature of God are the stuff of theological debate.

53. Possibly the most controversial English theological publication in the last 100 years was entitled *Honest to God*. It was written in 1963, a few years before the decision in S*egerdal*. The author was John Robinson, a distinguished New Testament scholar and then Bishop of Woolwich. Its central theme was that traditional Christian forms of description of God were often unintelligible to modern secular society and that God was properly to be understood as "the ground of our being". Unusually for a theological book, it was a best seller. The reason for this was that it caused a storm of protest among traditional Christians that such views should be expressed by an Anglican bishop. The point which I seek to illustrate is that it is not appropriate that the Registrar General or courts should become drawn into such territory for the purpose of deciding whether premises qualify as a place of meeting for religious worship.

54. For the purposes of charity law, section 3(2)(a) of the Charities Act 2011 now states that:

> "'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."

55. That definition removes uncertainty created by Dillon J's judgment in *South Place Ethical Society* about whether religious charitable trusts exclude faiths such as Hinduism and Buddhism. It has no direct application to section 2 of PWRA,

but it is a further indication that the understanding of religion in today's society is broad.

56. It might be argued that the expression "religious worship" in section 2 of the 1855 Act shows that Parliament intended the word "religious" to be given a narrow interpretation. I would reject that argument. The language of the section showed an intentionally broad sweep. It included "Protestant Dissenters or other Protestants", "persons professing the Roman Catholic religion", "persons professing the Jewish religion" and "any other body or denomination of persons". It may be that the members of the legislature in 1855 would not have had in mind adherence to other faiths such as Buddhism, but that is no ground for holding that they were intended to be excluded from legislation passed to remove religious discrimination.

57. Of the various attempts made to describe the characteristics of religion, I find most helpful that of Wilson and Deane JJ. For the purposes of PWRA, I would describe religion in summary as a spiritual or non-secular belief system, held by a group of adherents, which claims to explain mankind's place in the universe and relationship with the infinite, and to teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system. By spiritual or non-secular I mean a belief system which goes beyond that which can be perceived by the senses or ascertained by the application of science. I prefer not to use the word "supernatural" to express this element, because it is a loaded word which can carry a variety of connotations. Such a belief system may or may not involve belief in a supreme being, but it does involve a belief that there is more to be understood about mankind's nature and relationship to the universe than can be gained from the senses or from science. I emphasise that this is intended to be a description and not a definitive formula.

58. There is a particular reason, if it were needed, for excluding essentially secular belief systems from religion for the purposes of PWRA. I have previously referred to section 26(1)(a) of the Marriage Act 1949, as amended, which permits marriage in a registered building according to such form and ceremony as the persons to be married see fit to adopt. Additionally, section 26(1)(bb), as inserted by section 1(1) of the Marriage Act 1994, permits marriages to be solemnised on the authority of a superintendent registrar on "approved premises". Under that provision marriages can now take place in hotels or elsewhere. The form of marriage on approved premises is governed by section 46B, as inserted by section 1(2) of the 1994 Act, and sub-section (4) provides:

> "No religious services shall be used at a marriage on approved premises in pursuance of section 26(1)(bb) of this Act."

59. The legislation therefore makes separate provision for religious wedding ceremonies on registered premises and secular wedding services on approved premises.

60. On the approach which I have taken to the meaning of religion, the evidence is amply sufficient to show that Scientology is within it; but there remains the question whether the chapel at 146 Victoria Street is "a place of meeting for religious worship".

61. In my view the meaning given to worship in *Segerdal* was unduly narrow, but even if it was not unduly narrow in 1970, it is unduly narrow now.

62. I interpret the expression "religious worship" as wide enough to include religious services, whether or not the form of service falls within the narrower definition adopted in *Segerdal*. This broader interpretation accords with standard dictionary definitions. The Chambers Dictionary, 12th ed (2011) defines the noun "worship" as including both "adoration paid to a deity, etc" and "religious service", and it defines "worship" as an intransitive verb as "to perform acts of adoration; to take part in religious service". Similarly, the Concise Oxford English Dictionary, 12th ed (2011), defines "worship" as including both "the feeling or expression of reverence and adoration of a deity" and "religious rites and ceremonies".

63. The broader interpretation accords with the purpose of the statute in permitting members of a religious congregation, who have a meeting place where they perform their religious rites, to carry out religious ceremonies of marriage there. Their authorisation to do so should not depend on fine theological or liturgical niceties as to how precisely they see and express their relationship with the infinite (referred to by Scientologists as "God" in their creed and universal prayer). Those matters, which have been gone into in close detail in the evidence in this case, are more fitting for theologians than for the Registrar General or the courts.

64. There is a further significant point. If, as I have held, Scientology comes within the meaning of a religion, but its chapel cannot be registered under PWRA because its services do not involve the kind of veneration which the Court of Appeal in *Segerdal* considered essential, the result would be to prevent Scientologists from being married anywhere in a form which involved use of their marriage service. They could have a service in their chapel, but it would not be a legal marriage, and they could have a civil marriage on other "approved premises" under section 26(1)(bb) of the Marriage Act, but they could not incorporate any form of religious service because of the prohibition in section 46B(4). They would

therefore be under a double disability, not shared by atheists, agnostics or most religious groups. This would be illogical, discriminatory and unjust. When Parliament prohibited the use of any "religious service" on approved premises in section 46B(4), it can only have been on the assumption that any religious service of marriage could lawfully be held at a meeting place for religious services by registration under PWRA.

Conclusion

65. I would overrule the decision in *Segerdal*; allow the appeal; declare that the chapel at 146 Queen Victoria Street is a place of meeting for religious worship within section 2 of PWRA; and order the Registrar General to register the chapel under section 3 of PWRA and as a place for the solemnisation of marriages under section 41(1) of the Marriage Act. It is unnecessary in these circumstances to consider the arguments advanced by the appellants under the Equality Act and the European Convention.

LORD WILSON (with whom Lord Neuberger, Lord Clarke and Lord Reed agree)

66. I agree with the judgment of Lord Toulson and add a judgment of my own on a discrete point. Lord Toulson has explained at para 24 that in *R v Registrar General, Ex P Segerdal* [1970] 2 QB 697 ("the *Segerdal* case") the first submission made on behalf of the Church of Scientology (and Mr Segerdal) was that the function of the Registrar General in recording a place certified to him under the Places of Worship Registration Act 1855 ("PWRA") was purely ministerial, in other words that he had no right to decline to record a place on the ground that in his opinion it was not a place of meeting for religious worship. Lord Toulson has set out at paras 24-26 the three reasons advanced in that case for the court's rejection of the submission.

67. In the present proceedings the Church of Scientology (and Ms Hodkin) did not initially ask this court to overrule the part of the decision in the *Segerdal* case which had ruled that the function of the Registrar General in recording a place certified under PWRA was not purely ministerial in the sense which I have described. At the hearing, however, Lord Reed observed that the Court of Appeal's ruling might be questionable. His observation led Lord Lester, on behalf of that Church, to ask to be permitted to submit that, subject to an inherent discretion not to record a place in circumstances in which the certificate of it represented an abuse of the procedure, the Registrar General's function was purely ministerial and that the ruling to the contrary in the *Segerdal* case should be overruled. At the end

of the hearing the court directed that submissions be made in writing on the power of the Registrar General to decline to record a place certified to her. Her submission is that in that regard the ruling in the *Segerdal* case was correct. The considered position of the Church is however that, although she may lawfully record a place only if it is in fact one of religious worship, she should presume that a place certified to her is one of religious worship unless she receives information to the contrary.

68. I have come to the conclusion that in the *Segerdal* case the Court of Appeal was correct to rule that the function of the Registrar General is to record a place certified to her only if it is a place of religious worship. It follows that she has the right to investigate whether a place is one of religious worship and that, if she concludes that a place is not one of religious worship, then, subject to judicial review of her conclusion, she has a duty not to record it. Whether she chooses, in depth or at all, to investigate the assertion that a place certified to her is one of religious worship is a matter for her discretion and I see no basis for trammelling it with the presumption upon the basis of which, according to the Church, she ought to proceed.

69. I acknowledge, however, that the issue, which one might describe in shorthand as that of self-certification, is not free from difficulty. Since it relates to the jurisdiction of the Registrar General under PWRA and thus to the parameters of the court's role in reviewing her exercise of it, Lord Reed was, I respectfully suggest, right to raise it for the court's consideration.

70. The certification of places of religious worship has a long history. Its background lies in the penal laws against nonconformists which were enacted following the restoration of Charles II in 1660. Among those laws, compendiously called the Clarendon Code, was the Conventicles Act 1670 (22 Car II c 1) which, by section 1, made it an offence for five or more persons to be present at "any assembly, conventicle or meeting, under colour or pretence of any exercise of religion, in other manner than according to the liturgy and practice of the Church of England". The Toleration Act 1688 granted specified dissenters (excluding Roman Catholics) who took prescribed oaths and made prescribed declarations exemption from liability under specified penal laws including, by section 4, under the 1670 Act. Importantly for present purposes, however, section 19 of the 1688 Act provided that the exemption from liability under the 1670 Act did not arise until the place of meeting for religious worship had been certified either to the bishop and registered in his court or to the justices of the peace and recorded in their court.

71. Now it is clear that the function of the bishop and of the justices under section 19 of the 1688 Act was indeed only ministerial: they had no power to

decline to register or record a place which had been certified to them. This was decided by Lord Mansfield in the Court of King's Bench in *R v Derbyshire Justices* (1766) 1 Black W 605, 4 Durr 1991. There the justices had declined to record a place certified to them on the basis that they were not satisfied either that those certifying (who were Methodists) fell within the species of dissenters tolerated by the 1688 Act or that they had taken the prescribed oaths and made the prescribed declarations. By mandamus, the court ordered the justices to record the place. Blackstone, who had represented the justices, reported:

> "But the court was of opinion, that in registering and recording the certificate, the justices were merely ministerial; and that after a meeting house has been duly registered, still, if the persons resorting to it do not bring themselves within the Act of Toleration, such registering will not protect them from the penalties of the law." (p 606)

I am very doubtful whether, when in the *Segerdal* case he sought, at p 705, to explain the decision in the *Derbyshire Justices* case, Lord Denning MR was correct to state that the role of the justices had been ministerial only because the place was truly one of religious worship. In my view it was ministerial in every sense because the certification and its registration or recording represented no more than one of the steps which those certifying had to take in order to have a defence to any summons under the 1670 Act. Certification was an exercise in self-protection, somewhat analogous to the purchase today of a television licence, which does not depend on proof of ownership of a television and is issued automatically.

72. The question is whether the construction placed in the *Derbyshire Justices* case on section 19 of the 1688 Act also applies to sections 2 and 3 of PWRA. First, however, it is relevant to note the effect of two intervening Acts.

73. The Places of Religious Worship Act 1812 repealed some of the Clarendon Code, including the 1670 Act, and reformulated the offence of meeting for religious purposes. It, again, related only to Protestant dissenters but it was extended to Roman Catholics by the Roman Catholic Charities Act 1832 (2 & 3 Will 4, c 115) and to Jews by the Religious Disabilities Act 1846 (9 & 10 Vict, c 59). Although it did not repeal the 1688 Act, the 1812 Act, by section 2, defined the offence so as not to apply to meetings in places which either had been "certified and registered [or recorded]" under the 1688 Act or were to be "certified" under the 1812 Act itself. Although the provision for registration or recording was repeated, it seems therefore that the defence to a summons, whether by an occupier of the place under section 2 of the 1812 Act or by a preacher or worshipper there under section 4, was to depend on the certificate rather than also

on the registration or record thereof. This (one might contend) downgraded the significance of the registration or record and thus lessened the likelihood that the bishop or the justices were then entitled to scrutinise the truth of a certificate.

74. The above contention derives some support from the Protestant Dissenters Act 1852 (15 & 16 Vict, c 36). The machinery of civil registration, including the office of the Registrar General, had been created by the Births, Deaths and Marriages Registration Act 1836; and the object of the 1852 Act was that certificates of places of religious worship made by Protestant dissenters should be transmitted, via Superintendent Registrars, to the Registrar General for the latter to record them rather than to either the bishop or the justices. In providing in section 1, however, that the certifying of a place to the Registrar General was to have the same force and effect as the certifying of it to the bishop or the justices, Parliament may again be said to have implied that the legal effect derived from the certificate rather than from the Registrar General's subsequent record of it.

75. According to its preamble, the object of PWRA was modest, namely to extend to all religious denominations outside the Church of England the procedure, introduced in the case of Protestant dissenters by the 1852 Act (which it repealed), for certification to the Registrar General instead of to the bishop or the justices. But the terms which describe the facility to certify a place are different from those found in the Acts of 1688 and 1812. In para 11 Lord Toulson has set out section 2 of PWRA in full. The essence of it is that:

> "Every place of meeting for religious worship... required to be certified and registered or recorded, as... mentioned [in the 1688 and 1812 Acts], and not heretofore certified and registered or recorded... may be certified in writing to the Registrar General..."

Section 3 provides that the Registrar General should cause all places of meeting for religious worship certified to her to be recorded and that "the certifying to [her]... shall... have the same force and effect as if such place had been duly certified and recorded or registered... as before [the 1852 Act]".

76. What should one collect from the terms of sections 2 and 3? On the one hand section 3 appears to reaffirm that the legal effect derives from the certificate. On the other hand the new language of section 2 suggests that the only place which is entitled to be certified is one which is (i.e. genuinely is) a place of meeting for religious worship. As Lord Toulson has explained in para 24, this was the first ground for the rejection of the self-certification argument by the Court of Appeal in the *Segerdal* case, articulated both by Lord Denning MR at p 705 and pithily by Buckley LJ at p 709.

77. The second ground for that court's rejection of the argument, as explained by Lord Toulson in para 25, was collected from section 8 of PWRA, which has no parallel in earlier legislation. It provides that, whenever it appears "to the satisfaction of the... Registrar General", whether from any notice given to her or otherwise, that any certified place of meeting has ceased to be used for religious worship, she shall cause the record of it to be cancelled and the place "shall cease to be deemed duly certified as by law required". Section 8 thus expressly confers upon the Registrar General a decision-making function in relation to any suggested cessation of the use of a certified place for religious worship. One must acknowledge that there is no such express reference in sections 2 and 3 to the need for her to be "satisfied" that the place is indeed one of religious worship before she records a certificate which so claims. Nevertheless the stronger point is the paradox which would arise if she had a decision-making function in relation to the use of a place of religious worship following the recording of a certificate but not beforehand.

78. Three other sections of PWRA tend in my view to confirm that sections 2 and 3 confer, albeit not expressly, a decision-making function on the Registrar General. Section 4 provides that any place which has been certified to, and registered or recorded by, the bishop or the justices under the former procedure can be certified to, and recorded by, the Registrar General provided that it "continues to be used for religious worship". So this state of affairs has to exist in fact before the right to re-certify arises. Section 6 provides that, if a place certified under the 1852 Act has "wholly ceased to be used as a place of meeting for religious worship", the certifier is obliged to notify the Registrar General. So the obligation arises when, in fact, the use has wholly ceased. Section 9 provides that every place of meeting for religious worship certified to, and recorded by, the Registrar General is exempt from the operation of the Charitable Trusts Act 1853 "so long as the same continues to be bona fide used as a place of religious worship". The significance of this proviso resides in the word "continues", which clearly suggests that the place will not have been certified and recorded in the first place unless it was then being used, indeed *bona fide* used, as a place of religious worship.

79. There is a factor in the background which well explains why, by PWRA, Parliament should have cast on the Registrar General the duty to decide whether a place certified to her is thus qualified. It constitutes the third ground for the decision in the *Segerdal* case, as described by Lord Toulson in para 26 above, although reference was made to it only by the Divisional Court ([1970] 1 QB 430, 441-442) and then only briefly. The factor is this: certification had ceased to be only an exercise in constructing protection from criminal liability under the Acts of 1670 and 1812 and had also become a source of valuable privileges.

80. The first such privilege was created by the Poor Rate Exemption Act 1833 (3 & 4 Will 4, c 30). It extended the exemption from poor rates enjoyed by the

Church of England to other places exclusively appropriated to public religious worship which had been duly certified under the Acts of 1688 or 1812. Certification, albeit necessary, was therefore not sufficient to secure exemption because the religious worship had also to be public and the place had to be exclusively appropriated to it. Nevertheless it suddenly became important that a place should not be certified, and registered or recorded, unless it actually was one of religious worship: see *Henning v Church of Jesus Christ of Latter-Day Saints* [1964] AC 420, 438 (Lord Pearce). Exemption from poor rates became even more valuable when section 27 of the Highway Act 1835 (5 & 6 Will 4, c 50) provided that it also conferred exemption from the highway rate.

81. On the day in 1836 when it passed the Births, Deaths and Marriages Registration Act, Parliament also passed the Marriage Act. Apart from introducing, by section 21, the facility to marry in a register office before one of the new Superintendent Registrars, the Act, by section 18, conferred an important extra privilege on places of religious worship certified under the Acts of 1688 or 1812. It was that the proprietor of a certified place could apply to the Registrar General for the building to be registered for the solemnisation of marriages. His application had to be accompanied by a fresh certificate, signed on this occasion by at least 20 householders, that they had used the building for at least a year as their usual place of public religious worship. This procedure for a second certificate leading to a different sort of registration, namely for the solemnisation of marriages, was imported, with very few changes, into section 41 of the Marriage Act 1949 ("the 1949 Act") which remains in force. Back in 1836 it underlined the importance that the first certificate, on which therefore the entitlement to solemnise marriages in part depended, should have related to a place which was indeed one of religious worship.

82. I have referred in para 78 above to the exemption of certified and recorded places from the operation of the Charitable Trusts Act 1853 conferred by section 9 of PWRA and (I should add) prior thereto by section 62 of the 1853 Act itself. This was yet a further privilege for certified and recorded places in that those conducting worship there were exempt from the obligation cast by section 61 of the 1853 Act to file annual accounts. The exemption placed an extra premium on the importance that a certificate should not be recorded unless it related to a place which was indeed one of religious worship.

83. It may be said that the Registrar General is unlikely to have any particular expertise in making a sometimes difficult determination, albeit subject to court review, whether what occurs in a place is "worship" and, if so, whether it is "religious"; and that therefore it is improbable that Parliament would have imposed such a duty upon her. Forty years ago consideration at a high level was given to her apparent lack of expertise in this regard. On 10 April 1973 the Law Commission published a report on the Solemnisation of Marriage in England and

Wales (1973) (Law Com No 53), to which was annexed the report of a working party, set up under the chairmanship of Mr Justice Scarman in order to inquire into the suitability of the current requirements for solemnisation of marriages. The working party made a powerful recommendation, endorsed by the Law Commission but not to date reflected in legislation, that the procedures first of recording under PWRA and then of registering under the 1949 Act should be amalgamated. But, clearly proceeding on the basis that the decision in the *Segerdal* case had been correct, the working party proceeded to observe, at paras 70 and 76, that in any event someone would have to continue to decide whether the place was one of religious worship and that, although the task was more suited to a theologian than to a civil servant, it was unable to suggest any other person or body which would be likely to be not only better qualified to undertake it but also as generally acceptable as the Registrar General.

84. In the above I have set out my reasons for having concluded that in the *Segerdal* case the Court of Appeal was correct to reject the argument that the procedure under PWRA is one of self-certification. But I add, only by way of postscript, that I have reached that conclusion with some relief. For it seems clear that, in enacting the Marriage Act 1994 ("the 1994 Act"), Parliament itself also acted on the basis that the decision in the *Segerdal* case had been correct and that therefore a place of religious worship would need to be properly so called before it could qualify for recording under PWRA and, following the second certificate, for registration as a building for the solemnisation of marriages under the 1949 Act. In introducing a facility to enter into a civil marriage on approved premises, hedged around by regulations governing approval and by a requirement (greatly relaxed in the case of a wedding in a registered building: section 43 of the 1949 Act) for the presence at the wedding of both the Superintendent Registrar and the local Registrar (see sections 46A and 46B of the 1949 Act, inserted by section 1 of the 1994 Act), Parliament in 1994 clearly proceeded on the basis that a building would secure registration for the solemnisation of marriages under section 41 only if it truly was a place of public religious worship. Otherwise its requirement of approval of premises could be circumvented by false certification under PWRA and the 1949 Act.