

LEGAL AND ETHICAL MATTERS RELEVANT TO THE RECEIPT OF FINANCIAL BENEFITS BY MINISTERS OF RELIGION AND CHURCHES

A Case Study of the New South Wales Synod of the Uniting Church in Australia

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This paper discusses some of the findings of a research project on the use of spiritual influence for financial gain, using the New South Wales Synod of the Uniting Church in Australia (UCA) as a case study. The paper begins with the hypothesis that regulation is required with respect to the receipt of financial benefits by ministers of religion and religious bodies from those under their spiritual care. Current legal and ethical regulation is briefly outlined before the project's findings are discussed. Semi-structured interviews were conducted with leading players in the New South Wales Synod, who were asked to recount stories relating to the receipt of financial benefit that they perceived to constitute an abuse of spiritual influence for financial gain. It was found that at least two general scenarios existed which caused concern to interviewees but which were not regulated by law. The paper describes examples of these scenarios and considers whether they raise legal or ethical concerns.

The results of the empirical project discussed in this paper concern the specific circumstances in which legal or ethical issues arise when a Christian minister of religion or a Christian religious body solicits and/or accepts financial benefits from those to whom they provide spiritual care.¹ The focus of the project was a small empirical study in which semi-structured interviews were conducted with church officials, ministers and others within the New South Wales Synod of the Uniting Church in Australia (UCA). Initially, the project considered whether misuse of spiritual influence for financial gain occurred within the Synod, using the requirements of the equitable doctrine of undue influence as a template for such abuse. In fact, it became clear that many of the stories related by interviewees, and which were of concern to them, did not involve abuse of spiritual influence according to the relevant equitable doctrines. Nonetheless, the interviews raised important legal and ethical

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¹ Similar issues arise with respect to other religions but are not pursued here.

questions concerning the receipt of financial benefits in a religious faith context. Therefore, this paper adopts a wide focus and discusses the legal and related non-legal issues which were raised by the empirical project and which surround the receipt of financial benefit by ministers and churches from those to whom they provide spiritual and pastoral care. Abuse of spiritual influence is one aspect of this discussion.

The first section of the paper explains why the receipt of financial benefits by ministers and churches may require regulation and why it is important to consider the topic. The second part briefly canvasses the relevant law and the ethical guidelines adopted by the UCA. The third section describes the research project and the final section discusses two scenarios in which concerns arise: the receipt of benefits by individual ministers, and the taking of a commercial advantage through a relationship of spiritual and pastoral care. The paper describes examples of these scenarios and considers whether they raise legal or ethical concerns. The paper considers only *inter vivos* transactions.²

Why it is Important to Consider the Receipt of Financial Benefits by Ministers and Churches

Churches and other religious organisations rely on financial support from their members. Generally, such support is sought and provided in an uncontroversial fashion. For example, a weekly financial 'offering' donated during a Sunday worship service to further the purposes of the denomination is commonplace. Even if such a donation is made in response to a direct appeal from a minister of religion or the institution which he or she represents, there is no cause for concern. The donor has the opportunity to reflect and to make a considered decision in response to that individual's faith experience; similarly, the appeal for funds is made as an expression of the minister's or institution's religious beliefs, with no direct personal gain being received.

Nonetheless, ministers (and arguably the institutions they represent) undoubtedly possess influence by virtue of their profession. The intimate nature of religious faith, and the strong personal relationship that consequently can develop between a spiritual leader and his or her follower, mean that the minister is in a position of influence with respect to the people to whom he or she ministers.³ The sphere of such influence may be increased in the context of

² The solicitation of testamentary gifts raises unique issues and requires separate treatment.

³ It is difficult to find a precise description for someone holding spiritual influence that is sufficiently general to encompass the various relationships affected. Terms such as 'confessor', 'priest', 'spiritual director/adviser', etc that are used in the case law do not adequately describe contemporary Australian Protestant experience. Hence the more neutral term 'leader' is used. This paper is concerned with the influence held by 'ministers' as defined by the Uniting Church in Australia's Code of Ethics and Ministry Practice; however, 'leader' encompasses those in less formal leadership roles, such as Bible study leaders (see, for example, *Illuzzi v Christian Outreach Centre* [1997] Q Conv R [¶54-490]) and lay pastors/preachers (see, for example, *Report of the Western Australia Royal*

the Christian faith because of the biblical mandate to Christians to provide practical, emotional and spiritual care to any in need.⁴ Australian Christian churches, along with other charitable institutions, have an increasing responsibility for welfare services. Such community outreach brings spiritual leaders into proximity with people outside their church's formal membership who, because of illness, isolation, estrangement from family or other reasons, may form close attachments with those who care for them. The feelings of gratitude and dependence thereby engendered render such people more vulnerable to exploitation for financial gain.

Society allows us to influence and persuade others in relation to all manner of transactions. Is there anything different about transactions in a religious faith setting that requires regulation of the exercise of spiritual influence? This paper begins with the hypothesis that regulation of such transactions is necessary because there is the potential for vulnerability to exploitation in a spiritual setting which may not be present in other transactions involving money. There are at least two reasons to support this argument. One is that the non-commercial, faith-based setting may mean people are off guard and less vigilant in protecting their own interests. The second reason has been referred to already, and concerns the situational disadvantage of people outside the membership of a church who are assisted in times of crisis. And, while at one end of the spectrum of possible transactions we are free to give as we choose, the greater the size of the benefit received and the greater the inequality of the relationship, the more justifiable is legal and/or ethical regulation. One purpose of the empirical project was to test this hypothesis and to identify the points beyond which the solicitation of financial benefits by ministers or churches was not considered acceptable by interviewees. The questions raised have ramifications beyond the context of this project and impact upon all religious groups.

Legal and Ethical Standards Regulating Receipt of Financial Benefits by Ministers and Churches

There is legal regulation of the receipt of financial benefits by individual ministers of religion. Equity, for example, has several doctrines that regulate relationships of unequal power, and has long recognised the potential for spiritual relationships to involve an abuse of influence.⁵ The equitable doctrine of undue influence holds that when a gift is made, or a contract is entered into, between a spiritual leader and follower, a presumption arises automatically that

Commission into the Finance Brokering Industry, p 49). Similarly, 'follower' is not a completely satisfactory term given the egalitarian, non-hierarchical ethos of the Uniting Church in Australia, but is used here to include a member of a congregation as well as those receiving pastoral care outside a congregation.

⁴ For example, Isaiah 58: 6–7; Matthew 25: 34–40; Luke 10: 25–37; 14: 12–14. The duties of a minister of the Uniting Church in Australia (UCA), for example, include 'serving in the community, especially among those who are hurt, disadvantaged, oppressed or marginalised': UCA, *Regulations* reg 2.3.10(g).

⁵ *Hugenin v Baseley* (1807) 14 Ves 273 at 300; 33 ER 526 at 532.

the transaction resulted from the use of undue influence by the spiritual leader.⁶ This presumption can be rebutted by establishing that the follower exercised a free, informed judgment (generally by showing that independent advice was given as to the wisdom of the transaction).

In Australia there have been five reported cases in the last 50 years that involved abuse of spiritual influence for financial gain by spiritual leaders, where the equitable doctrines of undue influence or unconscionable dealings were successfully pleaded.⁷ The New South Wales Supreme Court decision in *Quek v Beggs*⁸ is an interesting example. A woman suffering from a terminal illness made substantial gifts of money and real property, comprising most of her assets, to a Baptist pastor and his wife. The donor's personality was such that she sought out and revered persons in spiritual authority. She had rejected her children because they did not share her spiritual beliefs. The pastor and his wife provided her with significant practical, emotional and spiritual support following the diagnosis of her terminal cancer. The donor believed that God was telling her (through verses from the Bible and her times of prayer) to make the gifts, and the pastor's evidence was that he believed this to be God's will as well. Whether knowingly or not, he made it clear to her that he needed finance for a retirement home, and when she told him that God wanted her to provide such a home, he did not discourage her belief, and nor did he suggest that she seek independent advice. After she died, her daughter brought an action to recover the gifts and succeeded on the ground of undue influence.

Abuse of spiritual influence for financial gain may also, in principle, generate equitable actions for unconscionable dealings and misrepresentation, as well as liability under the distinct probate doctrine of undue influence, common law fraud and even criminal liability.⁹ The majority of reported cases however, concern the equitable doctrine of undue influence.

⁶ *Hugenin v Baseley* (1807) 14 Ves 273; 33 ER 526; *Allcard v Skinner* (1887) 36 Ch D 145; *Johnson v Buttress* (1936) 56 CLR 113, 119 (Latham CJ); *Luffram v ANZ Banking Group Ltd* (1986) ASC ¶55-483; *Quek v Beggs* (1990) 5 BPR [97405]; *Illuzzi v Christian Outreach Centre* [1997] Q Conv R ¶54-490; *McCullough v Fern* [2001] NSWSC 406. In England, the presumption is viewed as an evidential tool for proving actual undue influence: *Royal Bank of Scotland Plc v Etridge (No 2)* [2002] 2 AC 773. See further, 'Undue Influence in Nontestamentary Gift to Clergyman, Spiritual Adviser, or Church' (1950) 14 ALR 2d 649. Note that the gift must be 'so large as not to be reasonably accounted for on the ground of friendship, relationship, charity, or other ordinary motives on which ordinary men act': *Allcard v Skinner* (1887) 36 Ch D 145, 185 (Lindley LJ).

⁷ *Luffram v ANZ Banking Group Ltd* (1986) ASC ¶55-483; *Quek v Beggs* (1990) 5 BPR [97405]; *Illuzzi v Christian Outreach Centre* [1997] Q Conv R ¶54-490; *McCullough v Fern* [2001] NSWSC 406; *Hartigan v International Society for Krishna Consciousness Inc* [2002] NSWSC 810; *Ridge* (2002, 2003). The most recent Australian case applying the probate doctrine of undue influence to a spiritual adviser is *In Re Breen* [1927] VLR 164.

⁸ (1990) 5 BPR [97405].

⁹ Unconscionable dealings: *McCullough v Fern* [2001] NSWSC 406; fraud: *In Re Love v Love* 182 BR 161 (1995); misrepresentation: no direct authority was discovered, although see *Plimer v Roberts* (1997) 80 FCR 303 where the Full

Although there are legal doctrines that apply to financial transactions in the religious faith context, the law is confused and contradictory and does not greatly assist in determining the point at which, or even why, regulation is necessary. The case law illustrates extreme instances of abuse of spiritual influence only; and furthermore, the conceptual basis of the equitable doctrine of undue influence is problematic. This doctrine vacillates between a focus on the behaviour of the recipient (a gift or contract may be rescinded if the minister unconscionably took advantage of a position of spiritual influence), and a focus on the impaired autonomy of the donor (transactions are overturned if they do not result from the free decision of a fully informed donor). In other words, the rationale of the doctrine is not clear: is it wrongdoing by the spiritual leader or impaired decision-making ability on the part of the donor, or (more likely) both, that justifies overturning the transaction?¹⁰ The paper does not directly tackle this conceptual dilemma, although the interplay of the two themes of wrongdoing and lack of autonomy is apparent in the concerns of interviewees discussed later and also in the suggested hypothesis above as to why some regulation may be necessary. The law is discussed only where relevant to the scenarios of concern to the interviewees.

Thus the lack of coherence in the equitable doctrine of undue influence and the fact that the law will generally be relied upon in extreme cases only, combined with the clear potential for vulnerability in the spiritual relationship, means that there is value in exploring situations of receipt of financial benefits by ministers and churches that may raise legal and ethical concerns.

The most relevant policy document of the UCA with respect to abuse of spiritual influence for financial gain is the *Code of Ethics and Ministry Practice*. The *Code of Ethics* was adopted by Assembly in 2000.¹¹ In its wording, it reflects principles inherent in the equitable doctrine of undue influence, although there was no specific consideration of that doctrine when the *Code of Ethics* was formulated.¹² For example, the *Code of Ethics* acknowledges that a minister's provision of pastoral care means that he or she is in a position of power within that community:

It is the seriousness of the pastoral relationship, and the vulnerability of people in that relationship, which make it necessary for Ministers to

Court of the Federal Court rejected a submission that misrepresentations made during a lecture on the location of Noah's Ark constituted misleading or deceptive conduct in trade and commerce for the purposes of the *Trade Practices Act 1974* (Cth); probate undue influence: *Parfitt v Lawless* (1872) LR 2 P & D 462; *In re Breen* [1927] VLR 164; criminal liability in the North American context: Senn (1990).

¹⁰ Birks and Chin (1998); Bigwood (1996); Ridge (2003).

¹¹ Hereafter referred to as the *Code of Ethics*.

¹² The Legal Reference Committee of Assembly commented on the Interim Code of Ethics but did not consider specifically the section on gifts and fees: interview with member of the Legal Reference Committee, Sydney, 19 September 2001.

appreciate their unique position and the way they touch people's lives. They exercise considerable influence and power.¹³

Section 5 of the *Code of Ethics* deals with the receipt of gifts and fees by UCA ministers at the expense of those with whom they are in a pastoral relationship:

5 Gifts and Fees

- 5.1 Ministers shall not seek financial gain for themselves or their families from a pastoral relationship beyond recognised fees, stipends and entitlements.
- 5.2 Where Ministers receive gifts resulting from the pastoral relationship the Minister shall use discretion concerning the acceptance or return of gifts by considering the intent and affordability of the gift and whether there is a risk of the Minister being compromised or losing objectivity. Advice shall be sought from the appropriate Presbytery officer if the Minister is uncertain of the appropriateness of a gift.
- 5.3 Where Ministers accept a gift to satisfy cultural traditions they should then look at the appropriate use of the gift to benefit the community of faith.
- 5.4 Ministers shall not use their ministry to recruit clients for private practice or commercial interests.

It is not clear whether section 5 of the *Code of Ethics* was intended to apply to testamentary gifts, although the wording appears sufficiently wide for it to do so. The *Code of Ethics* does not regulate the conduct of institutions rather than individuals.

A Description of the Research Project

The aim of the research project was to undertake an empirical study of the New South Wales Synod of the Uniting Church in Australia (UCA), to discover how abuse of spiritual influence for financial gain might occur within a mainstream Christian denomination.¹⁴ As already noted, much of the information generated did not necessarily relate to abuse of spiritual influence, but nonetheless suggested the need for regulation of the receipt of financial benefits by ministers and churches.

¹³ Section 1.4. 'Pastoral relationship' is defined in section 2.1 as 'the relationship between a Minister and another person: (a) in which the Minister is providing spiritual care for the person; or (b) where the person has looked to the Minister for guidance, protection or care; or (c) where the person has made contact with the Minister in their responsibility or function as Minister'. See also reg 7.7.5 *Regulations*.

¹⁴ The project also evaluated the efficacy of the UCA's safeguards against such abuse (including training of church officers, formulation of policy and education of the church community); and of procedures for dealing with complaints of such abuse including evaluation of how actual complaints were resolved.

The project focused on the conduct of ministers of the UCA and UCA bodies (rather than any persons holding spiritual influence within a UCA congregation).¹⁵ The definition of 'minister' given in the UCA's *Code of Ethics and Ministry Practice* was adopted, namely:

Ministers of the Word, Deacons, Deaconesses, Youth Workers, Community Ministers and Lay Pastors in the Uniting Church in Australia (whether in approved placements or not).¹⁶

Clearly, spiritual influence may be held by persons other than ministers (for example, the leader of a prayer or bible study group) however for a preliminary study, it was considered necessary to restrict the scope and subject matter of the study.

Sixteen semi-structured interviews were conducted over a 10-month period with UCA officers, lawyers retained from time to time by the UCA and who had also acted for clients who wished to benefit the UCA, members of UCA congregations and others.¹⁷ Even though the number of interviews conducted was very small, the interviewees were a representative group of key players within the Synod. The intention was to glean some preliminary insights into the relevant issues that might form the basis of a more extensive project in the future.

Collection of data through semi-structured interviews was considered more appropriate than conducting a questionnaire survey because the preliminary, open-ended nature of the project did not lend itself to specific questions, and because the sensitive nature of the topic may have inhibited written responses. After being given a general explanation of the research project, the facts of *Quek v Beggs* and the equitable doctrine of undue influence, interviewees were asked to respond according to their experience, including, whether they could recount stories of conduct by ministers of the UCA which they perceived to involve abuse of spiritual influence for financial gain. Most interviews were taped, except in a few instances where permission to tape was not given. The UCA *Constitution, Regulations* and *Code of Ethics* and *Ministry Practice* were analysed, along with other public documents relating to the UCA. Documentation relating to proceedings of the Synod's Committee for Counselling and the Committee for Discipline is deemed confidential under the *Regulations* and was not analysed as it became apparent that few official complaints under the relevant provisions of the recent *Code of Ethics* had been received. Only one church officer approached for an interview

¹⁵ For example, a bible study group leader.

¹⁶ The definition of minister includes UCA chaplains. The role of Ministers of the Word is described in clause 14(a) of the UCA's *Constitution*: 'These will preach the Gospel, administer the sacraments and exercise pastoral care so that all may be equipped for their particular ministries, thus maintaining the apostolic witness to Christ in the Church.'

¹⁷ From March 2001 to January 2002. Support for the project was given by the General Secretary of the Assembly of the UCA (the national body) and the General Secretary of the New South Wales Synod of the UCA.

declined the request. Attempts to locate and interview victims of abuse and the perpetrators of abuse were less successful. An advertisement in a UCA state magazine yielded one response only (from two members of a congregation).

An important clarification must be made at the outset regarding the use of the term 'abuse'. To talk of 'abuse' of spiritual influence requires a value judgment. The legal doctrines that regulate spiritual relationships represent normative judgments by the courts as to what constitutes acceptable and unacceptable transacting between persons in such relationships. Similarly, the UCA's *Code of Ethics* reflects the UCA's normative judgment as to what constitutes appropriate conduct by its ministers. The interviewees in the research project were asked for stories relating to receipt of financial benefits that *they* perceived to raise concern. The scenarios that were related do not necessarily constitute conduct that attracts legal sanctions. What became apparent during the project, and in collating the results, was the significant extent to which abuse is 'in the eye of the beholder' — that is, what is seen as abusive by one member of the UCA may be regarded as acceptable fundraising by another. This question will be returned to throughout the paper. In the meantime, the term 'abuse' will be used to describe exploitation of a position of spiritual influence that is perceived to be wrongful by either the law, the *Code of Ethics* or by a participant in the interviews.

The Uniting Church in Australia and the NSW Synod

The UCA was established in 1977 from the Methodist, Congregational and Presbyterian denominations.¹⁸ It is the third largest Christian denomination in Australia and it is the largest non-government provider of aged care services in Australia. The UCA has an Indigenous component (the Uniting Aboriginal and Islander Christian Congress) and many non-English speaking congregations.¹⁹ There are more female than male members of the UCA.²⁰ Both men and women may be ordained.

Administration and governance within the UCA is carried out at four levels: the Congregation (a group of people meeting for regular worship and Christian service); Presbytery (a regional council comprising lay and ordained representatives of the congregations); Synod (a state council comprising lay and ministerial representatives from the presbyteries — the New South Wales Synod encompasses the Australian Capital Territory); and Assembly (the

¹⁸ The congregations of the Congregational and Presbyterian denominations were able to decide individually whether to join the new denomination and not all chose to do so.

¹⁹ According to the home page of the UCA, the Congress has 10 000–15 000 Indigenous Australians 'involved'; further, 'from 5–7 per cent of Uniting Church members worship in languages other than English, in 25 different language groupings plus various Aboriginal tribal languages.': www.uca.org.au/uca.htm, accessed 28 June 2002.

²⁰ Some 65 per cent of the UCA's members are female: National Church Life Survey Research, findings from 1991 and 1996 surveys, www.ncls.org.au

national council).²¹ The New South Wales Synod has approximately 30 000 regular church attenders.²²

The UCA was chosen as the subject of this project primarily because the acceptance of a Code of Ethics, encompassing a formal procedure for making and processing complaints relating to abuse of spiritual influence for financial gain, made it more likely that there would be documented complaints, and that their incidence would increase. This had been the experience of the UCA in relation to complaints of sexual misconduct by ministers following the implementation of the 'Procedures for Use when Complaints of Sexual Abuse are Made Against Ministers' in 1994; however, it became apparent that it was too early for such a trend to have emerged with respect to section 5 of the *Code of Ethics*.

Also relevant to the choice of the UCA for this research project was the denomination's ministry to elderly people, both as members of congregations and through the provision of aged care. Members of the UCA are more likely to be over 60 years of age,²³ and many more elderly people are cared for by the UCA's aged care services. The equitable doctrines that protect those who are vulnerable to abuse in an unequal relationship emphasise disparity in age as a significant indication of potential vulnerability.²⁴

Finally, the presence of non-English speaking congregations within the UCA meant that there was the opportunity to consider cross-cultural issues relevant to the abuse of spiritual influence for financial gain.²⁵ As with age, non-English speaking background is a relevant factor in establishing vulnerability for the purposes of legal doctrines regulating relationships of unequal power.²⁶

It was decided to focus upon the New South Wales Synod of the UCA because of its size (it is the second largest Synod of the UCA) and because a number of New South Wales Synod officers were instrumental in the creation and implementation of the *Code of Ethics*. In addition, the writer's contacts within the Synod were relevant to the decision.²⁷

²¹ *Basis of Union* (1992), s 15; *Constitution*, s 22.

²² This figure is for 1999: home page of the New South Wales Synod, <http://nsw.uca.org.au/whatis.htm>, accessed 31 May 2001.

²³ National Church Life Survey Research, findings from 1991 and 1996 surveys, www.ncls.org.au

²⁴ See, for example, *Blomley v Ryan* (1956) 99 CLR 362; *Johnson v Buttress* (1936) 56 CLR 113; *Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447.

²⁵ The *Code of Ethics* specifically addresses cross-cultural concerns with respect to gifts to ministers in section 5.3.

²⁶ For example, *Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447.

²⁷ The author is a member of the UCA and has also established contacts in the New South Wales Synod through contributing to a church policy document on child safety and through Presbytery representation on the Interim Council of a UCA school.

Findings of the Project

In this part of the paper, two scenarios are discussed. The first concerns receipt of benefits by individual ministers and encompasses a range of situations. It was possible to identify a number of themes relevant to this scenario, and these are used to organise the material. As well as stories of the abuse of influence, some reasons why people give to UCA ministers are described, and the section finishes by describing the dilemma experienced by some ministers in deciding whether to accept gifts from those to whom they gave spiritual care. Most findings of the project relate to the first scenario. The second scenario concerns the taking of a commercial advantage through a relationship of spiritual care. Only one example is discussed (the provision of funeral services).

Receipt of Personal Financial Benefit by an Individual Minister

Approximately seven stories of receipt of financial benefit that involved a perceived abuse of spiritual influence emerged from the interviews, although there were more anecdotes that lacked sufficient detail to substantiate, or that occurred in other Synods. Some of these are described in this section according to common themes. Each of these fact situations would appear to breach section 5.1 of the *Code of Ethics*.

Transactions with the Elderly

Of the seven stories of actual or possible misuse of spiritual influence by individuals for financial gain related in interviews, at least five concerned gifts by elderly people.²⁸ For example, at the time of the research project, an unfair dismissal claim was being dealt with by the Synod in relation to such a scenario involving a chaplain of a UCA aged care facility.²⁹ His marriage had recently ended and he was in financial difficulty. It was claimed that he had talked about his personal problems with those to whom he was giving pastoral care. In the first disputed transaction, the chaplain sold some of his furniture to an aged care resident for whom he was caring. She claimed to have agreed to the transaction because she 'felt sorry for him'. He claimed that he offered to give her the furniture; however, she had insisted on paying him. In the second disputed transaction, the chaplain was accused of purchasing a valuable curio from a terminally ill resident for much less than its true value. The resident, who knew that his death was imminent, had been giving away his possessions. Staff at the facility were warned of this, and told not to accept his very generous gifts. When challenged, the chaplain claimed to be 'looking after' the item and that money had not changed hands. The chief executive officer of the facility dismissed the chaplain, who then brought proceedings for unfair dismissal.

²⁸ Although this demonstrates that age is a significant indicator of vulnerability, the finding also may be due to other factors — for example, abuse being more easily identified in an institution such as an aged care facility; the reluctance of younger people to admit to being abused; and the identity of interviewees.

²⁹ Telephone interview with a New South Wales Synod industrial officer, 25 May 2001.

One interviewee's explanation for the potential vulnerability of elderly people to spiritual manipulation was as follows:

a person with a sophisticated understanding of things uses that to tap into the innocence or simplicity of people whose behaviour or thinking patterns are fairly predictable.³⁰

However, not all interviewees depicted elderly donors as being unsophisticated and vulnerable to exploitation:

You frequently find there's a stage of life, I think, that many elderly people get to [when] they feel: 'I've worked for this money all my life. I've got all those assets, and I won't be long here now, I want to do something worthwhile with it.' And certainly we get a lot [of testamentary gifts] from gratitude, from people who feel: 'These people care for me, and I want to support them in being able to continue that caring.'³¹

Questions arise with respect to these findings, concerning the autonomy of elderly persons. For example, to what extent do elderly persons perceive themselves to be vulnerable to abuse of spiritual influence? It is interesting, for instance, that in the story of the aged care chaplain above, the chaplain was reported by colleagues rather than by the donor. Similarly, in *Quek v Beggs*, it was not the donor (Mrs Quek) but her children who challenged the gifts she had made to her pastor.³² Thus normative judgments are made by outsiders to the transactions (the courts, or the UCA or those otherwise entitled to the subject matter of the gift) as to the appropriateness of those transactions. It needs to be asked how these normative standards are set and what justifications exist for not recognising, or discounting, the autonomy of affected donors.

The Power of Suggestion

At the time of the project, disciplinary proceedings were underway with respect to a minister for alleged breach of section 5.1 of the *Code of Ethics*.³³ The minister allegedly accepted gifts of furniture from a person they had cared for pastorally during an illness. It was alleged that the minister had influenced the donor by repeatedly admiring the donor's furniture and hinting that the minister would like to own it. It was also alleged that there was a pattern of similar behaviour by this minister in the past and that in a previous settlement

³⁰ Interview with UCA chaplain, Sydney, 15 June 2001.

³¹ Interview with senior officer of Wesley Mission, Sydney, 22 June 2001.

³² (1990) 5 BPR [97405] at 11,776.

³³ Interview with general secretary of New South Wales Synod and UCA minister, Sydney, 30 March 2001. Because this person was in a placement rather than being employed, the *Code of Ethics* procedure was used. See further on employment status of ministers of religion, *Ermogenous v Greek Orthodox Community of SA Inc* (2002) 209 CLR 95.

the minister had 'ended up with a house-load of furniture' when an elderly person moved to a nursing home. The matter in question had been reported by a colleague.

In this story, the minister did not ask outright for the furniture to be given; instead the minister admired it. In another interview, a minister hypothesised on how someone might be similarly induced to act in a desired way:

I'm just visiting there today and happened to mention how tired I've been lately and how difficult it's been to get a break from such and such. 'Oh, that would be very nice, I'd love to have ...' I'm not seeking anything, but gee, you can be very subtle can't you?³⁴

In *Quek v Beggs*, McClelland J also referred to:

the ease and subtlety by which suggestions may be conveyed to, encouraged in, and absorbed by, those vulnerable to them as to what is the will of God in relation to their actions in particular matters.³⁵

Overlap with Other Forms of Abuse?

One question that the interviews raised, but did not answer, was the extent to which sexual abusers of spiritual influence were likely to have engaged also in abuse for financial gain — that is, is there an overlap in the different forms of abuse of spiritual influence? The possibility was suggested by two stories. In the first story (described above), of the chaplain at an aged care facility selling his furniture to a resident and accepting a valuable gift from another resident, the chaplain was also accused of sexual harassment of two female workers at the facility.³⁶ A second story suggested that, where sexual abuse is concerned, it becomes the focus of disciplinary proceedings, and potential financial abuse is overlooked:

One person who committed sexual misconduct, a minister with two late teen girls, had to leave his congregation. It was interesting at [around] the same time I became aware that ... a widow of the congregation had loaned him some money. I'm talking something in the order of \$10 000 or \$20 000 ... in my perception, it is highly likely that people who engage in such activities — they will be abusing in other ways and there's a pattern of deceit in the background or a pattern of misusing power.³⁷

In this instance, the minister resigned from the ministry and the loan was not investigated further.

³⁴ Interview with former Synod officer and minister, Sydney, 30 April 2001.

³⁵ (1990) 5 BPR [97405] at 11,766.

³⁶ The story does not necessarily indicate that there was abuse of spiritual influence involved in the sexually inappropriate conduct.

³⁷ Interview with officer of a Presbytery, Sydney, 7 May 2001.

Influence Over a Congregation

Most stories that were told in the interviews concerned exploitation by individual ministers of influence gained through a relationship with another individual to whom they gave spiritual guidance and care. However, one story concerned a minister's use of influence gained over a congregation. The minister solicited financial gifts from his congregation before leaving the UCA.

We have our own individual who managed to get through the net because it happened before the *Code of Ethics* came in who decided he was going to leave the Uniting Church and went around and basically solicited money from his whole congregation before he left. He got away with it because we didn't have something in place then specifically that said that is wrong.³⁸

In addition to the stories of perceived abuse of spiritual influence, a number of reasons were given as to why people are inclined to be generous to UCA ministers and the difficulty such generosity sometimes creates for ministers in deciding how to respond. These reasons are now discussed.

Respect for the Status of Ministers

For some groups within the UCA, a minister has a special status or 'prestige', simply by virtue of his or her employment. In the words of a New South Wales Synod document:

In some congregations, ministers are revered because of the Divine Power that is the ultimate authority behind the human person called minister. This sometimes makes it hard for both minister and congregation to think of the minister as being accountable. For some, 'to challenge the Minister is a direct insult on God the Almighty'.³⁹

This was particularly noted in relation to non-English speaking congregations. A retired senior official of the New South Wales Synod gave one example:

I remember sitting in a meeting on one occasion [with] a minister and a group of Tongan elders and there was a younger person who was showing some leadership and doing some organising for a synod event. This person said: 'I think we can do this and this and this' and the minister said: 'No, I think we should do it this way.' This went on two or three times and the minister just said quietly: 'No, we'll just do it this way.' Eventually one of the elders said: 'Be quiet and listen to what the minister is saying.'⁴⁰

³⁸ Interview with member of staff, United Theological College, Sydney, 16 August 2001.

³⁹ UCA New South Wales Synod, Board of Social Responsibility (1999).

⁴⁰ Interview with former Synod officer and minister, Sydney, 30 April 2001.

Elderly people also were perceived to give greater respect to their ministers, and one factor contributing to this was an increasing awareness of spiritual values and issues of salvation, consequent upon approaching death:

[Some older people] still see it being very important to be in the right relationship with the Church and with God in order to go to heaven ... that puts the Church in a very powerful position because, if the minister says: 'You're out of favour', that means you're probably out of favour with God.⁴¹

Culture of Generosity

It was clear from the interviews that, within the UCA, there is a culture of generosity towards ministers. Such generosity creates the potential for abuse of influence in extreme situations and, at a more general level, raises ethical questions about how ministers should respond appropriately to such generosity. Factors contributing to this culture that emerged from the interviews related to non-English speaking congregations, the history of remuneration of UCA ministers, and attitudes regarding the adequacy of remuneration.

Non-English Speaking Congregations. Generosity towards ministers in non-English speaking congregations was particularly commented upon in the interviews. The New South Wales Synod's response to the Interim Code of Ethics also raised this issue:

In some non-English speaking cultures, it is normal and acceptable to give gifts of both money and other goods to the Minister for 'services rendered'. In some cultures, it is regarded as a great privilege for the Minister to be involved in such functions as weddings, funerals, etc, [and] the Minister is bestowed with great gifts of both money and goods. In the UCA, we regard such duties as the normal part of the Ministers' responsibilities. Whilst the Minister is not necessarily seeking financial gain from pastoral relationships, in many cultures Ministers do not discourage this behaviour. It is not easy to do that as in some cultures it would be seen as inappropriate behaviour to refuse or decline such gifts. Still, I know of some instances where the Minister receives a great deal of money from families who are barely able to keep their heads above water.⁴²

As a result of this submission, section 5 of the *Code of Ethics* was amended to include section 5.3:

⁴¹ Interview with UCA chaplain, Sydney, 15 June 2001.

⁴² UCA New South Wales Synod, Board of Social Responsibility, *NSW Synod Response to the Interim Code of Ethics for Ministers*, 1999.

Where ministers accept a gift to satisfy cultural traditions they should then look at the appropriate use of the gift to benefit the community of faith.

The difficulty of knowing how to respond appropriately to extravagant hospitality and generosity given by non-English speaking congregations was commented upon:

I've had more dinners with Koreans than I have with any other cultural or ethnic group in the Church. The Tongans are also a very hospitable people. Hospitality is a key word in their theology. Hospitality is gospel. It doesn't come in my perception with strings attached ... sometimes you feel a sense of embarrassment about the level of that hospitality.⁴³

Historical Factors. A second factor contributing to a culture of generosity towards UCA ministers is that, historically, ministers of the UCA's parent churches were not well remunerated. People now aged in their seventies and eighties experienced the Great Depression of the 1930s and (in the view of some interviewees) retained a sense of obligation to ensure that the minister was adequately provided for.

*Adequacy of Remuneration.*⁴⁴ A third factor contributing to an ethos of generosity towards ministers that was identified through the research project and that is related to historical factors is the perception by some ministers and some members of the church that ministerial remuneration is not commensurate with the expertise and training required.⁴⁵ The comparison is drawn unfavourably with the remuneration received by other professionals such as lawyers and doctors. Compounding this view is the fact that some ministers have professional employment before accepting a call to ministry. The use of the term 'stipend' to describe a minister's salary reinforces the idea that ministers receive a bare allowance for living expenses.⁴⁶ All this makes it more possible that some ministers may feel justified in accepting even large gifts to 'top up' their remuneration.

A public scandal in 2000 concerning the salary package of the superintendent of Wesley Central Mission in Victoria generated much public

⁴³ Interview with former Synod officer and minister, Sydney, 30 April 2001.

⁴⁴ An issue related to the income of ministers that arose repeatedly in interviews, but which is not directly the result of exploitation of influence, concerns the receipt of fees for weddings and funerals. There was no Synod policy on whether such fees belong to the minister or the congregation. Of most concern was the issue of churches 'selling' wedding services to overseas tourists.

⁴⁵ This was a suggestion made by two interviewees, both executive officers within the New South Wales Synod: interview with officer of the New South Wales Synod (and minister), Sydney, 14 June 2001 and interview with past officer of the New South Wales Synod, Sydney, 14 June 2001.

⁴⁶ Interview with past officer of the New South Wales Synod, Sydney, 14 June 2001.

comment by UCA officials with respect to ministerial entitlements. In that case, the superintendent was secretly receiving more than four times the standard ministerial package of around \$40 000 per annum.⁴⁷ The public response of a senior New South Wales minister to the Victorian scandal is illustrative of a belief that ministers do not receive remuneration commensurate with their ability:

I am pleased to say that as Superintendent for the past 22 years I have never been on an excessive salary. My salary is based upon that of other Uniting Church ministers throughout New South Wales. My current salary of \$40 800 is approximately \$10 000 less than that of a high school teacher. I was pleased that the *Sydney Morning Herald* said there was no corporation in Australia whose Chief Executive with the responsibility of \$100 million a year budget received a salary of \$40 000.⁴⁸

Conversely, one interviewee (a UCA minister) was of the view that, while many UCA ministers consider that they are underpaid, this is misguided because in fact they earn above average weekly earnings and, depending on their placement, may take up to 30 per cent of a ministerial stipend in fringe benefits. This is advantageous because the UCA pays no Fringe Benefits Tax. So, for example, accommodation costs and travel allowances may be paid tax free.⁴⁹

Interviews with two members of a UCA congregation showed how a minister might foster and exploit the perception of inadequate remuneration in order to receive significant extra financial benefits from his or her congregation. According to the two interviewees, the minister in question made it clear to his congregation that he was not well remunerated:

Congregation member 1: He made comments about not getting much money. He cried poor on a fairly regular basis. I can remember him making a statement, it was actually in a sermon, about if he left he could just leave with his car and his clothes ...⁵⁰

Approximately halfway through his settlement (ministry) with the congregation, a proposal was put to the Parish Council that the minister be

⁴⁷ The package had been approved by the executive committee of the Board of Wesley Central Mission, contrary to the UCA *Regulations* (which required such approval to be made by the relevant presbytery) and contrary to Synod guidelines which stipulated a maximum of 30 per cent loading on the standard stipend. The arrangement had been kept secret.

⁴⁸ Wesley Mission Sydney, *Annual Report 1999/00*, Superintendent's Report, p 11.

⁴⁹ Interview with officer of the New South Wales Synod (and minister), Sydney, 14 June 2001. The estimated minimum stipend for UCA ministers in the New South Wales Synod for 2002 given to congregation treasurers for budgetary purposes was \$40 500.

⁵⁰ Interview with two members of a UCA congregation, 6 January 2002.

paid 10 per cent above the normal UCA stipend entitlement.⁵¹ According to the two interviewees, the rationale given by the chairman of Parish Council for the suggested increase in the minister's stipend was:

Congregation member 1: he worked so hard, he was a wonderful minister, he was just the best you could have and look at the poor pay they get ...⁵²

A story was told in another interview of how a minister obtained rent-free accommodation from an elderly person in a way that was perceived by the interviewee as an abuse of power. A belief by the donor that the minister was inadequately remunerated was exploited:

A pastoral care person used influence to go and live rent-free in a house which was vacant because the resident had come to live in a retirement place. And the [resident] ... felt: 'It's a lovely thing to be able to do to assist this minister.' But I think that the way that it was done was extremely manipulative on the part of the minister, who was being paid by the Church sufficient funds to be able to have arrangements for accommodation anyway.⁵³

Thus the practice of extravagant hospitality by non-English speaking congregations, the historical inadequacy of ministerial remuneration and the perception by some ministers that they are inadequately remunerated all contribute to a culture of generosity towards UCA ministers.

Dilemma for Ministers Regarding Acceptance of Gifts

It is self-evident that, generally, gifts to ministers are not the product of abuse of spiritual influence. Most are made freely and after due consideration by the donor. However, should ministers ever be able to accept gifts from those with whom they are in a pastoral relationship, given that it will be difficult after the event to determine whether or not the gift was made freely and whether there was an abuse of power? Some interviewees felt that acceptance of any gift compromised the integrity of the pastoral relationship and therefore, was not appropriate.⁵⁴ The example given (although it was unclear whether this was true or hypothetical) was of a well-known artist giving a painting to a UCA minister in a context where the gift was undoubtedly not the product of the exercise of undue influence. In that situation, despite the decision to give being independent, nonetheless the minister's acceptance of the gift blurred the nature of the pastoral relationship. However, other interviewees considered that such an uncompromising stance created a dilemma for ministers: if the

⁵¹ This is permitted by the UCA in some circumstances.

⁵² Interview with two members of a UCA congregation, 6 January 2002.

⁵³ Interview with UCA chaplain, Sydney, 15 June 2001.

⁵⁴ Interview with general secretary of NSW Synod and UCA minister, Sydney, 30 March 2001.

gospel is about hospitality and generosity, why should the minister be the only one not to benefit?

Is it alright for me to encourage you to share your holiday house with that family who we know has been going through a rough time, but don't share it with my family?⁵⁵

Section 5.2 of the *Code of Ethics* takes a middle line between the two extremes:

5.2 Where Ministers receive gifts resulting from the pastoral relationship the Minister shall use discretion concerning the acceptance or return of gifts by considering the intent and affordability of the gift and whether there is a risk of the Minister being compromised or losing objectivity. Advice shall be sought from the appropriate Presbytery officer if the Minister is uncertain of the appropriateness of a gift.

Thus ministers are not precluded by the Code from accepting gifts but must take a range of considerations into account in deciding whether to accept. None of the interviewees referred to section 5.2; however, this is likely to be due to the relative newness of the Code and the fact that, generally, interviewees were reflecting upon past experiences.

Taking a Commercial Advantage from a Spiritual Relationship

The second scenario identified by the project in which concerns were raised is where an individual or an institution takes advantage of a relationship of pastoral and spiritual care to gain a commercial advantage. This can be by individuals for personal gain or for the benefit of the institution represented by the individual. Both the law and the UCA regulate this situation. Legal doctrines that may apply to such a scenario include undue influence and unconscionable dealings.⁵⁶ The *Code of Ethics* prohibits the taking of a commercial opportunity by virtue of spiritual influence by individual ministers, in section 5.4:

Ministers shall not use their ministry to recruit clients for private practice or commercial interests.

⁵⁵ Interview with former Synod officer and minister, Sydney, 30 April 2001.

⁵⁶ Both doctrines allow rescission of a contract where either there is actual undue influence or an unrebutted presumption of undue influence between the parties to the contract, or where a special disability in one party is knowingly taken advantage of by the other party (unconscionable dealings). The special disability could be a permanent disability such as physical infirmity or a strong attachment and deference to the spiritual leader, or a circumstantial disability such as extreme grief immediately following a bereavement. See *Commercial Bank of Australia v Amadio* (1983) 151 CLR 447. Part IVA *Trade Practices Act 1975* (Cth) may also apply.

In the view of some interviewees, a clear breach of section 5.4 of the *Code of Ethics* occurred with respect to Wesley Mission's alliance with Creightons Palmdale Funeral Service ('Creightons'). Wesley Mission is a parish mission within the New South Wales Synod and based in Sydney. Wesley Mission contracted with Creightons, an established funeral provider on the north coast of New South Wales, to refer clients to Creightons to settle such clients' funeral arrangements, and to provide grief counselling for referred clients. In May 2000, Wesley Palmdale Funeral Service ('Wesley Palmdale') was launched. In essence, it was envisaged that Wesley Palmdale would arrange funerals and Creightons would provide the services to carry out the funeral. The venture would operate from premises in Sydney that Wesley Mission would provide. It was agreed that employees of Wesley Mission who provided pastoral care during a bereavement (primarily chaplains) would sell Wesley Palmdale's services to their clients. They would settle the funeral arrangements on behalf of the funeral provider, including selection of a casket, cars, newspaper advertisements and so on, and would provide appropriate grief counselling. In return, Wesley Mission was to receive a fixed fee for each referral by Creightons.

Wesley Mission was strongly criticised by four interviewees for confronting its chaplains with a conflict of interest between the pastoral needs of bereaved families and the commercial interests of Wesley Palmdale in securing a referral. Compounding this conflict of interest was the intense vulnerability to influence of a recently bereaved family:

If someone close dies and you are distressed, there almost seems an unseemliness about haggling over prices for funerals. And people almost invariably decide that the first person they ring is the person who will do the funeral. They don't want — they're not emotionally geared up to argue. They're just distraught and the emotional concerns are dealing with their feelings.⁵⁷

A chaplain interviewed for the project described the dilemma created for him by Wesley Palmdale:

I will not sell a coffin and bury it because, to me, it is a dramatic conflict of interest, that opens one up to all sorts of potential misunderstanding. I mean, there's a sense in which it is fine to be able to give people support and pastoral counselling at a time when they need that, but that needs to be kept separate from the physical arrangements which have to do with a funeral service.⁵⁸

After Wesley Mission chaplains expressed their dissatisfaction with the resulting conflicts of interest, Wesley Mission employed a minister (a Baptist pastor) to manage the operation, including settling the funeral arrangements, and excused chaplains from that role. In addition, responsibility for Wesley

⁵⁷ Interview with UCA chaplain, Sydney, 15 June 2001.

⁵⁸ Interview with UCA chaplain, Sydney, 15 June 2001.

Palmdale was moved from the Pastoral Services department of Wesley Mission.

A senior officer of Wesley Mission interviewed on behalf of Wesley Mission defended Wesley Palmdale. In his view, the service enabled Wesley Mission to continue its care for a bereaved family into the commercial aspects of the funeral, and was not intended to be a profit-making venture. In fact, Wesley Palmdale was operating at a deficit. He explained the rationale for Wesley Palmdale as follows:

I suppose the whole philosophy of the mission is we go into services where there is a gut feeling that we're needed ... you have to try it. There is thought to be a need out there.⁵⁹

The chaplain quoted above also explained that Wesley Mission's motive in setting up Wesley Palmdale had been to encourage a more competitive market for funeral services in the Sydney metropolitan area:

Wesley Mission were concerned for the escalation in the price of funerals, especially for people who were of limited means, and they thought one of the things they would like to do is to make a small impact in this by being an Australian — offering a service which minimised the need for people to be caught up in the Americanisation.⁶⁰

The amended arrangements for Wesley Palmdale meant that chaplains were not required to 'sell' a funeral to bereaved people to whom they were giving pastoral care; however, the question is whether there remained a conflict of interest nonetheless. A chaplain counselling bereaved people is faced with an ethical dilemma if asked to recommend a funeral service, particularly if the death has occurred in a facility operated by Wesley Mission. Pamphlets advertising Wesley Palmdale were distributed through Wesley Mission's congregation and facilities. The chaplain interviewed explained that he provided the brochures and prices of all local funeral services to families who asked for his advice in choosing a funeral provider.

Particular concern was expressed that Wesley Palmdale was not, in fact, offering a cheaper or more competitive service, although clients may be misled into believing that the involvement of Wesley Mission meant that Wesley Palmdale provided a cheaper service. Their prices were described as 'a little bit higher than the middle of the road'. Thus it appears that at least one goal of the enterprise (to provide more affordable funeral services) was not being met.

Wesley Palmdale ceased business in April 2002. Its operation illustrates how a close relationship created through spiritual care in a time of crisis might be taken advantage of (albeit with altruistic motives) to secure a commercial advantage, thereby breaching the *Code of Ethics* (at least when Wesley Mission chaplains recommended its services). Unless the solicitation for

⁵⁹ Interview with senior officer of Wesley Mission, Sydney, 22 June 2001.

⁶⁰ Interview with UCA chaplain, Sydney, 15 June 2001.

business by Wesley Palmdale was separated completely from the relationship between ministers and bereaved families, it would continue to pose a conflict of interest for those ministers.

Conclusion

The object of the research project discussed in this paper was to explore, in a preliminary fashion, the receipt of financial benefits within the New South Wales Synod by UCA ministers and institutions (excluding testamentary gifts). The template of the equitable doctrine of undue influence as illustrated by the facts of *Quek v Beggs* was taken as a starting point; however, although the project yielded some stories of abuse of spiritual influence for financial gain, there were none in which the legal validity of the transactions in question could be challenged. On the other hand, although most of the stories described predated section 5 of the UCA's *Code of Ethics*, they contravened that provision. The two scenarios in which concerns arose that were identified are:

- 1 the receipt of financial benefits by individual ministers. All the stories described involved a perceived abuse of spiritual influence; however, the interviews also yielded information about other reasons why people might give to ministers, and the difficulties for ministers in accepting gifts;
- 2 the taking of a commercial advantage from a relationship of pastoral and spiritual care. The example discussed was the selling of funeral services to families receiving pastoral care.

The hypothesis that generated this project was that there were likely to be circumstances in which financial benefits were received by ministers or religious bodies where regulation (either legal or ethical) was warranted. The suggested reasons for this were the potential for a strong and intimate relationship to arise between a spiritual carer/leader and follower that created the potential for abuse of influence, and the fact that Christian churches have a ministry to people in need who are, by nature of their circumstances, vulnerable to exploitation. The project's findings support the initial hypothesis that regulation is warranted because they demonstrate that abuse of spiritual influence for financial gain by ministers and bodies within the UCA does occur. The first suggested reason for the hypothesis was not so well supported. Instead, the project yielded information about a culture of generosity towards ministers in the UCA that is based upon respect for ministers as God's representatives, cultural norms in non-English speaking congregations, a history of poor remuneration and a perception that ministers continue to be inadequately remunerated. The second scenario discussed in the paper (the taking of a commercial advantage) did support the second suggested reason for the hypothesis (that people in crisis who turn to UCA ministers for support are vulnerable to exploitation).

The project also demonstrates that, to a large extent, the UCA *Code of Ethics* provides appropriate regulation to deal with the scenarios described, whether they involved issues of abuse of influence or, more generally, the appropriateness of accepting gifts arising out of a pastoral relationship.

Obviously, the efficacy of the *Code of Ethics* depends upon how it is implemented and enforced and, as the *Code of Ethics* is still in its infancy, it is too early to assess its operation.

Regarding the conceptual dilemma of the equitable doctrine of undue influence (is it about wrongdoing by the minister or impaired autonomy on the part of the donor or both?), the interviewees in the project clearly focused on the former aspect in relating stories of perceived abuse of spiritual influence. For example, it was the fact that the nursing home chaplain took advantage of the terminally ill resident in accepting a valuable curio at less than market value that rendered the transaction offensive to the interviewee who related the story. Similarly, in the story of the minister who repeatedly admired the furniture of aged congregation members selling up their houses, it was the 'planting' of ideas in the minds of the donors that caused offence. Thus, in this project, it was the exploitation of an advantage gained through a relationship of spiritual and pastoral care that caused concern to interviewees, rather than any impairment in the ability of donors to think for themselves.

This was a very small project, which sought to identify issues worthy of further study. Nonetheless, its findings are important. The UCA is a mainstream Christian denomination that has sought to address the issues explored in this paper through its *Code of Ethics*. There are many Christian denominations in Australia and overseas that have not taken such steps. Furthermore, the issues are relevant to any religious group.⁶¹ A pervasive theme throughout this paper concerned the necessity for normative judgments to be made regarding when receipt of financial benefits by ministers and churches requires legal or ethical regulation. How does one decide whether conduct constitutes an abuse of spiritual influence, and on what grounds? Such questions concerning the restriction of the rights of donors to give as they choose in the free expression of their religious beliefs versus the regulation of such transactions by legal or ethical standards, justify further study.

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⁶¹ It is noteworthy that the two most recent cases in the New South Wales Supreme Court to apply the equitable doctrine of undue influence to gifts in a religious faith context involved a breakaway sect of the Church Universal and Triumphant and the Hare Krishna movement respectively. *McCullough v Fern* [2001] NSWSC 406; *Hartigan v International Society for Krishna Consciousness Inc* [2002] NSWSC 810.

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