

Appeal No. VA12/1/008

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

World Missions Ireland

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Lot No. 809917, Office(s) at 62-64, Rathmines Road Lower, Rathmines West B,
Rathmines West, County Borough of Dublin.

B E F O R E

Niall O'Hanlon - BL

Deputy Chairperson

James Browne - BL

Member

Michael Connellan Jr - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 17TH DAY OF JULY, 2012

By Notice of Appeal received on the 19th day of January, 2012 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €218 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are:

"The valuation is excessive having regard to the nature, layout and size of property."

"The property should be exempt from the valuation list having regard to the origin, status and activities of the occupier and the definition of relevant property not rateable as set out in Schedule 4 of the Valuation Act 2001."

Introduction

By Notice of Appeal received by the Tribunal on the 19th of January, 2012, the Appellants appealed against the determination of the Respondent in respect of the property the subject matter of the present appeal.

Oral hearings in respect of this appeal took place in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 24th of April, the 10th of May, the 7th of June, the 21st of June and the 27th of June, 2012.

Mr. Maurice Gaffney S.C. and Mr. Fionan Ó Muircheataigh B.L., instructed by A. McCann & Co. Solicitors, appeared on behalf of the Appellant.

Ms. Rosemary Healy-Rae B.L. appeared on the 24th of April, Ms. Grainne O'Neill B.L. appeared on the 10th of May, and Ms. Peggy O'Rourke B.L. appeared on the hearing dates between the 7th and the 27th of June, 2012, each of the aforementioned Counsel being instructed by the Chief State Solicitor, on behalf of the Respondent.

Preliminary Matter

Introduction

At the hearing of the within matter the Respondent objected to the Appellants putting certain documents before the Tribunal. The Respondent alleges that these documents were not before the Commissioner at the revision or appeal stage and therefore cannot now be introduced for the first time at final appeal stage. The Respondent submits that the documents constitute new grounds of appeal and/or new evidence and therefore should not be considered by the Tribunal in the absence of exceptional circumstances of which it submits there are none. The documents objected to are the Statute of the Pontifical Mission Societies 1980 (hereinafter referred to as the Statute of 1980) plus certain provisions of the Code of Canon Law which the Appellants seek to rely on for the purposes of establishing the constitution of the Appellants. During the hearing counsel on behalf of the Appellants stated that they were no longer relying on the Statute of 1980

and therefore the only issue remaining is the admittance before this Tribunal of the Code of Canon Law.

Respondent's Submissions

The Respondent submits that there was no reference made to the Code of Canon Law by the Appellants either at revision stage or at first appeal stage. The Respondent accepted that the Appellants did in its grounds of appeal at first appeal stage indicate that the origin, activities, status and financial accounts of the Pontifical Mission Societies were set out in brochures, leaflets and annual reports already supplied to the Valuation Office. However, the Respondent submits that the documentation received by the Respondent from the Appellant did not include the Code of Canon Law.

The Respondent submitted that the Revision Officer had sought clarification by way of an email dated the 9th day of May 2011 asking the Appellants to specify why the property should be exempt under schedule 4 of the Valuation Act 2001. The Respondent further submitted that the Revision Officer in the 'consideration of appeal form' dated the 23rd of December 2011, stated that no satisfactory response was ever received to this query.

In its supplemental legal submissions, the Respondent submitted that the Appellants are effectively trying to introduce new grounds of appeal which were not raised at revision or first appeal stage by seeking to rely on certain provisions of Canon Law to show that the Appellants come within the definition of a 'charitable organisation' contained in Section 3 of the 2001 Act. To demonstrate this, the Respondent made an analogy with that of a company seeking to furnish an amended memorandum of association and/or articles of association to the Tribunal which was not furnished to the Commissioner at first appeal stage.

At paragraph 2 of the Respondent's second supplemental submissions, the Respondent stated that that the Appellants are '...seeking to adduce evidence which was not before the Respondent at the revision or appeal stage. As previously addressed to the Tribunal, the Appellant is effectively attempting to introduce new grounds of appeal which were not

raised at the first appeal stage. This is entirely inappropriate given that it is clear that the appeal before the Tribunal is not a de novo hearing. It is a limited appeal' (underlining added).

In its aid, the Respondent referred the Tribunal to a number of decisions of the Tribunal concerning the admittance for the first time at final appeal stage of: new grounds; new evidence; and the addition of areas of a subject property rated by the Commissioner. The cases referred to were: VA97/2/007 - AIB Bank, Rathmines, VA97/2/007; VA10/3/007 - Carlow Warehousing Ltd.; VA 88/0/165 - Ebletoft Ltd. t/a "Hunters" Licensed Premises; VA 00/1/030 - A. Curneen & Son; VA 98/3/092 - Kilcarra Yarns Ltd.; VA08/5/187 - Kilsaran Concrete; VA09/3/036 - Muintearas Teo; VA 95/5/015 - John Pettitt & Son Limited; and VA 89/0/201 - Stafford Shipping.

Of these the Respondent opened before the Tribunal the decisions in Ebletoft Ltd., Kilsaran Concrete and John Pettitt & Son Limited. The first two decisions cited were quoted in the submissions while the John Pettitt & Son Limited case was opened before the Tribunal at hearing. The John Pettit & Son Limited decision will be referred to later in this determination.

Appellant's Submissions

The Appellants submitted that what they were seeking to adduce was simply evidence which goes to whether or not the Appellants are or are not entitled to exemption from valuation. Furthermore, the Appellants submitted that no enquiry was made as to the constitution of the Appellants by the Commissioner. The Appellants submitted that had if they had been told of any deficiencies now perceived, it would have been easy for them to assuage the misgivings of the Commissioner by referring to Canon Law. In essence therefore, the Appellants submit that what is now sought to be adduced before the Tribunal, and which was not before the Commissioner, is merely evidence and does not constitute a new ground of appeal. They furthermore submit that there was an onus on the Commissioner to seek further evidence from the Appellants or at a very minimum to

point out to the Appellants deficiencies in their evidence where a specific exemption is relied upon to ratability.

The Law

The requirements concerning appeals to the Tribunal are set out in the Valuation Act, 2001 and supplemented by Valuation Act, 2001 (Appeals) Rules, 2008 and Guidelines for the Hearing of Appeals.

The Valuation Act, 2001

Section 30 of the Act provides for an appeal to the Commissioner of Valuation after Revision stage. Section 31 of the Act provides that an appeal to the Commissioner must state with specificity the grounds upon which the appeal is made. By way of Section 34, an occupier can appeal to the Valuation Tribunal against the decision of the Commissioner. Section 35 provides that the grounds of appeal under Section 34 are to be stated. It provides as follows:

‘An appeal made under Section 34 shall, as appropriate –

a. Specify –

- (i) the grounds on which the Appellant considers that the value of the property, the subject of the appeal (in this section referred to as “the property concerned”) being the value as determined or confirmed by the Commissioner under Section 33, is incorrect, and
- (ii) the value the Appellant considers the Commissioner ought to have determined under Section 33 as being the value of the property concerned,

b. specify the grounds on which the Appellants considers any detail in relation to the property concerned (other than the property’s value) as stated in the valuation certificate concerned, issued under Section 33(2) or in the notification concerned made under that section is incorrect.

- c. specify the grounds on which the Appellant considers that the property concerned ought to have been included in, or, as the case may be, ought to have been excluded from, the relevant valuation list by the Commissioner under Section 33(2), and, in case the Appellant considers the property concerned ought to have been so included, what he or she considers ought to be determined as the property's value.'

Valuation Act, 2001 (Appeals) Rules, 2008

The rules and guidelines booklet sets out provisions dealing with the making of appeals. These provisions are set out in paragraph 10. Therein, it states that:

'Notice of Appeal shall set out exhaustively the grounds of appeal upon which the Appellants intend to rely. These grounds of appeal may not be changed or extended (and liberty to amend will not be granted) save in exceptional circumstances. The Tribunal shall not entertain any amendments to the grounds of appeal at hearing and in particular, introducing a new ground of appeal other than in exceptional circumstances. The Tribunal will adjudicate on such matters having regard to the rules of the Superior Courts.'

Case Law

This issue has been dealt with in a number of decisions of the Tribunal. However, it is our opinion that while other decisions of the Tribunal on this issue are both helpful and useful the decision in **VA95/5/015 - John Pettitt & Son Limited** sets out most concisely, clearly and effectively the Tribunal's position on this issue.

Furthermore this decision was tested and approved in the High Court by way of case stated (and as such the High Court judgment is the only judgment to which this Tribunal is bound). The decision of the Tribunal concerned, *inter alia*, the reliance by the Appellant "...about the inadequacy of the maps or the mapping system used or adopted by the Commissioner." This was a ground of appeal not relied on at first appeal stage before the Commissioner. The Commissioner argued that the Appellant should not be permitted to raise this point before the Tribunal. The Commissioner referred to a number

of the Tribunal's own decisions including: **VA88/0/165 - Ebletoft Ltd. t/a "Hunters" Licensed Premises** (which the Respondent has sought to rely on in the instant case). The essence of these cases supported the proposition that where an Appellant did not rely on a ground of appeal at first appeal stage it should not be permitted to rely on it for the first time at final appeal stage. The Tribunal held that:

"7. If the case being made on behalf of the Commissioner was to the effect, that the rule of practice underpinning this submission was to operate, without exception or a qualification, then the submissions so made would be rejected by us. The appeal process in valuation matters, is governed by the provisions of the Valuation Acts, 1852 /1988. It involves two stages after the initial revision. The first appeal process has a mechanism within its application which enables representations to be made by or on behalf of a rate payer. These may be verbal or in writing and may be supported by such evidence as available and material. There is not however, any forum at which both parties can be heard and which, independently and in its own right, makes and reaches a decision.

An appeal to this Tribunal, which makes that forum available, is, as everybody knows, by way of an entire re-hearing. Evidence is adduced by both parties; evidence can be called on their behalf and submissions can be made. It is in effect a hearing de novo. In that way both appeal procedures but in particular that prevailing before this Tribunal is more a kin to what happens with the District Court appeals and Circuit Court appeals than it is to the jurisprudence followed by the Supreme Court. In the rules of both the Circuit Court and Superior Courts, dealing with Circuit appeals, the appropriate Judge is vested with full discretion to allow such amendments as he sees fit. He is given full power to permit the reception of evidence which had not been presented in the Court below. He can, in all these circumstances, make whatever Order the justice of the case requires. Quite frequently that element of justice will be served by

simply permitting an amendment or by allowing the introduction of further evidence, without more. In other instances, which are quite rare or quite limited, it may be necessary to exclude an expansion of either the grounds of appeal or the evidence previously adduced. In the vast majority of cases however, the Rules of Court and the powers of Judges are sufficiently extensive to ensure that if such an amendment is allowed or such evidence permitted, then by the imposition of costs or by the granting of an adjournment or otherwise, the balance of the scales of justice is achieved admirably as between the parties. In neither Court however is there any Rule of Practice, much less of statutory origin which, without exception forbids such an amendment or refuses the receipt of such evidence.

8. *The procedure before the Supreme Court is of course quite different than that prevailing in either of the Courts last mentioned. Essentially, though by no means exclusively it is an appellate jurisdiction confined to points of law. As may be imagined the issue presently under discussion has frequently been raised in the Supreme Court.*

This question is not to be confused with other though different circumstances. For example there is no doubt but that the Supreme Court has jurisdiction to raise, of its own motion, an issue which has never been raised in the High Court. See Keenan –v- Sheil Insurance Company Limited [1988] I.R. 89. Equally so, on a number of occasions that Court has permitted a point of law to be raised, argued, debated and judged upon even though the same was not raised in the High Court or even by the Appellant himself in the Supreme Court. See Burke (Minor) –v- Dublin Corporation [1991] I.R. 341 and Manning –v- Shackelton [1997] 2 ILRM 26. See also Rooney –v- Connolly [1986] I.R. 352.

9. *On the precise issue as raised in this first submission, the Supreme Court has given a number of decisions including that in case KD (otherwise C.) –v- M.C. [1985] IR 657. In that case the facts of which are not relevant, the Chief Justice at p701 of the Report said:-*

‘It is a fundamental principle, arising from the exclusively appellate jurisdiction of this Court in cases, such as this, save in the most exceptional cases, the Court should not hear and determine an issue which has not been tried and decided in the High Court. To that fundamental rule or principle there may be exceptions, but they must be clearly required in the interest of justice. This case can not, in my view however provide such an exception.’

In applying that principle the Supreme Court has permitted parties to raise before it, issues which had not been raised in the Court below, for example the constitutional validity of a statute (O’Shea –v- DPP [1988] I.R.655), and an issue as to whether or not a statutory instrument was ultra vires the powers of the rule making person. (Harvey –v- Minister for Social Welfare, Supreme Court, 10/5/88). See also O’Keeffe –v- O’Flynn Exhams & Partners, Supreme Court, 26/7/93. There are it should be said several other decisions, some permitting the raising of a new ground whilst other rejecting it. The test in all cases is whether, given the importance of the issue on the one hand and the rights of the Respondent on the other, it is, in the interest of justice, desirable and necessary to permit the amendment. In all such cases it is for the Court or Tribunal to make that decision and for the moving party to discharge the onus of proof.

10. *This Tribunal is of course a creature of statute. It is not a Court established by or under the constitution or by or under the Courts*

(Establishment and Constitution) Act 1961. Whilst its existence depends on the 1988 Act, the validity of its actions and decisions must surely be constitutionally safe as falling within the provisions of Article 37 thereof. In any event it would in our view be quite invidious for a Tribunal of this nature to have a rule of practice or produce or to adopt a jurisprudence which is at variance with that practice in the Courts above mentioned and in particular in the Supreme Court. It seems to us therefore that we ought, and indeed must follow the principles enunciated in the cases above identified. Accordingly, it is our firm view that it would be quite wrong to have a practice of exclusion which given the importance of the case and interest of justice, did not permit of exceptions or deviations therefrom. So, it is therefore our decision that whilst, as a general rule, where a ground of appeal has not been advanced before the Commissioner it will not be possible to raise it before us nevertheless, in exceptional circumstances where the interest of justice requires, this Tribunal will permit the raising of a ground, the reception into evidence and the reliance on a point of law none of which have been previously so raised or so adduced. We are satisfied that the previous Judgments of this Tribunal, on this point, were all intended to be read and understood in this manner.”

The decision of the Valuation Tribunal in **John Pettitt & Son Limited** was referred to the High Court by way of case stated, see **John Pettitt & Son v Commissioner of Valuation**, Unreported, Butler J, 1st day of May 2001. One of the questions before the High Court was whether the “...Appellant was entitled to raise in the Appeal before it issues ... notwithstanding that these issues were not at first appeal in the Appeal to the Commissioner of Valuation pursuant to Section 19 of the Act of 1852?”

Mr Justice Butler addressed the issue of the Tribunal's decision concerning the admittance of new grounds of appeal at paragraph 10 of his judgment in the following terms:

“I am satisfied that the Valuation Tribunal was entitled to so conclude. The Tribunal concisely reviewed the law and came to the view that it ought and must follow the principles which it referred to as enunciated by the Supreme Court and held that it would be quite wrong that the practice of exclusion which, given the importance of the case and the interests of justice, did not permit exceptions or deviations therefrom. It accepted that whilst, as a general rule, where a ground of appeal has not been advanced before the Commissioner it will not be possible to raise it before the Tribunal, nevertheless, in exceptional circumstances where the interests of justice requires, the Tribunal will permit the raising of a ground, the reception into evidence and the reliance of a point of law none of which have previously been raised so far or adduced.”

Findings on Preliminary Matter

1. The Tribunal finds that the documents now sought to be adduced before the Tribunal by the Appellants, namely the Statute of 1980 and the Code of Canon Law were not before the Commissioner at revision or appeal stage.
2. The Tribunal notes that there is a reference to Canon Law in the Statute of 2005 which statute was before the revision officer and the Commissioner at first appeal stage.
3. The Tribunal notes that the Respondent is no longer relying on the Statute of 1980 and is satisfied it can make its case in the absence of the Statute of 1980.
4. The Tribunal is of the view that the Code of Canon Law sought to be adduced by the Appellants to the Tribunal constitutes new evidence but not a new ground of appeal. The Code of Canon Law does not seek to change the nature or type of “ground of appeal” which the Appellants have always sought to rely on, namely that the Pontifical Mission Societies are a “charitable organisation” pursuant to Section 3 of the Act of 2001. Rather, the Code of

Canon Law goes to proof as to whether or not the Appellants meet the criteria for being a “*charitable organisation.*”

5. The test for adducing evidence before the Tribunal which was not previously before the Commissioner at revision or first appeal stage differs from that for adducing a ground of appeal (and any supporting evidence and/or legal submissions in aid of the that ground) which was not previously before the Commissioner at revision or first appeal stage.
6. The test for adducing evidence before the Tribunal which was not previously before the Commissioner at revision or first appeal stage is as set out at paragraph 7 of the Tribunal's decision in **VA95/5/015 - John Pettitt & Son Limited**. That is, the Tribunal has the power to make whatever order it deems necessary as the justice of the case requires.
7. The test for adducing a ground of appeal (and any supporting evidence and/or legal submissions in aid of that ground) which was not previously before the Commissioner at revision or first appeal stage, is as set out at paragraph 10 of the Valuation Act, 2001. In its approach to this issue the Tribunal is guided by paragraph 10 of the decision in **VA95/5/015 - John Pettitt & Son Limited** which held that a new ground of appeal could only be adduced at final appeal stage in “exceptional circumstances where the interest of justice requires.” This was approved by Mr. Justice Butler at paragraph 10 of his unreported judgment dated 1st May, 2001.
8. The Tribunal notes that the Respondent stated that even with this evidence before him at the time of the revision and first appeal stage, he would not have altered his decision.
9. Furthermore, notwithstanding the fact that the Respondent was aware from the time he was served with the Appellants' précis that the Appellants were

seeking to adduce the Code of Canon Law as evidence the Tribunal facilitated the Respondent with an adjournment so that the Respondent could be prepared to meet this evidence.

10. The Tribunal is of the view that the Respondent is not prejudiced by this new evidence being submitted to the Tribunal at this stage considering that it was admitted that the new evidence would not have materially affected his decision, that the evidence was contained in the précis and the Respondent was given time to consider the new evidence and to respond thereto.
11. In the circumstances the Tribunal finds that it is in the interests of the justice of the particular facts of this case to allow the Appellant to adduce the new evidence, notwithstanding that the evidence was not before the Commissioner at revision or first appeal stage.
12. The Tribunal therefore will allow the Appellants to adduce the Code of Canon Law as evidence.

The Issue Arising

The Appellants assert that the property, the subject matter of the present appeal, comes within paragraph 16 (a) of Schedule 4 of the Valuation Act 2001 (hereafter the Act) and therefore constitutes relevant property not rateable.

The Respondent disputes this assertion on the basis that the Appellants do not come within the definition of charitable organisation contained within section 3 of the Act.

The Tribunal notes that quantum is not in issue between the parties.

The Evidence Adduced by the Parties

Given that issues pertaining to the Code of Canon Law arose in this case and it being common case the Code constituted foreign law; both parties retained expert witnesses to give evidence to the Tribunal on the relevant provisions of the Code to the Tribunal.

Father Edward Grimes, the former National Director of the Pontifical Missions Societies gave evidence on behalf of the Appellants. A copy of a statement, dealing with certain aspects of Canon Law, was prepared on behalf of the Respondent by Dr. Michael Mullaney, Professor of Canon Law at Maynooth, and made available to the Tribunal by the Respondent.

Ms. O'Rourke told the Tribunal that Dr. Mullaney was not available to give evidence. However, Mr. Gaffney indicated that the Appellants were not taking issue with the content of Dr. Mullaney's statement and a copy of same was admitted into evidence.

The evidence of both Father Grimes and Dr. Mullaney will be referred to by the Tribunal in the course of its judgment.

The Pontifical Missionary Societies

Father Grimes gave evidence that the name of the Appellants, World Missions Ireland, was the name given to the Irish part of the Pontifical Missionary Societies, constituted by four, long established, distinct Pontifical Missionary Societies, all four having been amalgamated into one new Pontifical Missionary Society by an Ecclesiastical Statute binding each of them and made in 1980.

The four societies were, the Pontifical Mission Society for the Propagation of the Faith, the Pontifical Mission Society of Saint Peter Apostle, the Pontifical Mission Society of Holy Childhood or Missionary Children and the Pontifical Missionary Union. Despite the amalgamation, each of the four societies continued to retain its separate identity.

Father Grimes stated that the Pontifical Missionary Societies were a world wide organisation and that in each State in which the Societies existed there was a National Director for the four societies. As part of the Pontifical Missionary Societies, World Missions Ireland were, in general, subject to the Pope, to the Congregation for the Evangelisation of Peoples situated in Rome, and to the provisions of a Statute (hereafter "the Statute") approved by a plenary session of the said Congregation on the 2nd of June,

2005. Father Grimes informed the Tribunal that the 2005 Statute had replaced a 1980 statute. Copies of both statutes were provided to the Tribunal by the Appellants.

The Statute

Father Grimes gave evidence that the Statute comprised two parts: Part I, divided into paragraphs, gave an account of the history and doctrine relating to the four societies: Part II, which comprised Title I and Title II was headed “Norms” and Father Grimes referred the Tribunal to Canon 94 § 1 of the Code of Canon Law, which, according to the statement provided by Dr. Mullaney on behalf of the Respondent, states:

*Statutes in the proper sense are ordinances which are established according to the norm of law in aggregates of persons (universitates personarum) or of things (universitates rerum) and **which define their purpose, constitution, government and methods of operation.*** (emphasis added)

Title I of Part II was headed “The Pontifical Mission Societies” whilst Title II was headed “Government and Administration”.

Father Grimes stated that the central government of the Pontifical Missionary Societies comprised, inter alia, the Supreme Committee provided for in Articles 29 to 32 of the Statute and the Superior Council, provided for in Articles 33 to 36 of the Statute.

The Handbook and the Code of Canon Law

In addition to referring to the Statute, Father Grimes, referred, as indicated, to the Code of Canon Law, (as indeed did Dr. Mullaney in his statement on behalf of the Respondent), and also to a document entitled the Handbook, a copy of which was provided to the Tribunal. Extracts from the Code of Canon Law were also provided to the Tribunal.

The Tribunal notes that the Foreword to the Handbook states that official approval of the text of the Handbook will come from the Supreme Committee and that it refers to Statute II Article 31d. The Tribunal further notes that Article 31d of the Statute states that “With

the Supreme Committee rests the responsibility to approve the Internal Regulation of the PMS;”.

The Tribunal also notes that the Foreword to the Handbook states that in the first three chapters are specified the structural levels and the areas of operation of the Pontifical Mission Societies whilst a fourth chapter is concerned, *inter alia*, with general operational guidelines. Appendix A to the Handbook presents a funding calendar, Appendix B provides, *inter alia*, guidelines for the collection and destination of offerings for the Missions, whilst Appendix C introduces the outline of regulations for ordinary general assemblies and special assemblies of the Superior Council.

Whether the Name of the Appellants appears in its Constitution

Insofar as the name of the Appellants is concerned, Father Grimes in his evidence stated that the Pontifical Mission Societies were defined under Article 1 of the Statute. Article 1 states:

The Pontifical Mission Societies (PMS) are:

- *the Pontifical Mission Society for the Propagation of the Faith (PSPF);*
- *the Pontifical Mission Society of Saint Peter Apostle (SPA);*
- *the Pontifical Mission Society of Holy Childhood or Missionary Children (HC);*
- *the Pontifical Missionary Union (PMU).*

Although established at different times, each through the initiative of its founder or foundress, and having developed as distinct and autonomous entities, the four Societies now constitute a single institution, dependant upon the Congregation for the Evangelization of Peoples. In fact although their specific and distinct natures are advantageous for the development of each Society, it is nevertheless necessary to have one single institution for worldwide missionary cooperation, within the context of the activities carried out by the CEP.

In cross-examination Father Grimes conceded that the name World Missions Ireland was not contained in the Statute however he pointed out that, inter alia, on the front page of the 2010 Annual Report, a copy of which was provided to the Tribunal, appeared the words “ANNUAL REPORT OF THE PONTIFICAL MISSION SOCIETIES” and also the words “WORLD MISSIONS IRELAND” and directly underneath the words “The Work of the Pontifical Mission Societies”.

Whether the Objects of the Appellant appear in its Constitution

Father Grimes gave evidence that objects of the Pontifical Missionary Societies were contained in Articles 4, 6, 11, 13 and 20 of the Statute. The Tribunal notes that Article 4 in particular states that:

The four PMS share as their primary and principal aim the promotion of the spirit of universal mission within the People of God, so that its missionary witness may be expressed through spiritual and material cooperation in the work of evangelization.

The Tribunal notes that Articles 6, 11, 13 and 20 are concerned with the particular objects of the four constituent societies of the Pontifical Missionary Societies.

Membership and Procedures

When asked how the Appellants complied with the requirements of paragraph (a) (v) of the definition of charitable organisation in section 3 of the Act, Father Grimes referred to Articles 38, 39, 40, 48 and 53 of the Statute. Paragraph (a) (v) requires the constitution of a charitable organisation to provide for rules governing its membership and procedures to be followed in relation to meetings and the discharge generally of its business.

Article 38 provides:

The President of the PMS has the authority, when regarded as necessary by him and in agreement with the President of the Supreme Committee, to convene a Special Assembly in November. The date and duration of such an Assembly are

determined by the Ordinary General Assembly, as proposed by its President and pending prior communication with the Secretaries General. The Special Assembly is directed by the President of the PMS and attended by the four Secretaries and representatives of National Directors, elected by all the members of the Superior Council according to a quota determined on a continental basis, established by the Superior Council itself.

Article 39 provides:

The Cardinal Prefect of the CEP attends the meetings of the two Assemblies, if he so wishes, in the forms and manner he considers opportune.

Article 40 provides:

Within the Superior Council, there is an Executive Committee, chaired by the President of the PMS and including the four Secretaries General. It convenes at least once every two months, operating in compliance with its Internal Regulations, and has the following tasks:

- a) to ensure implementation of the general guidelines given by the Supreme Committee and the Superior Council;*
- b) to organize all the Assemblies of the PMS and other similar initiatives;*
- c) to assist the effective organization of the PMS National Offices, in accord with the spirit and the norms of the Statute;*
- d) to examine and respond to urgent requests for assistance, within the limits established by the Superior Council;*
- e) to coordinate the preparation of proposals for allocation of annual subsidies;*
- f) to evaluate with the Delegate for Administration financial management issues of the PMS in general and each of the four Societies in particular.*

The Delegate serves the Executive Committee, to which he is accountable and with which he will verify all issues related to the administration and management of the PMS personnel.

Article 48 provides:

The Superior Council will therefore facilitate contacts and collaboration among National Offices. Some international meetings, on both regional and continental level, will provide those responsible with an opportunity to pool opinions, information and experiences. This will constitute a true source of enrichment for all and will offer each one the opportunity to re-evaluate and renew, if necessary, their own views, programmes and traditional working methods.

Article 53 provides:

According to the norms of the Apostolic See and any special directions issued to the Episcopal Conference, the National Director has the following responsibilities:

- a) to represent the PMS before national religious and civil authorities;*
- b) to promote and direct the PMS within the nation and coordinate their functioning among the different dioceses, in agreement with the Episcopal Conference and according to the spirit of the Statute;*
- c) to chair, as a matter of course, the National Council of the PMS;*
- d) to encourage within the National Council joint reflection, and to promote animation activities, suggesting initiatives to be carried out, giving general guidelines to be followed and to coordinate various other activities;*
- e) to present the annual pastoral and financial reports of individual Societies to the National Council and to the Episcopal Conference , through the Episcopal Commission for the Missions, to the CEP, to the President of*

the Societies, and to the Secretaries General. The financial report must be examined and signed by a Public Auditor as a matter of course.

Father Grimes in his evidence stated that a person by virtue of making a donation to the Pontifical Missions Societies would thereby become a member of same. However, when it was put to him by Ms. O'Rourke, on behalf of the Respondent, he agreed that there were no provisions in the Statute dealing with such membership, or indeed making provision for membership on such terms.

Provisions relating to Income, Assets, Surplus and Remuneration

When asked how the Appellants complied with the requirements of paragraph (a) (vii) of the definition of charitable organisation in section 3 of the Act, Father Grimes referred to Articles 8, 35, 40, 44, 56, 61 and 62 of the Statute.

Article 8 relates to the Pontifical Mission Society for the Propagation of the Faith and provides, inter alia, that Bishops and Episcopal Conferences should ensure that all offerings given on World Mission Day, defined in Article 7 as the penultimate Sunday in October, are used exclusively for the purposes of the Universal Solidarity Fund. Article 10 provides that all offerings collected by the Society constitute the Universal Solidarity Fund of the Society for the Propagation of the Faith.

The Tribunal notes that Article 12 contains a similar provision in respect of all monies collected by the Pontifical Mission Society of Saint Peter Apostle whilst Article 18 provides that the subscriptions and contributions of children from the various continents together constitute the Universal Solidarity Fund of Holy Childhood to assist institutions and activities for the benefit of children in mission territories. The attention of the Tribunal was not drawn by the Appellants to any specific provision regarding collection of monies or their permitted uses in the case of the Pontifical Missionary Union, nor was it a matter that was raised by the Respondent.

Article 35 deals with the responsibilities of the Superior Council. The Tribunal notes that Article 34 provides that the Superior Council comprises, inter alia, the Secretaries

General of the four Pontifical Mission Societies. Article 35 provides, at 35(l), that it is the responsibility of the Superior Council to prepare and update an operational Handbook, and, at 35(m), that it is the responsibility of the Superior Council to determine the amount of money which the Secretaries General can retain from the budget of their respective Society to respond to requests for assistance in situations of special emergencies. Article 35(m) goes on to provide that these funds will have to be allocated according to well defined projects and will become part of the accountability for the following year.

Article 40 provides that within the Superior Council there is an Executive Committee, chaired by the President of the Pontifical Missionary Societies and including the four Secretaries General. Article 40 states that the Executive Committee has a number of tasks, including; at 40(d), to examine and respond to urgent requests for assistance, within the limits established by the Superior Council; at 40(e), to coordinate the preparation of proposals for allocation of annual subsidies, and; at 40(f), to evaluate with the Delegate for Administration financial management issues of the Pontifical Missionary Societies in general and each of the four Societies in particular.

Article 44 deals with the responsibilities of the Secretary General of each of the four constituent Societies of the Pontifical Missionary Societies and provides that these responsibilities shall include; at 44c, to present every year proposals for subsidies, both ordinary and extraordinary, for various projects to be presented to the Superior Council for approval, and; at 44d, to prepare an annual general report for the Superior Council on the activity of the Secretariat, along with a detailed report on the funds received and the subsidies granted.

Article 56 provides:

In each nation the PMS must observe the civil law in force, with regards to both the juridical status to be incorporated in their regulations and in all their operations. The National Office, through the Administration Council or other governing group (e.g. Board of Trustees), will ensure that the status of the PMS as

a “Non-profit Organisation” or “Foundation” or “Registered Charity” is maintained.

Article 61 provides:

The total offerings collected by the PMS in all the parishes and dioceses of every Rite throughout the world, constitute a Fund of Solidarity to establish a programme of universal assistance. Its aim is to provide economic assistance to Churches in the mission territories in their commitment to evangelization, to ecclesial and social development as well as to educational and material assistance. It is a sign of unity of faith, of love and justice, which unites in the world all the members of the Church and the particular Churches in the communion of the Universal Church, because all the faithful of every Church in every part of the world contribute towards it.

Article 62 provides:

The offerings of the faithful collected by the PMS in the dioceses must be transmitted promptly, in their totality and with regularity to the National Office. These offerings collected for the mission ad gentes on World Mission Day «in every diocese, parish and institute of the Catholic world» or on other special occasions, cannot be used for other purposes.

Article 62 of the Statute includes a footnote reference to Canon 1267 § 3, which, according to the statement provided by Dr. Mullaney on behalf of the Respondent, states:

Offerings given by the faithful for a certain purpose can be applied only for that same purpose.

The attention of the Tribunal was also drawn to Article 63, which provides:

The distribution of the offerings collected by the PMS is the exclusive prerogative of the General Secretariats. It is their task, in collaboration with the National Directors, to make the subsidies granted during the year available to the person responsible for the projects approved by the Superior Council. Only a percentage of the offerings collected can be retained by the National Offices for animation and administration activity. Such a percentage, as determined by the Superior Council, is also intended to make up for the possible lack of sufficient funds for activities of the National Offices in the most disadvantaged countries. In the annual financial reports, the expenses for missionary animation must be recorded separately from those for administration costs.

Winding Up and Disposal of Surplus Property

Father Grimes, in dealing with the issue of winding up and disposal of surplus property to another charitable organisation within the meaning of the Act, stated that the Statute made no provision for winding up in its Articles. However, he stated, the Pontifical Missionary Societies were subject to Canon Law and that under Canon 114 bodies such as the Pontifical Missionary Societies had the status of a public juridic person.

The Tribunal notes that this was also a matter dealt with by Dr. Mullaney in his statement of evidence, which contained the following:

Members of the Roman Catholic Church can set up associations or foundations (i.e. an aggregate of things – can. 94 § 2) whose goals and objectives transcend the individuals involved and which are in harmony and promote the mission of the Catholic Church, as in the case of the Pontifical Missions Societies/(World Missions Ireland).

Such associations or aggregates of things are established as ‘juridical persons’ in canon law (can. 113 §2) which assigns a particular juridical/canonical identity to entities within the Church. It can do this by two means: firstly, ipso jure or by virtue of a decree of the ecclesiastical authority (can. 116 §2) as in the case of Pontifical Missions Societies/World Missions Ireland which was established by

the competent ecclesiastical authority (can. 117), the Supreme Legislator, Pope John Paul II and the Congregation of the Evangelisations of Peoples in the foreword to its statutes in 1980 whose purposes which (sic) concern works of piety, apostolate and/or of charity (can. 114, §2).

The Tribunal notes that Canon 116, a copy of which was provided to the Tribunal by the Appellants and which was referred to by Dr. Mullaney in his statement, distinguishes between public and private juridical persons. Canon 116 §1 provides:

Public juridical persons are aggregates of persons or of things which are established by the competent ecclesiastical authority so that, within the limits allotted to them in the name of the Church, and in accordance with the provisions of law, they might fulfil the specific task entrusted to them for the public good. Other juridical persons are private.

Father Grimes went on to state that Canon 123 provided that on the extinction of a public juridical person, unless otherwise provided by law or the Statute, the arrangements for its patrimonial goods and rights devolved on the next highest juridical person, always with due regard for the wishes or benefactors and for acquired rights. Thus, were the Pontifical Missionary Societies to be extinguished, their income, assets or surplus would have to be applied to their main objective, which was perpetual in nature.

Canon 123, a copy of which was provided to the Tribunal by the Appellants, provides:

On the extinction of a public juridical person, the arrangements for its patrimonial goods and rights, and for its liabilities, are determined by law and the statutes. If these do not deal with the matter, the arrangements devolve upon the next higher juridical person, always with due regard for the wishes of the founders or benefactors and for acquired rights. On the extinction of a private juridical person, the arrangements for its goods and liabilities are governed by its own statutes.

Dr. Mullaney, in his statement, also dealt with the matter thus:

Where a public juridical person ceases to exist the destination of its assets are determined by can 123: “Upon the extinction of a public juridic person, the allocation of its goods, patrimonial rights, and obligations is governed by law and its statutes; if these give no indication, they go to the juridic person immediately superior, always without prejudice to the intention of the founders and donors and acquired rights. Upon the extinction of a private juridic person, the allocation of its goods and obligations is governed by its own statutes.” The primary norm of the Code is that the destination of the assets of the juridical person can be stipulated in the statutes. As a subsidiary norm, the canon states that where there is no such stipulation, responsibility for all assets and liabilities devolve upon the juridical person which is immediately superior.

As the four original societies amalgamated in 1980 by the Holy See were first erected by decree of the Irish Episcopal Conference, in the event of the extinction of the Pontifical Missions Society/World Missions Ireland, those assets and liabilities would devolve to the Irish Episcopal Conference, In such a case the remaining assets of the Pontifical Missions Society/World Missions Ireland would have to be disposed in accordance with the statutes/purposes of the Society according to can. 1267 §3: “Offerings given by the faithful for a certain purpose can be applied only for that same purpose.”

The Submissions of the Parties

The Appellants asserted that they came within the definition of a charitable organisation contained in section 3 of the Act and that accordingly, the property, the subject matter of the present appeal, came within paragraph 16 (a) of Schedule 4 of the Act and therefore constituted relevant property not rateable.

The Respondent disputed this conclusion. In particular the Respondent argued that the evidence before the Tribunal disclosed that there did not exist in relation to the

Appellants, a constitution or deed of trust as required by the paragraph (a) of the definition of charitable organisation in section 3.

Whilst such a submission would suggest that the Appellants could not, in consequence, meet any of the requirements specified in subparagraphs (i) to (ix) of paragraph (a), at the hearing the Respondent argued that the Appellants do not meet the requirements of subparagraphs (i), (iii), (v), (vii), (viii) and (ix) but did not advance any oral argument in relation to the other subparagraphs.

Insofar as subparagraph (iii) is concerned, the Respondent referred to authority supporting the proposition that the advancement of religion did not constitute a charitable purpose within the meaning of the Act.

The detail of the argument advanced by the Respondent and the rebuttals of the Appellants will be considered in detail presently, but firstly it is necessary to set out the relevant provisions of the Act.

The Valuation Act 2001

Paragraph 16 (a) of Schedule 4, provides that relevant property not rateable includes:

Any land, building or part of a building which is occupied by a body, being ... a charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit, ...

The relevant part of section 3 of the Act provides as follows:

“charitable organisation” means a company or other body corporate or an unincorporated body of persons which complies with the following conditions—

- (a) in the case of a body corporate which is not a company, or of an unincorporated body of persons, there exists a constitution or deed of trust in relation to it that –

- (i) states the full name of the body,
- (ii) provides who are to be its trustees or who are to be the members of its governing board or committee,
- (iii) states, as its main object or objects, a charitable purpose and specifies the purpose of any secondary objects for which provision is made to be the attainment of the main object or objects,
- (iv) states its powers,
- (v) provides for rules governing its membership and procedures to be followed in relation to meetings and the discharge generally of its business,
- (vi) provides for the keeping of accounts and the auditing thereof on an annual basis,
- (vii) (I) provides for the application of its income, assets or surplus towards its main object or objects,
(II) prohibits the distribution of any of its income, assets or surplus to its members, and
(III) prohibits the payment of remuneration (other than reasonable out-of-pocket expenses) to its trustees or the members of its governing board or committee or any other officer of it (other than an officer who is an employee of it),
- (viii) makes provision for its winding up, and
- (ix) provides for the disposal of any surplus property arising on its being wound up to another charitable organisation (within the meaning of this Act), the main object or objects of which is or are similar to its main object or objects or, if the body receives a substantial proportion of its financial resources from a Department of State or an office or agency (whether established under an enactment or otherwise) of the State, to such a Department, office or agency, ...

The Decision of the Tribunal

The Tribunal will deal in turn with each of the arguments advanced by the Respondent.

Does the Advancement of Religion Constitute a Charitable Purpose under the Valuation Act 2001?

The most fundamental challenge raised by the Respondent relates to the alleged failure on the part of the Appellants to meet the conditions stipulated by paragraph (a) (iii) of the definition of charitable organisation contained in section 3 of the Act.

Whilst it was common case between the parties that the advancement of religion constituted the main object of the Pontifical Missionary Societies, the Respondent asserts that the advancement of religion does not constitute a charitable purpose within the meaning of the Act.

The Tribunal notes at the outset that it is striking that although the term “charitable purpose” or “charitable purposes” appears in both paragraph 16 (a) of Schedule 4 of the Act, and within the definition of charitable organisation within section 3, it is not a term that is defined by the Act.

The Respondent drew the attention of the Tribunal to the following passage in *Brendan v. Commissioner of Valuation* [1969] I.R. 202 where Henchy J. stated, at page 221:

The second ground on which it is alleged that the convent is exempt is that it is used exclusively for charitable purposes, namely the advancement of religion. Regardless of whether the facts are such as to justify a finding that the convent is used exclusively for the advancement of religion, this ground fails for the reason that it has been held by the Supreme Court in *McGahan & Ryan v. Commissioner of Valuation* [1934] I.R. 736 (as interpreted in *Elliott v. Commissioner of Valuation* [1935] I.R. 607 and *Maynooth College v. Commissioner of Valuation* [1958] I.R. 189) that user for the advancement of religion is not a charitable purpose within the meaning of the proviso to s. 63 of the Act of 1838.

The Appellants argued that *McGahan* was not applicable as section 63 of the Poor Relief (Ireland) Act 1838 had been repealed and that the Tribunal should interpret the phrase

“charitable purpose” in accordance with Lord Macnaghten’s famous dicta in *Commissioners for Special Purposes of Income Tax v. Pemsel* [1891] A.C. 531, where he stated, at page 583:

Charity in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads.

The Respondent argued that the component parts of section 38 had been incorporated into Schedule 4, in particular paragraphs 7, 8, 9, 10 and 16 and that, accordingly, the same definition of charitable purpose should continue to apply.

In support of this proposition the Respondent relied on the decision of the Supreme Court in *Cronin v. Youghal Carpets (Yarns) Ltd.* [1985] I.R. 312. In that case the Revenue appealed unsuccessfully against the decision of the High Court that the phrase “total income brought into charge to corporation tax” could be construed in *pari materia* with the phrase used in income tax legislation “profits or gains brought into charge” which had been construed in a number of cases as meaning the taxable, and not the actual profits or gains in the year of assessment.

Griffin J, who delivered judgment on behalf of the Court, at page 321, stated:

It is a well established principle to be applied in the consideration of an Act that, where a word or expression in an earlier Act has received a clear judicial interpretation, there is a presumption that the subsequent Act which incorporates the same word or expression in a similar context should be construed so that the word or expression is interpreted according to the meaning that has previously been ascribed to it, unless a contrary intention appears.

The provisions of the section 63 of the 1838 Act are recited by the law reporter in *Brendan v. Commissioner of Valuation* [1969] I.R. 202, at page 210. When in force, Section 63 of the Poor Relief (Ireland) Act 1838 provided:

Provided also, that no church, chapel, or other building exclusively dedicated to religious worship, or exclusively used for the education of the poor, nor any burial ground or cemetery, nor any infirmary, hospital, charity school, or other building used exclusively for charitable purposes, nor any building, land, or hereditament dedicated to or used for public purposes, shall be rateable, except where any private profit or use shall be directly derived therefrom, in which case the person deriving such profit or use shall be liable to be rated as an occupier according to the annual value of such profit or use.

Although the Respondent argued that the advancement of religion did not come within charitable purposes and relied on the jurisprudence in respect of section 38 of the 1838 Act, the only decision opened by the Respondent in that regard was *Brendan v. Commissioner of Valuation* which merely states the conclusion of the Supreme Court in respect of the section. The Tribunal received no submissions relating to the rationale underlying the conclusion in respect of section 63.

However, the Appellants opened the decision of *Barrington's Hospital v. Commissioner of Valuation* [1953] I.R. 299 to the Tribunal. In that case Kingsmill Moore J. reviewed the jurisprudence relating to section 63 of the 1838 Act. He referred in particular to the judgment of Lord Herschell in *Commissioners of Inland Revenue v. Scott* [1892] 2 Q.B. 152, which dealt with section 2 of the Valuation (Ireland) Act, 1854, and which explained the rationale for the restrictive interpretation of charitable purposes in the context of rating law. Kingsmill Moore J. noted, at page 326, that:

He [Lord Herschell] ... distinguished the case before him on the ground that "the words we have to construe are placed, as I have pointed out, between specific exemptions which, if used in their widest sense, they would be sufficient to

cover.” The words which immediately preceded and followed the words “for any charitable purpose” would have been unnecessary if “charitable purpose” were given its widest meaning. He concluded:- “All these considerations satisfy me that the words ‘for any charitable purpose’ cannot have been used in this enactment in the wide sense contended for.

Kingsmill Moore J. went on to state, at page 327:

... the argument of Lord Herschell ... has also an application to s. 63 of the Act of 1838. “Charitable purposes” in s. 63 cannot have their widest meaning inasmuch as particular charitable purposes are specifically mentioned with certain limitations on their nature and “charitable purposes” cannot be construed as covering the same particular purposes without such limitation.

The argument advanced by the Respondent before the Tribunal raises a question of statutory interpretation, namely the proper scope of the term charitable purpose or charitable purposes. The Tribunal is of the view that the immediately preceding dicta of Kingsmill Moore J. encapsulate the approach that the Tribunal must apply in this instance.

The Appellants argue, on the basis of Pemsel, that the activities in which they are engaged, in this instance the advancement of religion, ought to qualify as a charitable purpose under the Act. However, Schedule 4 of the Act mentions, at paragraph 7, a particular charitable purpose, the advancement of religion, with a certain limitation, public religious worship. Specifically, under paragraph 7 of Schedule 4, relevant property not rateable includes:

Any land, building or part of a building used exclusively for the purposes of public religious worship.

The Tribunal notes that that a similar restriction was contained in section 63 of the Poor Relief (Ireland) Act 1838.

Accordingly, the Tribunal holds that with the exception of the specific circumstances referred to in paragraph 7 of Schedule 4, the advancement of religion does not constitute a charitable purpose within the meaning of Schedule 4 of the Act.

Whether there Exists a Constitution in respect of the Appellants

The Respondent argues that there does not exist, within the meaning of the relevant provisions of section 3 of the Act, a constitution or deed of trust in relation to the Appellant. Mr. Gaffney argued that there did exist a constitution in respect of the Appellants and that it comprised, inter alia, the Statute.

Having heard the extensive evidence of Father Grimes and considered the submissions of the parties, the Tribunal holds that the Statute constitutes the constitution of the Appellants.

The argument was made by Mr. Gaffney that certain other documents also formed part of the constitution of the Appellants. This argument will be considered subsequently in the Tribunal's judgment.

Whether the Constitution states the full name of the Appellants

The Respondent argued that the name of the Appellants, World Missions Ireland, did not appear in the Statute and that accordingly paragraph (a) (i) of the definition of charitable organisation was not satisfied.

The Tribunal notes; firstly, that Father Grimes stated in his evidence that the Pontifical Missionary Societies is a world wide organisation; secondly, that it was not disputed that the name of the world wide organisation is Pontifical Missionary Societies, and; thirdly, that the said name appears in the Statute.

The evidence before the Tribunal established that World Missions Ireland was merely the name given to the Irish part of the societies (which formed part of the world wide organisation) and that in any event it was a term that was used in conjunction with the name of the world wide organisation. There was no evidence to suggest that the Pontifical Missionary Societies had otherwise adopted the name World Missions Ireland. There was no evidence before the Tribunal to suggest that World Missions Ireland had a separate constitution or that it was an entity that was independent of the Societies and the Tribunal is satisfied that World Missions Ireland is merely a part of the Pontifical Missionary Societies. The fact that certain activities are carried out in the State under the name World Missions Ireland, including the prosecution of this appeal, does not change the reality that it is the Pontifical Missionary Societies who are the Appellants in this case. Accordingly, the Tribunal holds that the requirements of paragraph (a) (i) have been satisfied.

Rules governing Membership and Procedures

The Respondent asserted that the requirements of paragraph (a) (v) of the definition of charitable organisation were not satisfied. Having heard the evidence of Father Grimes the Tribunal holds that the Statute provides for procedures to be followed in relation to meetings and the discharge generally of the Appellant's business.

So far as the question of membership is concerned, although Father Grimes stated in evidence that a person by virtue of making a donation to the Pontifical Missionary Societies would thereby become a member of same, when it was put to him by Ms. O'Rourke, on behalf of the Respondent, he agreed that there were no provisions in the Statute dealing with such membership, or indeed making provision for membership on such terms. The difficulty, it seems to this Tribunal, with the Respondent's argument, is that as a matter of principle there can only be rules governing membership where there is provision for membership in the first instance. Accordingly, the Tribunal holds that the issue of whether there are rules governing membership simply does not arise in this instance and that accordingly, the requirements of paragraph (a) (v), insofar as they are relevant, have been satisfied.

Provisions relating to Income, Assets, Surplus and Remuneration

The Respondent asserted that the requirements of paragraph (a) (vii) (I), (II) and (III), of the definition of charitable organisation, were not satisfied.

Paragraph (a) (vii) (I)

It was common case between the parties that offerings received by the Appellants constituted income. Article 61 of the Statute provides that the total offerings collected by the Pontifical Missionary Societies in all the parishes and dioceses of every rite throughout the world constitute a Fund of Solidarity. The Tribunal notes that the Respondent did not contend that the Pontifical Missionary Societies received offerings otherwise than through the mechanism as described in Article 61. However, in his evidence Father Grimes did indicate that interest income might accrue on accounts held by the Appellants. The Tribunal did not have its attention drawn to any articles of the Statute dealing with such an eventuality. Nor did the Tribunal have its attention drawn to any articles providing for the application of the assets of the Appellants towards their main objects. The Tribunal notes that Mr. Gaffney submitted that the Appellants did not have any surpluses, however a perusal of the annual report of the Appellants for 2010 discloses several instances of an excess of income over expenditure. Again, there does not appear to be any provision in the Statute relating to any excess of income over expenditure or surplus.

Paragraph (a) (vii) (II)

Whilst the attention of the Tribunal was not drawn to any provisions prohibiting the distribution of any income, assets or surplus to members, as noted earlier, neither does there appear to be any provision for membership in the Statute. In the circumstances the issue of non compliance with Paragraph (a) (vii) (II) does not arise.

Paragraph (a) (vii) (III)

Again, the attention of the Tribunal was not drawn to any provisions prohibiting the payment of remuneration (other than reasonable out-of-pocket expenses) to trustees or the members of the governing board or committee or any other officer (other than an officer who was an employee) of the Appellants.

Accordingly, the Tribunal holds that the provisions of paragraph (a) (vii) (I) and (III), of the definition of charitable organisation, have not been satisfied, but that the provisions of paragraph (a) (vii) (II), insofar as they are relevant, have been satisfied.

Winding Up

The Respondent asserted that the requirements of paragraph (a) (viii) of the definition of charitable organisation were not satisfied.

As noted earlier, Father Grimes, in dealing with the issue of winding up and disposal of surplus property to another charitable organisation within the meaning of the Act, stated that the Statute made no provision for winding up in its Articles. However, he stated, the Pontifical Missionary Societies were subject to Canon Law and he noted that Canon 123 provided that on the extinction of a public juridical person, unless otherwise provided by law or the Statute, the arrangements for its patrimonial goods and rights devolved on the next highest juridical person, always with due regard for the wishes of benefactors and for acquired rights. However, the Tribunal notes that paragraph (a) (xi) deals with the area covered by Canon 123, which indicates that the provisions referred to in paragraph (a) (viii) are those provisions relating to winding up other than the disposal of surplus property.

Given that no evidence has been adduced relating to any provisions for winding up other than Canon 123, the Tribunal holds that the requirements of paragraph (a) (viii) of the definition of charitable organisation have not been satisfied.

Disposal of Surplus Property

The Respondent asserted that the requirements of paragraph (a) (ix) of the definition of charitable organisation were not satisfied. In particular, argument centred on whether Canon 123 should be regarded as forming part of the constitution of the Appellant.

The evidence adduced establishes that the Statute makes no provision for the winding up of the Appellants. Whilst Canon 123 does deal with the issues raised by paragraph (a)

(ix), it is not part of the Statute. Neither does the Statute appear to make any reference to Canon 123. Further, whilst it was not disputed that Canon 123 governs the Appellant, there was no evidence before the Tribunal that Canon 123 formed part, or was deemed to form part, of the Statute.

The Tribunal notes that the Respondent further argued that even if Canon 123 did form part of the constitution of the Appellant, that there was no evidence that the body to whom its surplus property would go was a charitable organisation within the meaning of section 3 of the Act.

Accordingly, the Tribunal holds that the requirements of paragraph (a) (viii) of the definition of charitable organisation have not been satisfied.

Determination

The Tribunal finds that the subject property is rateable within the meaning of the Valuation Act, 2001. This appeal is therefore dismissed.