

Appeal No. VA95/5/022

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Catholic Marriage Advisory Council (CMAC)

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices at Map Ref: 39, Harcourt Street, Ward: St. Kevin's, County Borough of Dublin
Exemption - Charitable and public purposes

B E F O R E

Mary Devins

Solicitor (Acting Chairman)

Brid Mimmagh

Solicitor

Barry Smyth

FRICS.FSCS

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 19TH DAY OF APRIL, 1996

By Notice of Appeal dated the 16th day of October 1995 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £110 on the above described hereditament.

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

"The premises are owned and used for the charitable and public purposes of the Catholic Marriage Advisory Council and exemption from rates in the valuation list should be granted in respect of the above property."

The Property:

The hereditament comprises a terraced 4 storey over basement Georgian style building in good order throughout.

The accommodation comprises reception and general offices on ground floor with meeting cum counselling rooms on 1st, 2nd and 3rd floors including basement.

The premises have been refurbished in recent years with central heating system and lift to each floor installed.

Premises is located on Harcourt Street adjacent to Harcourt Hotel and within easy reach of St. Stephen's Green.

Tenure:

Subject premises is owned by St. Laurence O'Toole Diocesan Trust and occupied rent free by appellant.

Written Submissions:

A written submission on behalf of The Catholic Marriage Advisory Council, known since May 1995 as Accord, was received from Arthur O'Hagan, Solicitors on 6th day of March 1996. In the written submission the premises were described as the administrative headquarters for Accord centres in the Dublin diocese. The building, 39, Harcourt Street, Dublin 2 was described as occupied entirely by Accord. Ownership is vested in the St. Laurence O'Toole Diocesan Trust and the premises are occupied at the pleasure of the Trust.

Accord was described as a national organisation working in co-operation with and under the special direction of the Catholic Hierarchy in Ireland, serving primarily in the areas of marriage and family relationships. The services provided in 39, Harcourt Street were described as:-

- (a) Marriage counselling
- (b) Pre-marriage courses
- (c) Family planning
- (d) Psycho-sexual counselling
- (e) School programme.

The premises houses the offices of Fr. McManus, Dublin Director of Accord. Thirty five lay counsellors also operate in the centre.

Funding:

Accord in the Dublin diocesan area is funded mainly by an annual church collection and this funding is supplemented by grant aid from the Department of Equality and Law Reform. There are occasional donations and pre-marriage course contributions.

Staffing:

Services are provided by voluntary workers who receive no remuneration. Mr. Brett is Finance Officer of Accord and there are four secretaries working in the headquarters.

The Law:

It was submitted that the premises was "a building used exclusively for charitable purposes, coming under the fourth heading of the definition of charity in the case *Commissioners for Special Purposes of Income Tax v. Pemsel [1891] AC 531* i.e." for other purposes beneficial to the community not falling under any of the preceding heads" which comprised buildings used for the relief of poverty or the advancement of education or religion.

He said that no fee is charged for services, save the contribution towards pre-marriage courses and for school invitations, which is non-mandatory and that no private use or profit was made from the premises. He submitted that although Accord operated under the special direction of the Catholic Hierarchy no person was rejected on grounds of religious belief.

A written submission was received on 4th March 1996 from Mr. Tom Stapleton on behalf of the respondent. In the written submission, Mr. Stapleton described the premises, as set out above. Referring to the appellant's grounds of appeal, Mr. Stapleton said that the entity was not entitled to be distinguished in the Valuation Lists as it did not comply with the provisions of the Valuation Acts in that the building was not exclusively used for public or charitable purposes - Section 2, 1854 Valuation (Ireland) Act, nor did it comply with Section 63 Poor Relief (Ireland) Act 1838 and Section 16 Valuation (Ireland) Act 1852. Mr. Stapleton briefly outlined the activities of Accord and referred the Tribunal to the case of ***VA92/5/016 - N.A.O.M.I. v. Commissioner of Valuation.***

Oral Hearing:

The oral hearing took place in Dublin on the 11th day of March 1996. Mr. Charles Meenan, Barrister-at-Law instructed by Messrs. Arthur O'Hagan & Company, Solicitors appeared on behalf of the appellant. Also present to give evidence were Mr. Michael Brett, Finance Officer with the appellant organisation and Ms. Margaret Chambers, Counsellor.

Mr. Paul Gardiner, Barrister-at-Law instructed by the Chief State Solicitor appeared on behalf of the respondent. Mr. Tom Stapleton of the Valuation Office was also present.

Mr. Meenan, referring to his written submissions, explained that the name of the organisation had been changed some two years ago from Catholic Marriage Advisory Council to Accord (Catholic Marriage Counselling Service). He explained that the services in the organisation were given by trained counsellors on a voluntary basis and he submitted that the services provided were on a non-denominational basis as evidenced by the "Code of Ethics and Practice". He explained that four office staff and a cleaner were the only paid employees on the premises.

He submitted that the building in Harcourt Street is used exclusively for charitable purposes and in this context referred to the decision of the Tribunal in *VA91/2/067 - Clanwilliam Institute Personal Marriage & Family Consultants Limited v. Commissioner of Valuation*.

Mr. Brett gave evidence that the property occupied by Accord is vested in the Saint Laurence O'Toole Diocesan Trust which trust is located in the Archbishop's residence and is a trust for the entire Dublin diocese. Mr. Brett explained that the entire of the premises was occupied by Accord and included the administrative offices of the Dublin diocese of Accord. He explained that the greater part of the organisation's income was provided by an annual collection taken up in Catholic Churches and that for the past two years the organisation had also received a grant from the Department of Equality and Law Reform which, he said, accounted for approximately 31% of the amount shown in central funding on the Statement of Receipts and Payments for the year ending 31 December 1994.

Replying to a question from Mr. Paul Gardiner in cross-examination, Mr. Brett confirmed that the church referred to in paragraph 2 of the Constitution of the organisation is the Catholic Church.

Ms. Chambers in evidence, said that the Catholic religion was not promoted in pre-marriage courses, that the people attending were not asked what religion they were and that the counselling given was entirely non-directive.

She said that in spite of the reference in the organisation report, to instruction and support in the use of natural family planning, all methods of family planning were presented to the participants in a neutral fashion. She explained further that the natural method was the only one which called for instruction.

In the course of cross-examination by Mr. Gardiner, Ms. Chambers confirmed that the Catholic sacrament of marriage was the only type of marriage discussed. She explained that while the property in Harcourt Street housed the office of Fr. McManus, the Dublin Director, there were some 35 lay counsellors working in the centre.

Replying to a further question from Mr. Gardiner, Ms. Chambers said that she understood that the Constitution of the organisation was under review and that it reflected the time when the organisation was first established some 27 years ago.

Submissions:

Mr. Meenan submitted that the services provided by the centre were beneficial to the community. He said that the evidence of Ms. Chambers as to non-directive counselling was at variance with the idea of promoting a religion.

He submitted that in view of the fact that 90% of the population in the State is Roman Catholic, the vast majority of people who would attend the centre would be Roman Catholic and would accordingly have questions about the Catholic sacrament of marriage.

Mr. Meenan submitted that the case should be distinguished from the Maynooth College case in that the evidence in the latter clearly indicated that the aim of Maynooth College was the promotion of religion.

Mr. Meenan said that the evidence in relation to contributions from the pre-marriage course participants does not remove the subject's right to exemption and in this instance he cited *Barringtons Hospital v. Commissioner of Valuation [1957] IR 299*.

In conclusion, Mr. Meenan submitted that in light of the apparent disparity between the Constitution and the 1994 report and the evidence in relation to the actual work carried on in the centre, if there is deemed to be conflict that conflict must be resolved in favour of the evidence given in the course of the hearing. He referred to the decision of the Tribunal in *VA92/5/016 - N.A.O.M.I v. Commissioner of Valuation* and submitted that it might be distinguished from the subject as the evidence in the former seemed to centre on the actual wording of the Constitution of that organisation.

Mr. Gardiner submitted that the mere fact that the work carried on by the subject might be described as laudable would not afford it charitable exemption and he submitted that the facts in this case were almost entirely similar to those in the N.A.O.M.I. case. In his view the only difference would seem to be the provision of the schools programme by the subject centre.

Mr. Gardiner further submitted that if one were to distinguish the subject case from the N.A.O.M.I. case on the grounds of the universality of the work carried out, then the subject would fall within the terms of the Maynooth College case as one clearly promoting a religion by reference to its constitution.

Mr. Gardiner submitted that even if the evidence were sufficient to show that the subject organisation is not actually doing what it is supposed to do by virtue of its constitution, nevertheless the Tribunal must look to that constitution as supported by the 1994 report.

Mr. Gardiner finally submitted that there are other important indicators that the constitution's aims and views are being pursued, namely, that the majority of funding comes from the catholic church collection and that most people find out about the courses run in the centre, either from posters in catholic churches or from individual priests.

Determination:

The relevant law in this appeal is as follows:-

Valuation (Ireland) Act 1854, Section 2:

"In making out the lists or tables of valuation mentioned in the said firstly herein-before mentioned Act the Commissioner of Valuation shall distinguish all hereditaments and tenements, or portions of the same, of a public nature, or used for charitable purposes, or for the purposes of science, literature, and the fine arts, as

specified in an act of the sixth and seventh years of Her Majesty, chapter thirty-six;
 and
 all such hereditaments or tenements, or portions of the same, so distinguished, shall,
 so
 long as they shall continue to be of a public nature, and occupied for the public
 service,
 or used for the purposes aforesaid, be deemed exempt from all assessment for the
 relief of the destitute poor in Ireland and for **Grand Jury and County Rates:**
 provided always, that half the annual rent derived by the owner or other person
 interested in any tenements or hereditaments so distinguished shall be included in
 such
 list or tables, so far as the same can or may be ascertained by the said Commissioner
 of
 Valuation."

The proviso to Section 63 of the Poor Relief (Ireland) Act 1838:

"... 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 infirmary, hospital or charity school, or other building
 exclusively used 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 property or use."

At the outset, the Tribunal finds that the decision of the Tribunal in *VA91/2/067 -
 Clanwilliam Institute Personal Marriage & Family Consultants Limited v. Commissioner
 of Valuation* can be distinguished by reason of the findings therein that the services provided
 by the appellants were primarily for the relief of distress within the family and the underlying
 acceptance of the provisions of the constitution of the State as regards the family. It was
 clear too that the Clanwilliam Institute had no involvement with, or relationship to any
 particular religion.

The Tribunal accepts Ms. Chambers evidence in relation to the type of counselling afforded by her. Nonetheless it is noteworthy that while she is the co-ordinator of marriage care, she is only one of 35 counsellors in the centre and that she contributed to the annual report of 1994 which refers quite specifically to the conviction of the organisation "that it is carrying out Christ's work".

There is undoubtedly a conflict between the evidence given by Ms. Chambers in the course of the hearing and the description of the organisation in the constitution as a "service agency" working under the direction of the Catholic hierarchy in Ireland, whose aims are *inter alia* to promote a better understanding of Christian marriage in accordance with the teaching of the church on marriage and family life. It has been confirmed in evidence that the church referred to therein is the Roman Catholic Church.

The Tribunal notes that the subject property is owned by a diocesan trust. It also notes the special directional role of the Catholic hierarchy in Ireland in relation to the National Organisation of Accord. It notes too that the Dublin Director is a Catholic priest and that the complete name of the organisation now reads Accord " Catholic Marriage Counselling Service".

It would seem to the Tribunal that the substitution of the word "counselling" for "advisory" in the previous title merely indicates changes of thinking in relation to the type of counselling now generally considered acceptable i.e. non-directive.

In spite of the evidence given in relation to the type of counselling carried on, the Tribunal is of the opinion that this may indicate changes in the area of counselling generally, rather than in the ethos of the organisation.

The Tribunal must have regard to the constitution of the organisation together with its annual report for 1994.

The Tribunal is satisfied that the organisation, while it is voluntary and predominantly lay, is nonetheless quasi-religious and has as its objects and aims the promotion of the teaching of the Roman Catholic Church on marriage and family life.

The Tribunal accordingly finds against the appellant in relation to the issue of exemption and affirms the decision of the respondent.

Authorities:

- (a) Commissioners For Special Purposes of Income Tax v. Pemsel [1891] AC 531
- (b) Barringtons Hospital v. Commissioner of Valuation [1957] IR 299
- (c) Clanwilliam Institute v. Commissioner of Valuation 26th February 1992
- (d) N.A.O.M.I. v. Commissioner of Valuation - VA92/5/016