

Appeal No. VA99/2/028

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

Bord na Gaeilge

VA99/2/028 (Comhar na Múinteoirí Gaeilge)

VA99/2/029 (Gaeilscoileanna)

VA99/2/030 (Chomarchumann Raidió Átha Cliath)

VA99/2/031 (An Coimchoiste Réamhscolaíochta Teo)

APPELLANT

and

An Choimisinéir Luachála

RESPONDENT

RE: Offices (basement, ground, first and third floors) at Map Reference No. 7 (-1), (0),(1), and (3) (pt) (Incl 31 Fenian Street) Merrion Square North, Ward: Mansion House, A, Dublin

Exemption - Charitable and public purposes

B E F O R E

Henry Abbott - Senior Counsel

Chairman

Michael Coghlan - Solicitor

Member

Finian Brannigan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 26TH DAY OF NOVEMBER, 2001

By Notices of Appeal dated 28 April 1999, the appellant appealed against the determination of the Commissioner of Valuation in fixing rateable valuations as set out below on the above described hereditaments. The grounds of appeal as set out in the Notices of appeal were that :

"Gur cheart go mbeadh an t-aitreamh sainraite idirdhealaithe sna Liostai Luachála toisc go bhfuil sé a úsáid go leithliseach i cgoir cuspóiri poiblí agus cuspóiri carthanachta agus dá bhrí sin go bhfuil dioluine iomlán ó rátáí tuilthe ag an athchomharc."

The oral hearing concerned all four above named appeals and took place in the Tribunal Offices in Dublin on 26 January 2001.

Seamus O'Tuathail SC instructed by Edge Manning & Co., Solicitors, represented the Appellant. Cormac O'Dulachain instructed by the Chief State Solicitor represented the Respondent.

Mr. Donal O Buachalla of GVA Donal O Buachalla gave evidence on behalf of the appellant. Reamonn O Baoill Bord na Gaeilge also gave evidence. Helen O'Murchu gave evidence on behalf of Comhar na Muinteoiri Gaeilge Teoranta. Labhras O Laighleis gave evidence on behalf of Chomarchumann Raidio Atha Cliath. Paschal Conboy District Valuer from the Valuation Office was present on behalf of the Commissioner of Valuation.

At the outset of the hearing it was agreed that quantum was not at issue in the appeals and that the legal issue of exemption was the only issue for the Tribunal to deal with in all appeals.

Valuation History

The entire property had a valuation of £625 as one hereditament in the Valuation lists prior to the revision in May 1996. Following revision no change was made to the valuation. The decision was appealed and at first appeal the hereditament was divided into five parts as follows

VA99/2/028 (Comhar na Muinteoiri Gaeilge)	Part of the basement RV £29
VA99/2/029 (Gaeilscoileanna)	Part of the ground floor RV£23
VA99/2/030 (Chomarchumann Raidio Atha Cliath)	Part of the first floor RV£35
VA99/2/031 (An Comhchoiste Reamhscolaiochta Teo)	Part of the third floor RV£20

All the above hereditaments were listed as rateable. Bord na Gaeilge Offices in the same building were valued at £518 (exempt).

Property

The premises under appeal comprise the offices of the above named organisations located in No. 7 Merrion Square.

Appellant's case

In the written submission to the Tribunal the appellant described the objects and aims of the appellant organisations in the following terms:

VA99/2/028 Comhar na Múinteoirí Geailge:

Was established in 1964:

- To promote the Irish language
- To provide due status to the Irish language in the field of education in this country, and
- To advise the authorities in this regard

The organisation operates as a support and source of direction for all the teachers of the country – teaching Irish or teaching through the medium of Irish – in their efforts to promote the Irish language as a normal means of communication and to ensure that that basic aim is reflected in the Irish language syllabus for the pupils of the country.

- Various resource materials are published to increase the potential of Irish language teachers and pupils
- Events and competitions are organised for teachers and pupils with the aim of encouraging the Irish language
- Discussion documents are made available showing how best to add to the Irish language ability of the target community
- Comhar has strong representation on official committees which deal with development of skills and the use of the Irish language
- Co-operation is given to other organisations, both official and voluntary, with similar aims in respect of the promotion of the Irish language
- Whatever services are needed by the members are provided to support them in this national work.

Comhar na Múinteoirí Geailge is a 32 county organisation and each Irish language teacher is a language activist, an agent of the State implementing the basic constitutional policy of the State.

Aims:

- To promote the teaching of Irish and develop the position of the Irish language in the education system
- To provide professional services to teachers at all levels of the education system
- To promote the Irish language as a spoken and written language using the most efficient aids and methods
- To participate fully with educational institutions in the assessment and review of the curriculum when necessary
- Provide co-operation for the benefit of the teaching of Irish and teaching through the medium of Irish
- To promote the linguistic culture in every way possible

VA99/2/029 Gaelscoileanna

Gaelscoileanna is a national voluntary development organisation that was established in 1973 as The National Committee for All Irish Schools. Gaelscoileanna has been in receipt of a grant from Bord na Gaeilge since 1978.

Gaelscoileanna provides information, assistance, support and advice to parents wishing to establish all Irish schools or to develop a school as a gaelscoil. It is a non-profit making organisation, which is almost entirely dependent on its grant from Bord na Gaeilge. (The schools pay a small subscription each year amounting to about £2000 in total. Audited accounts are made available at each annual general meeting.

Gaelscoileanna is devoted entirely to the promotion of Irish as a living language in the community through education in the Irish language. Irish language schooling and the growth in school numbers is the greatest sign of hope in the past twenty years for language revival movement. The demand for schools comes entirely from the community. The organisation responds to queries from parents in different places throughout the country and assistance is provided in the establishment of a new gaelscoil.

Gaelscoileanna establishes an average of 8 schools per year, both primary schools and secondary schools.

The all-Irish schools provide a stream of fluent Irish speakers every year. More than 25,000 pupils are receiving education through the medium of Irish outside the Gaeltacht. That is almost 4% of all primary pupils in the country and 1% of post-primary pupils. This growth and development in the number of schools and students attending them would certainly not have come about without the continuous support, assistance and advice provided by Gaelscoileanna.

The schools and the work of the organisation have an influence on the general public in many places. Irish language communities are established around the schools. Demand for services is created as well as for materials and aids for education through the medium of Irish. It proves to the Department of Education and Science and to the general public that there is a demand for the Irish language and for education through Irish. All Irish schooling and Gaelscoileanna, which acts as a support for that movement, are very important for the Irish language and for the revival of the language.

VA99/2/030 - Comharchumann Raidió Átha Cliath (Dublin Radio Co-operative Society)

A group of people came together initially in October 1988 with the idea that an all Irish radio service should be provided for the greater Dublin area. The new Broadcasting Act had just been passed and the Independent Radio and Television Commission intended awarding broadcasting licences in the areas of commercial, community and specialist radio. The group decided that a community co-operative structure would best suit the aims and philosophy behind the kind of service that would be set up. To that end,

Comharchumann Radió Átha Cliath Teoranta was established and registered with the Registrar of Friendly Societies in July 1989; the principal aim of the Co-operative society, as specified in its rules, is to provide an all-Irish radio service to the greater Dublin area on an educational and community basis. Shares in the co-operative society valued at £25 each were sold in the Irish language community and support for the project was sought from Irish language organisations. That support was readily given and gradually the number of shareholders was increased. Politicians and other public representatives were also lobbied for their support for the objectives of the co-operative society.

It was decided to name the station “Radió na Life” on receipt of a broadcasting licence. The co-operative mounted a publicity campaign and audience research was carried out regarding the demand for an all Irish radio service in Dublin. A comprehensive application for a special interest broadcasting licence was then submitted, in 1990, to the Independent Radio and Television Commission.

The Co-operative society received a temporary licence for a fortnight to broadcast during the Oireachtas festival in October 1991 and that proved a great success. The efforts to obtain a long-term licence were then intensified. In December 1992, the Commission announced its intention to award a licence for an Irish language radio service in Dublin. The co-operative society applied for that licence and that application was successful. Raidió na Life went on air on 25 September 1995 and has been broadcasting live since that date. The studio is situated in the offices of Bord na Gaeilge at 7 Merrion Square and the Sponsorship Manager works from an office in the premises of Comhdháil Náisiúnta na Gaeilge, 48 Kildare Street, the co-operative’s registered address.

Raidió na Life currently broadcasts live from 16:30 until 24:00 each day plus 12:00 until 24:00 on Saturday and Sunday. The broadcasters work on a completely voluntary basis although there are seven people working on FAS community project employment schemes in areas of the station connected with research, production, technology and secretarial duties.

VA99/2/031 An Comhchoiste Réamhscolaíochta Teo (Pre-School Joint Committee Ltd)

An Comhchoiste Réamhscolaíochta Teo is a voluntary, national organisation with charitable status Chy. 6894, incorporation number 85180, that is non-commercial and non-profit making. An Comhchoiste Réamhscolaíochta Teo was established in 1978 to promote the Irish language amongst children of pre-school age. The organisation is funded by Bord na Gaeilge/ An Foras Teanga.

The work of the Joint Committee is carried out in the following ways-

- By assisting parents and communities throughout the country to develop Irish language playgroups i.e. Naíonraí (playschools). The Naíonraí are made up of groups of children and fluent Irish speaking adults thus providing an opportunity for those children through play to acquire Irish naturally i.e. the learning process

for children in the 3-5 year age group. In addition, the development, health and safety of the children in the group are catered for.

- An Comhchoiste Réamhscolaíochta Teo provides advice and information free of charge to parents, communities and organisations or to any individual wishing to use the Irish language with young children.
- Training courses are provided for people wishing to set up Naíonraí.
- An Comhchoiste Réamhscolaíochta Teo develops Irish language aids such as cassettes, information leaflets, books and posters to support the work of Naíonraí, parents and communities and to assist the children and adults in the groups acquire and promote the Irish language.
- Research has been carried out, in conjunction with Institiúid Teangeolaíochta Éireann (Irish Linguistics Institute), regarding the progress of Naíonraí and this research shows the valuable role played by Naíonraí in the promotion and acquisition of the Irish language in the home.

Mr Boyle from Bord na Gaeilge – Personal section

Mr Boyle said that he had worked in the Personnel section of Bord na Gaeilge since 1982. In his oral evidence to the Tribunal Mr Boyle said that the appellant organisations were doing the work of Bord na Gaeilge. He said that they were in the building because their work, aims and objectives accorded with those of the Bord. He said that they were independent in their functions but subject to the overall control of Bord na Gaeilge. He said that all the organisations received funding from the Bord which funding represented the majority of the funds available to these bodies. For example in 1999 the bodies received the following grants:

Comhar na Muinteoirí Gaeilge - £84,000
 Gaeilscoileanna - £123,000
 Chomarchumann Raidió Atha Cliath - £40,000
 An Comhchoiste Réamhscolaíochta Teo £157,000

He said that the bodies would submit plans each year to be agreed by the Bord. They also submitted accounts at the end of the year for auditing by the Bord and these accounts would be submitted as part of the Bord's accounts to the Comptroller and Auditor General. He confirmed that the **Bord** could evict these organisations if fundamental disagreements arose in relation to policy aims and objectives as no lease was in place and no rent paid. Mr O Boyle confirmed that while Bord na Gaeilge were established by an Act of the Oireachtas none of the appellant organisations were so established. He confirmed that the Minister had no power to regulate these bodies under their Constitutions.

Ms Helen O’Murchu Director, Comhar na Muinteoiri gave evidence that they took up occupation of the offices in Merrion Street about 1982. She said the organisation was a limited company without shares and that it had charitable status. She said that there was over 2000 registered members in the 32 counties but that many more came to the events organised throughout the country. She described the role of the organisation as helping teachers to work effectively. She said the organisation also had an input into the development of the Irish syllabus in schools. She confirmed that they could operate from offices elsewhere but had not had any offers of accommodation.

Mr Lawless of Radio Na Life also gave evidence. He said the station began broadcasting in 1991 and that since the establishment of the IRTC has had to renew its license each year. Under the terms of its license the station serves the community specialising in educational and Irish language affairs. It broadcasts each day from 4.30pm to 12.00 am. He assessed the listenership as about 40,000 based on a survey carried out 4 – 5 years ago. The organisation operates as a public co-operative since 1989. It gets its equipment free from Bord na Gaeilge and also gets an annual grant currently £40,000. It has a staff of three, two full time. It does not have charitable status. Advertising generates some income for the station. To date the cooperative has incurred losses each year. He accepted that members of the cooperative are entitled to a bonus from profits but pointed out that this had not arisen. In reality he said that they depended for funding on the grant from Bord na Gaeilge and from other Irish Language organisations. A workplan was submitted each year to Bord na Gaeilge. He said that Radio na Life had no narrow objectives. Its service to the community was to broadcast through Irish. They were there to serve the wider community. To that extent the material they broadcast was very broad – drama, jazz, pop music and the audience was young.

He said that in their most recent license renewal application to the IRTC, a budget of £80,000 - £100,000 was shown. The IRTC required that they be in a position to clear their costs but that they were not expected to make profits. He confirmed that it was his

understanding that Bord na Gaeilge owned the rooms they occupied in the building and that they had permission only to be there.

Mr Donal O’Buachalla in his evidence said that Bord na Gaeilge was established under the Bord na Gaeilge Act of 1978 and took possession of 7 Merrion Square as its headquarters in that year. Its rateable valuation then was £625 (exempt). In 1996 the Commissioner of Valuation revised the premises and assessed the valuation as set out at the Valuation History above. He said that he sought exemption for all four organisations. He said that the Bord provided assistance to these organisations and gave them rent-free accommodation with the intention of achieving the aims of the Act and he did not distinguish between Radio na Life and the other three organisations. He said that all bodies were there to fulfil the aims of Bord na Gaeilge to promote the use of the Irish Language as a living language and were under the control of the Bord and the Government. He said that the bodies were not in receipt of any private profit. Mr O Buachalla relied on the comparisons set out below in support of his case for exemption.

- (1) Bord na Gaeilge (in possession of most of Number 7 Merrion Square)
- (2) Various Irish Summer Colleges:

		<u>Valuation</u>
(a) Coláiste Bríde	On 23 Rinn na Feirste	£40
(b) Coláiste Uladh	9D Gort a’Choirce	£60
(c) Coláiste Chonnacht	11BA An Spidéal	£45
(d) Coláiste Columba	6a An Cheathrú	£40
(e) Coláiste Lurgan	12Ada An Cnoc	£130
(f) Coláiste na Mumhan	11 Béal Átha an Ghaorthaidh	£78
(g) Coláiste Samhraidh	3C Cúil Aodha	£23
(h) Coláiste Eoin Uí Chomhraí	1Aab Carraig a’ Chóлтаigh	£23

Mr O’Tuathail SC made the following submissions to the Tribunal

The said that the appellant relied on the public purposes and educational exemptions in Valuation Law. In this context reliance was placed on Article 8 of the Constitution wherein the Irish language is described as the first official language. He further referred and placed reliance on the Bord na Gaeilge Act 1978, in particular the long title and Sections 2, 3, 16 and 17 thereof. He submitted that the references in the Act to Bord na Gaeilge supported his proposition that the Bord was a Government board and that its policies were Government policies. Reliance was also placed on the British Irish Agreement Act of 1999. Under the provisions of this Act (Section 3) an Foras Teanga was established and the powers and functions of Bord na Gaeilge were transferred to it. The Act also provided at Section 52 that implementation bodies would not be liable to pay rates under the Valuation Acts. The section went on to state that such hereditaments are deemed under the Act “to be of a public nature and occupied for the public service”.

He relied on the judgment of the Valuation Tribunal in *VA95/5/010 – 014 - University of Limerick* appeal, where exemption for Public purposes was given. Mr O Tuathail quoted the Tribunal’s judgment wherein it stated that the University was a State Institution and therefore statutorily obliged to carry out its functions. Any lawful activity therefore that was within the authority and competence of the University was in the Tribunal’s view entitled to public purpose exemption.

In relation to the issue of rateable occupation Mr O’Tuathail submitted that the appellants were not in rateable occupation of the hereditaments in question. In this context he relied on the Supreme Court Judgment in the Valuation Tribunal appeal VA88/0/141 Aer Rianta cpt and the Commissioner of Valuation. In that case the Supreme Court upheld the determination of the Tribunal that Tedcastle was not in rateable occupation of the aviation facility but used it for the purposes of carrying out a service. He equated the situation of the appellant companies who occupied the premises in Merrion Square with the permission of Bord na Gaeilge for the purposes of carrying out the aims and objectives of that body

He said that the educational exemption applied to Comhar na Muinteoiri and Gaeilscoileanna. He said that public purposes applied to all organisations.

Mr O Dulachain BL for the respondent made the following submissions to the Tribunal

(A copy of the written submissions supplied to the Tribunal is attached to the Tribunal as Appendix 1).

Mr O Dulachain said that there was no public purpose involved in these appeals. He said that the issue before the Tribunal was not what the objectives of the organisations were but the use made of the building. He submitted that the public made no use of these buildings and that in the cases of three of the appellants, they were used as offices only. He said that the origins and objectives of these bodies did not derive from Bord na Gaeilge nor did Bord na Gaeilge set down their aims and objectives. Bord na Gaeilge is not responsible for keeping the organisations in being from year to year. In relation to the doctrine of CY PRES he said that it meant that the prime objective should continue in existence but did not imply a public purpose. Similarly the existence of charitable status from the Revenue Commissioners did not mean that similar treatment would be available under the Valuation Acts. . He referred to the cases of *Pembroke Urban District Council v Commissioner of Valuation 1904 2IR 429*; *The Governing Body of University College Cork v Commissioner of Valuation 1912 IR328* and *the Maynooth College Case [1958] IR189*. In these cases he said that in order to establish a right to exemption the usage of the buildings was the key issue taken into account by the Courts.

In relation to the claim for educational exemption he said that firstly there was no educational organisation in the building and secondly that the education that was provided was not of the poor which was a necessary requisite for this claim for exemption.

He referred to the Supreme Court decision in the Tribunal Appeal No: VA88/0/141 Aer Rianta cpt and the Commissioner of Valuation. He submitted that the facts of that appeal were all important. He said that the fuel farms in question were built by the Minister and that while Ted castle, was running the farm, it did so under the direction and control of the Minister. In contrast in the subject appeals there is no obligation under law on Bord na Gaeilge to give money to any particular organization. It is not essential to the functioning of Bord na Gaeilge that any of these organizations exist. The work of the

Bord can be advanced in several ways. In the Aer Rianta case, the fuel farms in question were an essential requirement for the airport that could not have operated without it. It was on the basis of these facts that the Court held that the Minister was in rateable occupation of the fuel farm.

He concluded that the appeal dealt only with the issue of occupation and did not deal with the issue of public purposes. In relation to the summer colleges put forward as comparisons by the appellant, he submitted that the appellant bodies were not summer colleges nor was it made clear what the basis was for exempting these colleges. In relation to colleges normally one would expect that the public i.e. students would make use of the buildings. Furthermore the teaching of Irish would be conducted in such colleges. He submitted that the exemption of these colleges would have no bearing on the current appeals before the Tribunal.

In relation to the law in this area he submitted that because organizations were in receipt of a Government grant did not imply that they became part of the state system without further examination. It was essential, he submitted, that use for public purposes must be established. These appeals do not simply concern the Irish Language, but are relevant to several organizations that are in receipt of grants from many state boards. Many are in the same situation as applies in these cases i.e. that they are doing good and important work but do not receive exemption per se.

In relation to Radio na Life, he submitted that the fact that it was located in the Bord na Gaeilge building should not make any difference to its treatment under the Valuation Acts. Similarly in relation to the work of Radio na Life, it is an organization that uses Irish in the same way as an organization that publishes newspapers in Irish. Is there any difference in law if one gets a paper in Irish or a radio broadcast in Irish.

In relation to the use of the building it is a private building and even though it has excellent objectives he submitted that they are not state objectives.

DETERMINATION:

The Tribunal has considered the evidence adduced and in particular has had regard to what was said by Mr. O'Tuathail SC for the Appellants and by Mr. O'Dulachain B.L. for the Commissioner. The Tribunal has also noted provisions of the Constitution, the legislation and the various cases adduced by Counsel when making and responding to this case.

At the outset and in the absence of any dispute as to the occupancy of the subject premises the Tribunal deems the Appellant correctly to be the occupant of its portion of the premises in this case.

The Appellant has contended that the Appellants objectives and aims are broadly the same as those of Bord Na Gaeilge who are in turn a creature of legislation tasked with the duty of advancing the Irish language initially upon a 32 county basis, but since the British/Irish agreement of 1999 within the jurisdiction of the 26 counties. With this contention the Tribunal does not have a difficulty.

Mr. O'Tuathail in this and in the related cases contends that the activities of the Appellants are for public purposes to include educational and charitable purposes upon the basis, inter alia, that they are fulfilling the statutory functions of Bord Na Gaeilge in advancing the Irish language albeit in a specialist manner. This contention is one with which the Tribunal cannot agree.

There is a well-developed jurisprudence on the criteria for exemption on the basis of "educational" or "charitable" purposes and those terms have been defined and developed by legislation and by various valuation decisions. It is the view of the Tribunal that the activities of the Appellant cannot be considered "charitable" in their nature. Accordingly, the Tribunal is of the view that the Appellant cannot rely for exemption upon the grounds that its activities were educational and charitable.

The Tribunal is thus required to determine as to whether the activities of the Appellant are for "public" purposes. In this respect it has been contended by the Appellant that the

constitution makes provision for Irish as a national tongue and that legislation (The 1978 Act) established Bord Na Gaeilge for the purposes of advancing the Irish language and with wide discretionary powers as to how to go about that task.

As events have developed it is noted that Bord Na Gaeilge has chosen to use these organisation among others which were originally voluntary in nature to achieve its aims. Bord Na Gaeilge now assists the Appellants with grants for those purposes.

Notwithstanding the similarity of aims and the close connection between the Bord and the Appellants and notwithstanding the fact that the Bord undoubtedly performs a "public" function when carrying out its duties pursuant to statute, the Tribunal is not convinced that the Appellant carries out a similar public function.

It is noted that the Appellant originally came into existence as a voluntary body independent of the Bord. Even presently the Appellant though dependent upon the Bord for funds retains its right to organise its activities and prioritise those activities from within. Perhaps because of its voluntary origins the Bord exercises no control over the Appellant upon a day-to-day basis. The understandings that exist between the Bord and the Appellant are of an ad-hoc nature and could be terminated theoretically by either side without recourse to the other.

The Tribunal is of the view that though the aims of the Appellant and its activities are entirely laudable from a cultural, social and indeed political viewpoint, they are not "public" in nature as they are performed by an entity which is itself essentially independent of the Bord and private in nature.

It may be that if the Bord had retained to itself functions presently carried out by the Appellant that the Tribunal's views would be different. As this is not the case the Tribunal regretfully has no option but to refuse the Appellants application for exemption.