Institut de Taoïsme Fung Loy Kok c Ville de Montréal
FLK Institute of Taoism v MPAC

Québec Divisional Court, Yergau JCS, 20 September 2021
Ontario Divisional Court, Fitzpatrick, Bale and Kristjanson JJ, 6 January 2022
2021 QCCS 3873 (CanLII) [in French]; 2022 ONSC 57 (CanLII)
Religious exemption – local taxes – Tai Chi

The objects of the Fung Loy Kok Institute (FLK) are to establish and maintain Taoist temples and shrines; to conduct public or private religious meetings such as religious services; to run classes on Taoist philosophy and religion and related subjects for public education; and to promote awareness and understanding of Taoist philosophy and Chinese culture. It also offers Tai Chi classes for payment. The information on the trademark granted to *Taoist Tai Chi* in 2012 by the Canadian Intellectual Property Office began the list of its services with several references to the provision of 'religious, spiritual and cultural practices, teachings and ceremonies'. The FLK sought exemption from property, municipal and school taxes on the grounds that it was a religious institution and that Taoist Tai Chi was to be regarded as a religion rather than as a physical exercise regime.

In the Superior Court of Québec, Yergeau JCS noted that 'religion' was the first of the list of fundamental freedoms in both the Canadian Charter of Rights and Freedoms and the Québec *Charte des droits et libertés de la personne*. That was not surprising, because freedom of religion went hand in hand with freedom of conscience and everyone was free to adhere to a religion or not – although individual and isolated belief on its own was not enough to establish the existence of a religion. Furthermore, although it was important to distinguish between 'religion' and 'belief', the notion of 'religion' was not to be reduced to questions of freedom of religion or belief. On the evidence, FLK was a genuine community sharing the values inherent in the rituals, practices and spirituality of Taoist Tai Chi rather than a legal fiction constructed to conceal a lucrative activity. Nor was it for the Court to judge the depth of its members' religious conviction or to establish a threshold below which the label of 'religious institution' would be refused: 'To venture down that path would lead the Court to interfere in intimate beliefs'. Following the dictum that 'the State is in no position to be, nor should it become, the arbiter of religious dogma' and that the courts 'should avoid judicially interpreting and thus determining … the content of a subjective understanding of religious requirement', he concluded that FLK met the necessary conditions to be classified as a religious institution within the meaning of Article 204 12° of the Québec *Loi sur la fiscalité municipale*.

In Ontario, on appeal against an assessment for municipal taxes, the Divisional Court took the opposite view. The application judge had found that

https://doi.org/10.1017/S0956618X22000242 Published online by Cambridge University Press

the properties on which the FLK held Tai Chi classes were not entitled to be classified as exempt, and the FLK submitted that she had erred in applying the proper legal test for an exemption under the Act, that the test of what constituted 'worship' within the meaning of the legislation had been improper and that the facts of the case had been assessed 'through an impermissible Judaeo-Christian lens thereby committing an error of law'. The Divisional Court held that the issue before it '[did] not require the court to engage in questions of religious doctrine or arbitrate disparate views among a particular religious group'. The application judge had held that the evidence supported MPAC's position that people engaged in the Tai Chi classes at the locations under dispute were not worshipping through Tai Chi and that no exempting act of worship occurred. There had been no error of law in her conclusions and she had not applied 'an improper analytical lens' in her judgment: 'in order to create an exemption for those properties, those activities must constitute acts of worship, a more narrow form of activity than the simple act of conducting a practice that has religious connotation'. Appeal dismissed. [Frank Cranmer]

doi:10.1017/S0956618X22000242

Re St John, Clayton
Leeds Consistory Court: Hill Ch, 19 October 2021
[2021] ECC Lee 5
Duffield framework – 'public benefit' – 'centre of mission' – s35 Ecclesiastical Jurisdiction and Care of Churches Measure 2018

While granting a faculty for various works of re-ordering, the court considered the scope of the phrase 'public benefit' in the *Duffield* framework, and noted that the examples given therein were not exhaustive. s35 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 provided:

> A person carrying out functions of care and conservation under this Measure, or under any other enactment or any rule of law relating to churches, must have due regard to the role of a church as a local centre of worship and mission.

The church in question was a Resourcing Church, assisting others in the area and becoming a beacon. The court took the view that s35 should be read expansively, and the term 'centre of … mission' should be read in the context of radiating outwards and conferring missional benefits upon neighbouring parishes and the deanery and diocese more widely. If that was wrong, and a