

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV-2004-404-001363

UNDER the Charitable Trusts Act 1957 and the
Trustee Act 1956

IN THE MATTER of an Application for Appointment of
Trustees and an Application for
Appointment of Manager of Trust

BETWEEN **K R LAMA**

PLAINTIFF

AND **R HOPE, L K SHEDRUP, T
BURCHELL and E DUCKWORTH**
as purported Trustees of the **NEW
ZEALAND KARMA KAGYU
TRUST**

DEFENDANTS

**AFFIRMATION OF GEOFFREY BRIAN SAMUEL IN
REPLY (IN RESPECT OF APPLICATION FOR
APPOINTMENT OF TRUSTEES AND OTHER
ORDERS)
AFFIRMED 11TH NOVEMBER 2004**

Presented for filing by:
PATTERSON HOPKINS
SOLICITORS
P O BOX 1772
AUCKLAND
TELEPHONE 09 968 8575
FACSIMILE 09 968 8579
Partner Responsible: **W M PATTERSON**
Solicitor Acting: **M J ALLAN**
Email: melissa@pattersonhopkins.co.nz

I, **GEOFFREY BRIAN SAMUEL** of Newcastle, New South Wales, Professor solemnly and sincerely **AFFIRM**:

1. My full name is Geoffrey Brian Samuel. I reside in Newcastle, New South Wales, Australia.

2. I am employed by the University of Newcastle, New South Wales, as a Professor in Anthropology. The specialist field of my research is religion and politics in Tibetan societies, and I have written and researched in this field since my doctorate, which was awarded in 1976 for a thesis on religion and politics in Tibetan societies. This thesis, and my principal book on Tibetan religion, *Civilized Shamans: Buddhism in Tibetan Societies*, published in 1993, both discuss the role of reincarnate lamas (*tulku*) in Tibetan religion at length, and I have continued to gather material on these topics subsequently, also working on other aspects of Tibetan culture and society. My research is based on interviews, participant observation, and study of documentary materials in Tibetan and in Western languages.

3. I confirm that I have read the Code of Conduct for Expert Witnesses contained in Schedule 4 to the High Court Rules and I agree to comply with it. My evidence is within the scope of my expertise.

Instruction

4. I have been asked to provide an affirmation on the subject of the recognition of reincarnate lamas in Tibet with particular reference to the Karma Kagyu lineage of Tibetan Buddhism and the role of the Dalai Lama generally. I have in addition to matters which are within my direct knowledge consulted the following written texts:

References Cited

Aris, Michael (1979) *Bhutan: The Early History of a Himalayan Kingdom*. Warminster, Aris and Phillips.

Cassinelli, C.W. and Robert B. Ekvall (1969) *A Tibetan Principality. The Political System of Sa sKya*. Ithaca, Cornell University Press.

Douglas, Nik and Meryl White (1976) *Karmapa: The Black Hat Lama of Tibet*. London: Luzac & Co.

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Ellingson, Ter (1990) "Tibetan Monastic Constitutions: the bca'-yig." In *Reflections on Tibetan Culture. Essays in Memory of Turrell V. Wylie*, ed. by Lawrence Epstein and Richard F. Sherburne, pp. 205-30. Lewiston, Queenston, Lampeter: The Edwin Mellen Press. (Studies in Asian Thought and Religion, 12.)

Goldstein, Melvyn C. (1971) "The Balance between Centralization and Decentralization in the Traditional Tibetan Political System." *Central Asiatic Journal* 15: 170-182.

Karma Thinley (1980) *The History of the Sixteen Karmapas of Tibet*. Boulder: Prajna Press.

Lessing, Ferdinand D. (1942) *Yung-ho-kung: An Iconography of the Lamaist Cathedral in Peking with notes on Lamaist Mythology and Cult*. Volume 1. Stockholm. (Reports of the Sino- Swedish Expedition, VIII, 1. Ethnography, 1.)

Shakabpa, W.D. (1967) *Tibet: A Political History*. New Haven, Yale University Press

Smith, E. Gene (1968) "Foreword." to *Tibetan Chronicle of Padma-dKar-po*, ed. Lokesh Chandra. New Delhi, IAIC, 1-8.

Detailed references for many of the matters contained within this affirmation are also given in my own book:

Samuel, Geoffrey (1993) *Civilized Shamans: Buddhism in Tibetan Societies*. Washington, DC: Smithsonian Institution Press.

Introduction

5. In pre-modern Tibet (before the Chinese takeover in 1949-59), there was no clear and unambiguous constitutional or legal framework which governed the recognition of reincarnate lamas. The situation was quite unlike e.g. the controversy in Australia over the dismissal of the Whitlam government in 1975 or that in the USA over the election of Bush as US President. In these cases, there were disagreements about the legality or propriety of what happened but both the USA and Australia possessed a formal constitutional framework that specified the rules according to which such decisions should happen. There were no rules of this kind in pre-modern Tibet (the so-called laws of Songtsen Gampo certainly do not constitute a framework of this kind). In addition, while the Tibetan rulers (*btsan-po* or 'emperors') of the early empire (7th to 9th centuries), such as Songtsen Gampo, may have been rulers of more or less all the Tibetan population of the time, this has not been the case for

subsequent Tibetan states, none of which have maintained effective control over more than a part of the Tibetan population. In addition, various Mongol, Manchu and Chinese rulers (and one should probably add the Dogras and the British, in regard to Ladakh at least) have also exercised jurisdiction to varying degrees and for varying periods of time (the Mongols in the late C13 and early C14, the Manchu Emperors of China intermittently, but particularly in late C18 and early C19).

6. In this situation, political power was a matter of maintaining shifting alliances between powerful local landowners (nobles or aristocrats), the increasingly powerful monasteries, wealthy trading families, and in some cases external powers. The lamas, both those identified as reincarnations (*tulku*¹), and those appointed or selected by other means, were very much part of this process, and their status and legitimacy was essentially a function of the effectiveness with which they or their monastic establishment operated in this environment. Recognition by other lamas and by political authorities, the possession of and right to transmit valued spiritual practices, as well as personal spiritual and other qualities, were all significant components of their status and legitimacy, but none by itself was decisive.

7. There was also a general idiom of dispute resolution and face-saving, such that agreements tended to be presented in such a way that both sides could claim success. Thus where there was more than one claimant to be a reincarnation, ways might eventually be found to recognise both as having some validity (see below).

8. The Lhasa government, which was in effect under the direction of the Dalai Lama (it began as an extension of his personal *labrang* or household, see later), gained control over much of Tibet in the 1640s. It subsequently went through periods of greater and lesser effective power, the latter coinciding with greater control by the large Gelugpa monasteries and/or external powers.

9. During the period of rule of the 13th Dalai Lama (who died in 1933) there were sustained attempts to construct some of the apparatus of a modern state in the area ruled by the Lhasa state (which at that time covered roughly half the Tibetan population) and these continued in varying degrees during the years after his death. Even the 13th Dalai Lama at the height of his power could not really be described,

however, as the overall spiritual and temporal leader of the Tibetan people. He was the temporal leader of some half of the Tibetan people (after the military defeat of Powo and the flight of the Panchen Lama to Mongolia) and the spiritual leader (if not the formal head) of the Gelugpa tradition (though individual monasteries within the Gelugpa order retained considerable autonomy). He was very widely respected among the entire Tibetan population, but this does not mean that what he said had binding authority for Tibetans outside the Lhasa state (so-called "Outer Tibet" as defined by the Simla Convention, and roughly equivalent to today's Tibet Autonomous Region). Within that state, his authority over ordinary Tibetans was that of a secular ruler.

10. As such, his government could and did take a role in approving the installation of reincarnate lamas, particularly the more politically important ones, within the Lhasa state (there were perhaps around a thousand reincarnate lamas by the mid-twentieth century, and many were of mainly local significance). This matter is discussed further below. It should be remembered, however, that more than half the population of Tibet lived *outside* the Lhasa state, in other states or stateless regions. While the Karma Kagyü head monastery of Tsurphu was within the Lhasa state, the majority of the followers of the Karma Kagyü tradition, and many of its important monasteries, were outside the Lhasa state (see Samuel 1993: 39-154).

11. In the years following H.H. the 14th Dalai Lama's flight from Tibet in 1959, he has become, in effect, the "overall spiritual and temporal leader of the Tibetan people" in a way that his predecessors as Dalai Lama were not. To a large extent this new role of the Dalai Lama has been generally accepted among the Tibetan population outside and inside Tibet, but when it comes to a crisis such as the dispute over Dorje Shugden rituals (Dreyfus 1998; Kay 1997) or the case at issue here, the recognition of the 17th Karmapa, it becomes clear that there are limits to that acceptance.

Authority among Monastic Orders

12. The first Tibetan monastery is said to date from the late 8th century, and by the 12th and 13th centuries substantial numbers of monasteries were being constructed

¹ The spellings given here represent the approximate pronunciation rather than transliterated

throughout Tibet. Individual monasteries were not initially part of any kind of hierarchical structure of religious authority. Each was initially under the authority of its own abbot, and this was essentially an elected and constitutional authority, generally defined by the charter or *chayig* of the monastery (see Ellingson 1990), and in any case subject to the monks moving elsewhere should they disapprove of the monastery's leadership.² In many cases, the headship of the monastery was passed down in a single family (where the head was a celibate monk, which was not necessarily the case, the next head would be a younger brother, brother's son or other younger patrilineal relative).

13. Monasteries were generally granted land by the local or regional ruler at the time of their initial foundation. This might be recorded in the monastery charter or *chayig*. Over time, significant monasteries might acquire further rights over land, villages, and pastoral communities, and these came to form the estate of the monastery. Large monasteries thus acquired, in effect, legal and judicial rights over the population of their dependent villages and pastoral communities, parallel to those of aristocratic landlords, though Tibetan communities retained into modern times a strong orientation towards the settlement of disputes through local mediation rather than centralised legal mechanisms, especially in the pastoral areas and among more remote agricultural communities. From the 13th century onwards, initially as a result of Mongol rule, some monasteries (or their senior lamas) became, in effect, rulers of small to medium size states. Examples are the rule of the Dalai Lamas over the Lhasa state, which comprised much of Central Tibet (Ü-Tsang) and parts of Eastern Tibet (Kham), of the Shabdrung Rinpoches³ over Bhutan, and of a number of lesser hierarchs, including the Sakya Tridzins and Panchen Lamas. The precise extent of government within these states could be further discussed and undoubtedly varied widely, but is not particularly material to the present issue (cf Cassinelli and Ekvall 1969; Goldstein 1971; Samuel 1993; Dreyfus 1995).

14. Each monastery possessed and transmitted its own spiritual practices, teachings and texts. Here it should be noted that Tibetan Buddhism places great

spellings.

² In later times, young men might serve as monks as part of a village's tax obligation, imposed by a local or regional ruler, so these monks were not free to leave unless they could get someone else to take their place.

³ The term "Rinpoche" is an honorific commonly used with the names or titles of lamas as well as in other contexts. It is also used as a polite term of address for lamas.

importance on the formal transmission of teachings (and of the right to teach) from guru to disciple. This is particularly true in the case of Tantric ritual practices. Such transmission creates a lineage (*gyü*)⁴ of successive teachers and disciples. Many of these lineages claim to go back to the Buddhist teachers of India in the 12th century or earlier, and possession of such a lineage is an important matter for a monastery.

15. It should be noted however that the term "lineage" is a general one, and this is only one sense in which it is used. Its primary meaning is genealogical (as in a family lineage). One can also speak of lineages in relation to non-Tantric teachings, e.g. Vinaya lineages, referring to the transmission of the monastic disciplinary code or Vinaya.

16. Over time, some monasteries became major teaching centres, and lamas who had studied there founded 'daughter' monasteries that continued the same teaching lineages. Thus a number of monastic orders or traditions were built up. These are generally divided into four overall groupings, the Nyingmapa, Sakyapa, Kagyüpa and Gelugpa. With the partial exception of the last, these were *not* however hierarchical structures under a single head. Each consisted of a number of more or less autonomous units.

17. The Nyingmapa was the least formalised of these, since it originated in the many small monasteries claiming descent from the original transmission of Buddhism to Tibet in the 7th to 9th centuries. By the 18th century, two Central Tibetan monasteries and four Eastern Tibetan monasteries had emerged as the principal teaching centres of the Nyingmapa, and most of the significant Nyingmapa Tantric lineages were possessed by these monasteries (Samuel 1993: 533).

18. The Kagyüpa claimed its origins in the 11th century Tibetan teacher Marpa, who studied in India with Indian tantric gurus of whom the most important was Naropa. The main teaching monasteries of this tradition were founded by disciples of Gampopa (c.1079-1153), a monk who studied with Marpa's own most important student, Milarepa. These disciples and their successors founded what were to be eventually recognised as eight independent Kagyü traditions. The three most important of these were the Karma Kagyü(-pa) or Karmapas, whose principal

⁴ The Tibetan word for Tantra (also pronounced *gyü* but with a slightly different spelling) is

monastery at Tsurphu was founded by Karmapa Düsum Khyenpa (1110-1193) in 1189, the Drigung Kagyü or Drigungpas, whose main seat, Drigung, was founded in 1179 by Drigung Rinpoche (1143-1217), and the Drukpa Kagyü or Drukpas, whose principal monastery, Ralung was founded by Lingrepa Pema Dorje (1128-1188) in 1180. These three monastic orders were major players in Tibetan and Bhutanese politics in subsequent centuries.

19. The Karmapas (Karma Kagyüpas) were the first to develop the institution of a succession of reincarnate lamas. This idea was based on Indian precedents and was closely linked in its origins to one of the main Kagyü tantric practices, which involved control of the consciousness during the after-death state. The recognition of a reincarnation involved, at least in theory, the dead lama having had conscious control during the post-death state and having deliberately chosen to be reborn so as to continue helping his followers. The first such sequence of lamas goes back to the founder of Tsurphu, Karmapa Düsum Khyenpa. These lamas are themselves known as the Karmapas (also known as Gyalwa Karmapas or Shanagpas), and Karmapa Düsum Khyenpa is consequently also referred to as the 1st Karmapa. The sequence appears to have been clearly established by the time of the 3rd Karmapa, Rangjung Dorje (1284-1339, see Samuel 1993: 494). A variety of techniques were developed to identify reincarnations and some of these are discussed below in the case of the Karmapas.⁵ The practice of identifying reincarnations, who would be trained to take over the *labrang* and monastery (or monasteries) of their predecessors, gradually spread through other suborders and later through other traditions. Other high-status lamas within the Karmapa order included the Shamarpa or Shamar Rinpoche (first member Khedrup Drakpa Senge, 1283-1349), Situ Rinpoche (first member Choskyi Gyaltzen 1377-1448) and Gyaltshab Rinpoche (first member Goshi Paljor Dodrup, c.1427-1489). High-status reincarnate lamas such as the Karmapas (and later the Shampapas, Dalai Lamas, Drukchen Rinpoches, Panchen Lamas, etc) came to be

closely related, and like the Sanskrit has the primary meaning of "thread" or "continuity".

⁵ A variety of divinatory techniques were employed to identify potential candidates, and these might provide indications of the birthplace, personal name, parents' names, etc, of the rebirth. Explicit predictions by the deceased lama were of great significance, and casual remarks made in his last days might be interpreted as giving relevant information. Possible candidates might be tested by presenting them with a number of similar objects, some of which belonged to the deceased lama, or expecting them to recognise people he knew in the previous life, often in disguised form. However, it is clear that none of these methods was in itself decisive, and that the retrospective narratives of identifications given in lama's biographies can involve considerable tidying up of a more complex series of events.

regarded not merely as rebirths of the previous lama but also as human emanations of important Tantric Buddhist deities such as Avalokitesvara and Amitabha.

20. The Sakya order is named after its head monastery, which is at Sakya in West-Central Tibet. The head lamas of this order (the Sakya Tridzins) belong to a hereditary lama lineage, as do those of many Nyingmapa monasteries. The Sakya Tridzins are however also held to be emanations of Tantric deities. Two sub-orders, the Ngorpa and Tsharpa, developed later. These share a common body of teachings with the Sakyapa but are organisationally distinct and were not under the authority of the Sakya Tridzin. The monastery of Sakya and its abbots gained great political power in Tibet in the late 13th century through their contacts with the Mongol Emperors. They destroyed the principal monastery and power base of their chief rivals, the Drigung Kagyüpa, but Sakya rule collapsed in the mid-14th century and the three following Central Tibetan regimes (those of the Lang and Rinpung families and of the Kings of Tsang) mostly favoured the Kagyüpa and the newly-emerging Gelugpa orders.

21. The Gelugpa order grew up around the teachings of Tsongkhapa (1357-1419), a lama who combined the monastic tradition of the Kadampa with Tantric lineages from several traditions to form a new synthesis of the Tibetan Buddhist teachings. The first Gelugpa monastery, Ganden, was founded by Tsongkhapa himself in 1409, and it was followed by a number of others founded by his immediate students. These included Drepung (1415) and Sera (1419), both close to the old imperial capital of Lhasa, in the Eastern province of Central Tibet (Ü).

22. One of Tsongkhapa's principal students, Gedun Drub (1391-1474), was abbot of Ganden and later founded the important monastery of Tashilhunpo near Shigatse, the main town of West-Central Tibet, in 1445. He was the first of the reincarnation series of the Dalai Lamas. His immediate reincarnation, Gedun Gyatso (1475-1542), retrospectively known as the 2nd Dalai Lama, became abbot of Drepung, which was thereafter closely associated with the Dalai Lamas. His reincarnation, Sonam Gyatso (1543-1588), established close links with Mongol tribes under the chieftainship of Altan Khan, who gave him the title "Dalai Lama". The 5th Dalai Lama, Lobsang Gyatso (1617-82) formed an alliance with the Mongol ruler Gushri Khan, a descendant of Altan Khan, who destroyed the pro-Karmapa dynasty of the Kings of Tsang in the 1640's and made the Gelugpas, under the administration of the Dalai Lama's *labrang*

at Drepung, the dominant power within an expanded Tibetan state. This was the foundation of the Lhasa state which existed until the Chinese takeover in 1949.

23. The Abbot of Ganden (Ganden Tripa or Ganden Tri Rinpoche) is technically the spiritual head of the Gelugpa tradition, but the Dalai Lama's administration were in effect temporal rulers over the Lhasa state (known as the Ganden Phobrang after the Dalai Lama's *labrang* at Drepung). In practice, during the 18th and 19th centuries, a regent, normally a lama, ruled on the Dalai Lama's behalf (most Dalai Lamas died before reaching adulthood).

24. Bhutan from the 17th to the beginning of the 20th centuries was also a state headed by a reincarnate lama (the Shabdrung Rinpoche). The circumstances of its creation are discussed later. There were smaller states of various kinds in other areas (Ladakh, Sikkim, Derge, Powo, etc), mostly hereditary principalities but some headed by lamas.

25. While the Gelugpa became the dominant religious tradition within the Lhasa state, and there were some forced conversions of monasteries of other traditions to the Gelugpa, the other major orders by and large continued to operate both within and outside the Lhasa state. There were also many small monasteries with eclectic local traditions. In the 19th century, a major religious movement among the non-Gelugpa traditions (the so-called Rimé, "eclectic" or "non-sectarian" movement) brought many of the non-Gelugpa monasteries closer together. It was centred in Derge, an independent state in East Tibet which included large monasteries of the Sakya, Karma Kagyü and Nyingmapa orders, and was outside the control of the Lhasa state. The leading figures in this movement were Jamyang Khyentse, Jamgon Kongtrul and Chogyur Lingpa (respectively Sakya, Karmapa and Nyingmapa in formal affiliation). Senior Karma Kagyü and Drukpa Kagyü lamas of the time (including the 15th Karmapa and 10th Drukchen) were active participants in this movement.

26. The religious and political structure of Tibet until the Chinese takeover could therefore be described as consisting of a large number of relatively autonomous religious units within a number of largely autonomous political units, without any formal legal or constitutional framework which encompassed the whole region. When the 13th Dalai Lama became effective ruler of the Lhasa state in 1911, he pursued a

policy of centralising control both over Gelugpa religious institutions and the state as a whole. Progress in this direction was however limited, and came to a standstill after the 13th Dalai Lama's death in 1933.

27. Some years after the 14th Dalai Lama's flight to India in 1959, his administration at Dharamsala (also known as the Tibetan Government-in-Exile) set up an office of religious affairs among the refugees, including a system of four "heads" of the "four main orders". The 16th Karmapa was appointed head of the Kagyü order. Thus the position of the Karmapa as "head of the Kagyü order" is essentially a new phenomenon, and did not exist before 1959. The heads of the other Kagyu orders would not have recognised the Karmapa as overall head before 1959, nor would the various Nyingma monasteries have acknowledged a supreme head. It should nevertheless be noted that this innovation appears to have been generally accepted. This was in part a recognition of the reality that the 16th Karmapa was the chief counterweight to Gelugpa dominance at Dharamsala in the 1960s and 1970s. However, this does not necessarily imply that the other Kagyü traditions would accept direction from the 16th Karmapa in matters such as the recognition of reincarnations, or that the Karmapas would necessarily accept such direction from the Dalai Lamas.

Recognition of Reincarnate Lamas: General Considerations

28. What has happened in practice in relation to the recognition of reincarnate lamas both in pre-modern times and since the Chinese takeover has thus been very much a question of the existing balance of powers. Initially, as with the early Karmapas (who were as noted above the first recognised series of reincarnations, in the 13th and 14th centuries), the recognition was essentially a matter for the monastery. In many ways, the primary responsibility up to modern times has remained with the lama's monastery (and his personal *labrang* or household, which is attached to the monastery). Many large monasteries or groups of monasteries had two senior lamas (e.g. the Karmapa and Shamarpa or Shamar Rinpoche up to the 18th century) and it would be more or less traditional that if one was of age when the other died he would act as the regent and be the person primarily responsible for identifying the reincarnation. If the appropriate person was not of a suitable age, the dying lama might appoint somebody else to act as regent. Typically, this would be a senior lama

from the monastery. Other senior lamas from the same order might be asked to assist in identifying the reincarnation. Local or regional rulers might intervene in various ways (especially since reincarnate lamas generally came from important local families). It should be appreciated that reincarnate lama positions were highly political. This was especially true for reincarnations of senior lamas associated with large, powerful and wealthy monasteries.

29. Where several monasteries had connections with the lama, different monasteries might support rival claimants, etc. The case of the 4th Drukchen, a distinguished scholar and lama named Pema Karpo (1527-1592), in the late 16th century, is particularly significant. The Drukchens (also known as Gyalwang Drukpas) are a reincarnate lama lineage of very similar status to the Karmapa, since both are heads of major Kagyüpa suborders and both are held to be, like the Dalai Lamas themselves, emanations of the deity Avalokitesvara. In this case, there were two main claimants. One was supported by the local ruler (the King of Tsang) and established at his predecessor's monastery. The other, later known as Shabdrung Ngawang Namgyel (1594-1651?), who belonged to the hereditary lineage of the Drukpa order's founder, Tsangpa Gyará, fled to Bhutan in 1616. There he and his supporters succeeded in establishing a monastic state similar to that of the Gelugpas in central Tibet, despite a series of invasions by the King of Tsang and later by the Gelugpa state (Smith 1968; Aris 1979: 205-28). Both lines continued to reincarnate separately. In the next generation there were three claimants to be the Bhutanese lama's reincarnation (Shabdrung Rinpoche), and these were eventually recognised in a compromise formula as reincarnations of the lama's "body," "speech" and "mind" (Aris 1979: 258-9). Two of these lines continued to reincarnate into modern times.

30. Similarly, there were several recognised reincarnations of the important 19th century Rimé lama Jamyang Khyentse Ongpo (1820-1892), and these were eventually accepted as representing body, speech, mind, quality and action of the deceased lama. Several of these have continued to reincarnate separately. Thus the present Beru Khyentse Rinpoche is the reincarnation of one of them, the 1st Beru Khyentse Rinpoche (1896-1945), who was the son of the King of Beru, a small state in East Tibet, and was associated with the Karmapa monastery of Palpung.

31. Again, the 9th Drukchen, Mipham Chökyi Gyatso (1823-1883) was held to have had two reincarnations, one being the 10th Drukchen, Mipham Chökyi Wangpo (1884-1930), and the other a distinguished yogic practitioner and Dzogchen teacher named Adzom Drukpa, and the Rimé lama Jamgon Kongtrul also had several recognised reincarnations.⁶ Such examples could be multiplied. In many of these cases, different monasteries associated with the previous lama supported separate candidates, and these were eventually accepted as parallel reincarnations.

The Involvement of Political Authorities in Recognition of Reincarnate Lamas

32. Relevant political authorities have generally assumed the right to approve or prevent the installation of important reincarnate lamas. Thus, after the first hereditary king of Bhutan, Orgyen Wangchuk, overthrew the system of government headed by the Shabdrung Rinpoche in 1907, the Bhutanese government refused to allow the recognition of subsequent rebirths of the Shabdrung Rinpoche. At least two lamas have however been generally recognised as having a claim to be Shabdrung Rinpoche in recent years, Shabdrung Jigme Nawang Namgyal, who died in 2003, and Chögyal Namkhai Norbu. Other similar cases could be cited.

33. Similarly, the government of the Mongolian People's Republic refused to allow the recognition of further rebirths of the Jetsun Dampa Hutuqtu, the senior Gelugpa reincarnate lama of Outer Mongolia and first head of state of independent Mongolia, after his death in 1924. A rebirth was however recognised in Tibet and is generally accepted as valid by Mongolian Buddhists today.

34. The Qianlong (Ch'ien-lung) emperor of China (1735-96) decreed in the late 18th century that senior Tibetan lamas had to be selected through a process in which his envoy at Lhasa pulled a name out of a golden urn. He also required that the Dalai Lama and Panchen Lama should not come from aristocratic families (Lessing 1942: 60-61; Shakabpa 1967: 172). This was during a period when Chinese control over Lhasa was temporarily strong, a Manchu army having been sent to Tibet at the time of the Tibet-Gurkha war. The golden urn appears to have been used on and off for

⁶ The Jamgon Kongtrul Rinpoche who was one of the four "Regents" following the death of the 16th Karmapa, and who died in 1992, was the recognised reincarnation of one of the rebirths of Jamgon Kongtrul.

several decades but gradually fell into disuse, though all subsequent Dalai and Panchen lamas have been from non-aristocratic families.

35. The action of the Lhasa government in prohibiting further rebirths of the 10th Shamarpa or Shamar Rinpoche, Mipam Chödrup Gyamtso (1742 - 1792) should be understood as parallel to the above examples, and as essentially an exercise of secular political power. It took place in the aftermath of the Tibet-Nepal war, in which the Shamarpa had been linked with the losing side, and at a time when the Lhasa government was under Manchu domination. It is thus somewhat misleading to speak, as Ross Hope does in his affirmation (para 188), of the Shamarpa as being "in disgrace" between that time and the 1960's, when the Lhasa government's ban was withdrawn by the Dalai Lama at the request of the 16th Karmapa (Douglas and White 1976: 152).

36. The Dalai Lama's role as approving the recognition of some "very important lamas" outside the Gelugpa order, referred to in the affirmation of Heda Thago Lama (Khenchen Thrangu Rinpoche) (para 17), would appear to have been similarly an exercise of the Dalai Lama's role as political ruler. The Buktham Rinpoche referred to in the affirmation of Bardor Tulku (para 14) and elsewhere is part of this same process. It is unclear, however, how commonly this was carried out, even within the lifetime of the 13th Dalai Lama. The only case known to me is that of the approval which was apparently sought from the 13th Dalai Lama before the enthronement of the 16th Karmapa at Tsurphu, and there may have been special circumstances⁷ in this case (see below; in any case he had already been enthroned at Palpung). It is also evident from the above examples that a refusal by the Dalai Lama or other political authority was not necessarily conclusive, and that reincarnations might continue to be recognised "unofficially" despite such refusal.

⁷ Specifically, it has been suggested by some Karma Kagyu sources that the Dalai Lama had previously endorsed an alternative candidate, the son of his minister, Tsipon Lungshar, the most powerful man in the Lhasa government in the late 1920's. I have not been able to find a detailed written account of these events, although they are referred to briefly in Anil Maheshwari's book *The Buddha Cries* (UBSPD, New Delhi, 2001), p.145. By 1931, when the 13th Dalai Lama performed the 16th Karmapa's hair-cutting ceremony before his enthronement at Tsurphu, Lungshar was out of favour, but it may be significant that the 16th Karmapa was already enthroned at Palpung, safely outside the control of the Lhasa state, before he was brought to Lhasa.

37. The status of such recognitions since the 14th Dalai Lama's departure from Tibet is less clear, since the Dalai Lama's administration at Dharamsala, while in some senses in continuity with the Lhasa government before 1959, does not have temporal power over monasteries either in Chinese-controlled Tibet or among the refugees. Any such recognitions could therefore only be effective to the extent that it is willingly accepted by the persons and institutions to which it applies.

38. It should be noted that these "recognitions" consisted of accepting (or refusing to accept) a candidate who had previously been recognised by the authorities of the relevant monastic order. In fact, this appears to have been the sequence of events in the case of the 14th Dalai Lama's acceptance of the 14th Shamarpa and his recognition of Situ Rinpoche's candidate as 17th Karmapa as well, although in the latter case it later became clear that not all the appropriate authorities within the order had been in agreement.

39. The only case I know of where the Dalai Lama or his representative actually arbitrated between two competing candidates outside the Gelugpa order took place in 1950, in the case of Sakya Trizin or head of the Sakya order (Goldstein 1971: 177-8). As noted above, the Sakya Trizin was a hereditary lama, not a reincarnate lama, and there was a dispute between candidates from two branches of the ruling family as to which should succeed. There is some disagreement as to the precise nature of the Lhasa government's action in this situation. Goldstein defines it as "arbitration" rather than "mediation," and sees it as part of a general role of the Lhasa government as a court of last appeal for disputes within the Lhasa state. However he notes that while "the central [i.e. Lhasa] government would adjudicate cases brought before them" they would "not initiate them themselves except in cases of treason" (178). In any case, it is clear that it is again the political (or judicial) role of the Lhasa government that is at issue here, not the spiritual role of the Dalai Lama.

40. As far as the Karmapas are concerned, since the Karmapas were the first series of recognised reincarnations, there was initially no issue of their being recognised by the Dalai Lamas or the Lhasa Government, since neither existed at that time. This could only have been a possibility after rise of the Gelugpas to power in central Tibet at the time of the 5th Dalai Lama and the defeat of the Kings of Tsang who were supporters of the Karmapas. From this time on, however, the main

Karmapa monastery was within the Lhasa state ruled by the Dalai Lama, and quite close to Lhasa, and this meant that the Karmapas needed the concurrence of the Lhasa government to continue to operate at Tsurphu. Nevertheless, with the probable exception of the case of the 16th Karmapa (see below), it is not clear that the Lhasa administration's approval was in general formally requested before the enthronement of a Karmapa.

41. The following data for the recognition of the Karmapas is summarised from Douglas and White 1976: 31-110. For the first thirteen Karmapas, their account is based on the *Zla ba chu Shel gyi phreng ba* ("Moon Water Crystal Rosary") by the 8th Situ, Chökyi Jungne (1700-74), supplemented by two earlier sources.⁸ For the 14th to 16th Karmapas, it is based on the spoken commentary of the 16th Karmapa. Both sources should be acceptable to all parties to the present dispute.

Karma-pa	Year of death of previous Karmapa	Year new Karmapa recognised	By whom recognised	On what grounds	By whom enthroned and where
2	1193	?c.1210	Gyalsé Pomtrakpa	Prediction details from Karmapa 1 transmitted to him by his teacher Drogon Rechen; message from deities in dream	Not stated
3	1283	c.1288	Urgyenpa	Prediction details from Karmapa 2; dream. Karmapa 2 also advised future parents he would be reborn as their child.	Not stated
4	1339	c.1343	Konchok Rinchen, personal secretary of Karmapa 3	Prediction details given to him by Karmapa 3	Not stated
5	1383	?	Shamar 2	Not clear, but Karmapa 4 had predicted place of rebirth	Not stated
6	1415	c.1417	Shamar 3	Not clear, but Karmapa 5 had predicted place of rebirth	Shamar 3, ?at Tsurphu

⁸ These are the *Deb ther sngon po* ("Blue Annals") of Gö Lotsawa Shönnu Pel and the *mKhas pa'i dga' ston* of Pawo Tsuglag Trengwa. I do not at present have access to any of these Tibetan texts (my personal copies of the last two are packed for an imminent move to the UK). I have normalised some of Douglas and White's spellings of Tibetan names to make them consistent with those employed elsewhere in this account. It should be noted that Tibetan ages include the year of birth.

7	1453	c.1455 (at age of 9 months)	Gyaltshab 1	Prediction letter by Karmapa 6 entrusted to Gyaltshab 1	Gyaltshab 1, not stated
8	1506	c.1507 (at age of 3 months)	Situ 3	Prediction letter by Karmapa 7 entrusted to Situ 3	Gyaltshab 2, at Riwoche (1513)
9	1554	c.1556	Shamar 5 and Situ 4	Prediction letter by Karmapa 8 entrusted to Shamar 5	Shamar 5 at Tsurphu
10	1603	1610	Shamar 6	Prediction letter by Karmapa 9 entrusted to Shamar 6	Shamar 6 at Zadam Nyinche Ling
11	1674	Not stated	Shamar 7	Prediction letter by Karmapa 10 entrusted to Shamar 7 and Gyaltshab 6	Not stated, at Tsurphu
12	1702	c.1710?	Search party sent by Shamar 8	Prediction letter by Karmapa 11 entrusted to Shamar 8	Shamar 8, at Tsurphu
13	1732	Not stated	Gyaltshab 7	Prediction letter by Karmapa 12 entrusted to Situ 8	Not stated, at Tsurphu
14	1797	Not stated	Situ 9	Prediction letter by Karmapa 13 entrusted to Situ 9	Not stated
15	1868	c.1876	Drukchen 9	Prediction letter by Karmapa 14 entrusted to Dodrup Tulku and Chöwang Tulku	Not stated, ?at Tsurphu
16	1922	Not stated	Situ 11 and Jamgon Kongtrul 2	Prediction letter by Karmapa 15 entrusted to	Not stated, at Palpung, then again by Drukchen 10 and Situ 11 at Tsurphu

The table gives the "official version," and particularly for the earliest rebirths may not be fully historical. The *Zla ba chu Shel gyi phreng ba* in particular, as the official chronicle of the Karmapas, is concerned to assert the legitimacy of previous recognitions, not to discuss any disputes or disagreements that may have taken place. However, the table makes a certain number of things clear:

- From the late 14th century onwards, the primary responsibility for recognising and enthroning the Karmapa normally belonged to the Shamarpa. The only real exception was in 1506 (Karmapa 8), when there was a dispute over the recognition and the Shamar's role is not mentioned.⁹ (In the cases of Karmapas 7 and 13, the Shamarpa had died at around the same time as the Karmapa, so there was no adult Shamarpa available to take responsibility.)

⁹ If Karmapa 7 had entrusted his prediction letter to Situ 6 rather than Shamarpa 4, this suggests that there may have been some strain between Karmapa 7 and Shamarpa 4.

- After the Lhasa regime prohibited the recognition of further Shamarpas in the 1790's, the responsibility for recognising the Karmapa reincarnation seems to have devolved on the most senior lamas around who had connections to the deceased Karmapa.¹⁰ The Situ Rinpoche of the time often but not always took a leading role within this group.
- From the recognition of Karmapa 7 onwards, there was expected to be a prediction letter from the deceased Karmapa. It seems clear however that the contents of this letter were generally vague and open to interpretation.
- The enthronement did not necessarily take place at Tsurphu, particularly in earlier cases, although from the enthronement of Karmapa 11 onwards it normally did.

A couple of other points are worth making:

- In at least one case (the 14th Karmapa), high lamas involved sent out *individual* search parties. This, in effect, is also what happened in the case of the 17th Karmapa, where Shamar Rinpoche and Situ Rinpoche acted independently in their search for a candidate.
- In only one case is there mention of the Dalai Lama being involved in any way. This is the case of the 16th Karmapa, who visited the 13th Dalai Lama at Lhasa on the way from his initial enthronement at Palpung to his second enthronement at Tsurphu. The Dalai Lama performed the 16th Karmapa's hair-cutting ceremony¹¹ and it seems, though this is not mentioned explicitly in Douglas and White's account, that his approval was sought to go ahead with the ceremony at Tsurphu.

42. The group of "four regents" who accepted joint responsibility for the finding of the rebirth of the 17th Karmapa, are thus, in one sense, a continuation of the previous system. This group appears to have been formed initially by the late Karmapa's general secretary, Damchoe Yongdu, to take over leadership of the Karmapa order after the 16th Karmapa's death.¹² They were the senior Karmapa lamas around

¹⁰ In the case of Karmapa 15, only one of these (Jamgon Kongtrul) was even Karma Kagyu, the other two being Drukpa and Nyingmapa. All, however, had had close links to Karmapa 14.

¹¹ He is also said to have seen the "real" but invisible Black Hat or vajra crown on the Karmapa's head of which the Black Hat used in the Black Hat ceremony is a replica (Douglas and White 1976: 109-10; Karma Thinley 1980: 130).

¹² It seems that the 16th Karmapa had not made any explicit arrangement for the succession. In an interview immediately after the 16th Karmapa's death, Situ Rinpoche commented that "there must be some one who will take the overall responsibility" but added that "Who it will be I am

immediately after his death, they had all been disciples of the 16th Karmapa, and they represented major interests within the Karma Kagyü. At the same time, there were pre-existing tensions within this group. The 16th Karmapa's promotion of the present Shamarpa (Shamar Rinpoche), and his securing the Dalai Lama's agreement in the 1950's to withdraw the ban on the recognition of the Shamarpas weakened the position of Situ Rinpoche within the Karma Kagyü order. Personal relations between Situ and Shamar Rinpoches have been poor, and cooperation within the group of four was very limited even before the death of Jamgon Kongtrul.

43. In addition to the tensions between senior Karma Kagyü lamas, the dispute over the recognition of the 17th Karmapa reflects a wider set of political issues regarding the autonomy of the non-Gelugpa orders within and beyond the refugee community. There was considerable initial opposition among Tibetan refugees with non-Gelugpa affiliations and/or from outside the Lhasa state to accepting the authority of the Dharamsala administration, which was seen as a direct continuation of the Gelugpa-dominated Lhasa administration. The 16th Karmapa, while avoiding overt conflict with the Dalai Lama, was in many ways the symbol of this opposition, as the most significant lama outside the Gelugpa hierarchy in the 1960s and 1970s. While the conflict has diminished over time, in part through the deliberately inclusive policy of the 14th Dalai Lama, there remain real tensions and fears among these groups, which are reflected in, for example, Shamar Rinpoche's suggestions that the Gelugpa hierarchy are using the dispute over the Karmapa as a way to gain control over the Karma Kagyü.¹³ In fact, these fears are not entirely unrealistic. It is likely that any future Tibetan state, whether independent or as a semi-autonomous part of the Chinese People's Republic, would move towards a more centralised style of religious administration.

not sure". Interview at <http://www.snowcrest.net/ladybear/Karmapa.html>, accessed Nov 1, 2004.

¹³ See Kunzig Shamar Rinpoche's "Message to the International Karma Kagyu Conference, March 16th 2001," <http://www.karmapa.org.nz/articles/2001/shamarpa.html>, accessed 20 Oct 2004: "Is the Dalai Lama still driven by his old personal animosity to the late 16th Karmapa and to the then Rumtek administration? The late 16th Karmapa, undisputed leader of the Karma Kagyu school, confronted Dharamsala's ambition regarding the four schools. By creating a successful counterbalance to Dharamsala's policy, H.H. the 16th Karmapa gained no friends within the exiled government. It seems that old rivalries die hard and today the Karma Kagyu school has come under fire at its most vital point."

Conclusions

44. The above material substantiates my contention that there was no clear and unambiguous mechanism for the selection of a reincarnate lama. Instead, I would maintain that effective recognition of a reincarnate lama in general, and the Karmapas in particular, is a progressive process and results from a combination of factors. These include (a) recognition by senior lamas of the previous lama's monastery or monastic order, (b) enthronement, if possible at the previous lama's monastery, (c) being in effective control of the previous lama's monastery, (d) receiving and being empowered to transmit the teachings associated with the previous lama, (e) being recognised and accepted by relevant external authorities, among which the Dalai Lama would today certainly count as significant, (f) being able to make an effective claim of being predicted by the previous lama or otherwise endorsed by divinatory procedures, etc.¹⁴

45. The factors named above can of course conflict, as in the present case where some lamas and monasteries endorse one candidate and others endorse another, and the existence of an authentic prediction letter is clearly also a matter of dispute. As seen above, this is not an uncommon situation.

46. In the long term, in pre-modern Tibet, further critical factors would come into play: (a) being recognised as a powerful and effective lama (i.e. having relevant qualities of personal charisma), (b) running a large and successful monastic establishment (or group of such), having many students, (c) having the support of local and regional rulers and important power-brokers, (d) having powerful and influential disciples. So far, there has not been sufficient time for such factors to be operative in relation to the dispute regarding the 17th Karmapa.

47. The arguments of the defendants in this case rest on the final and conclusive nature of the Dalai Lama's recognition of Ugyen Trinley as 17th Karmapa. In the light of the above material, it would seem that the Dalai Lama's recognition cannot be regarded as conclusive or final. While it appears to have been accepted by a majority

¹⁴ In the specific case of the Karmapas, possession of the Black Hat and performance of the associated ritual is also a significant marker, though the Black Hat used today is in fact held to be a replica of the original (invisible) Black Hat given to the 1st Karmapa by dakinis (female initiatory deities) and to be a gift of a Ming-dynasty Chinese Emperor to a previous Karmapa.

of Karma Kagyu monasteries and lamas, there remains a substantial minority of monasteries and lamas who have not accepted Urgyen Trinley as Karmapa. In particular, these include the Shamar Rinpoche, who historically has been the person most directly involved in the process of recognition. In these circumstances, the plaintiff's contention that the identity of the 17th Karmapa has not as yet been finally decided appears to me to be sustainable.

AFFIRMED at Newcastle, New South Wales this)

11th day of ~~November~~ 2004)

before me:)



Pamela Edith Tong, Solicitor
The UNIVERSITY of NEWCASTLE

