

Appeal No. VA99/4/023

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

**Outhouse Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Office at Map Reference 6/7 Pt. 1.2.3. South William Street, Townland: Sundry Townlands, Royal Exchange B, County Borough of Dublin  
Exemption - Charitable purposes

**B E F O R E**

**Con Guiney - Barrister at Law**

**Deputy Chairman**

**Michael Coghlan - Solicitor**

**Member**

**Anita Geraghty - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 26TH DAY OF JUNE, 2000**

By Notice of Appeal dated the 14th day of October 1999, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £90 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that; "we feel that we should qualify for exemption for the premises under the Valuation Act 1854 in that it is used for charitable and educational purposes and is open to the public at large at no cost to them. In particular we feel that Valuation Tribunal Judgments of 15th March 1999, VA97/5/011 - *Cork City Partnership* and VA97/5/027 - *Northside Community Enterprises Ltd.* are particularly relevant to our appeal.

The relevant valuation history is that on the 8<sup>th</sup> day of May 1998 the revision decision was published putting a value of £95 on the subject hereditament. The appeal decision was published on 14<sup>th</sup> day of September 1999 reducing the rateable valuation to £90.

A written submission from the appellant organisation was received by the Tribunal on the 9<sup>th</sup> day of May 2000. The written submission included details of the objectives and funding of Outhouse. The written submission also dealt with the Valuation Acts and cases of precedence from the Valuation Tribunal.

Annexed to this written submission there were eight appendices, namely;

- (1) Cairde exemption 05/11/91
- (2) Cairde exemption 27/10/93
- (3) Decision on Outhouse first appeal.
- (4) Outhouse – exemption under Income Tax Acts.
- (5) Certificate of Incorporation, Memorandum and Articles of Association of Outhouse Ltd.
- (6) Submission of 26/08/99. This was a submission to Mr. Joseph McBride of the Valuation Office.
- (7) Copies of the Valuation Tribunal judgments in *Northside Community Enterprises Ltd.* – VA97/5/027 and *Cork City Partnership Ltd.* – VA97/5/011.
- (8) A book published by the Combat Poverty Agency entitled *Poverty: Lesbians and Gay Men, the economic and social effects of Discrimination.*

A written submission prepared by Mr. Joseph McBride on behalf of the respondent was received by the Tribunal on 2<sup>nd</sup> May 2000. Mr. McBride is a District Valuer in the Valuation Office with nineteen years experience there.

The written submission described the accommodation at the subject hereditament. It included reception, offices and w.c's on first floor, function room, canteen, store and meeting on the second floor and offices, store and w.c's on the third floor.

The written submission stated that quantum was not in issue and that the appellant was seeking exemption pursuant to Section 63 of the Poor Relief (Ireland) Act 1838.

The written submission stated that the appellant was relying on two Tribunal decisions, Cork City Partnership – VA97/5/011 and North Side Community Enterprises Ltd. – VA97/5/027. The written submission mis-stated the Tribunal’s decision in both of these cases in as much as the submission stated that the Tribunal granted exemption on the basis of user exclusively for the education of the poor. In fact in each case the Tribunal refused to grant exemption on the basis of user exclusively for the education of the poor.

The written submission had annexed to it five appendices.

- (a) Location map showing the subject hereditament.
- (b) Submission made by the appellant at first appeal stage.
- (c) 1998 annual report of Outhouse Ltd.
- (d) Director’s report and financial statements for the year ended 31<sup>st</sup> December 1998, and
- (e) Memorandum of Association of Outhouse Limited.

The oral hearing took place at the Tribunal’s Offices in Dublin on the 15<sup>th</sup> day of May 2000. The appellant was represented by Mr. Owen Hickey B.L., instructed by Rutherfords, Solicitors. The respondent was represented by Ms. Sean Quinn, B.L. instructed by the Chief State Solicitor.

Mr. George Robotham gave sworn testimony on behalf of the appellant. Mr. Robotham described the activities, which took place at the subject hereditament.

Ice breakers group meets there. This is a group which facilitates gay and lesbian persons who are coming out for the first time.

A newspaper is produced from the premises by the National Lesbian and Gay federation. The newspaper is free to anyone who wishes to pick it up.

An A.A. group meets on the premises and it has several meetings each week. Gay people need an A.A. group confined to themselves because of the issues relevant to them, which would not be addressed at a routine A.A. meeting.

Another group using the property would be the youth group. This group used the centre for information and advice.

Another main activity is the provision of two outreach workers by the Eastern Health Board. These health workers deal with health issues and in particular H.I.V. and A.I.D.S. The Eastern Health Board funds this activity.

A Fás Enterprise worker operated from the premises whose task was to direct unemployed persons towards employment in a variety of ways.

There was a free library on the premises, which provided reading material that gay, and lesbian persons would find more comfortable to access there.

Again there was a canteen on the premises, which provided a setting where people attending the centre could interact socially in a relaxed manner.

In further testimony Mr. Rowbotham said that Outhouse is a non-profit making entity. Their focus was geared towards providing information, advice, and support (which included building self-esteem) for the persons who used the centre.

Mr. Rowbotham then referred to the funding of the centre. The Eastern Health Board had contributed £25,000 last year and £90,000 this year. Fás funded the community employment scheme and the Fás Enterprise worker. Also Fás had recently funded a training scheme for the Board.

Additionally user groups within the centre made a contribution towards the running costs of the premises. Also the centre engaged in fundraising in 1998.

Mr. Rowbotham referred to a letter dated 18<sup>th</sup> day of December 1998 to Outhouse, which indicated the Board's support for the work done by the organisation. This letter was contained in the appellant's written submission.

Again Mr. Rowbotham stated that Outhouse had obtained charitable status from the Revenue Commissioners. In this respect he referred to a letter from Revenue dated 10<sup>th</sup> day of December 1999 in the appellant's written submission.

Mr. Hickey then asked Mr. Rowbotham to comment on extracts from the book, *Poverty, Lesbians and Gay Men*. Ms. Quinn objected to this matter being put in evidence as she wished to cross examine the author about the methodology used in the research contained in that book.

Mr. Hickey said this was a document published by a public authority and was in the public domain. No further proof was required.

The Tribunal retired to consider Ms. Quinn's objection. The Tribunal upheld Ms. Quinn's objection on the basis that research findings do not have the same status, as documents contained in public registers, like the Registry of Deeds. Therefore it was appropriate to have the authors of the research called to prove the document.

Mr. Hickey asked the Tribunal for an adjournment to provide the necessary witnesses. The Tribunal granted this request.

The hearing resumed on 7<sup>th</sup> day of June 2000.

Ms. Helen Johnston, Head of Research at the Combat Poverty Agency gave sworn testimony.

Ms. Johnston said that the Combat Poverty Agency was a state body established by the 1986 Combat Poverty Agency Act. She confirmed that the book, *Poverty, Lesbians and Gay Men* was published by the Combat Poverty Agency.

Ms. Johnston confirmed that as the foreword of the book stated, that one of the key functions of the Combat Poverty Agency is to promote and interpret research, which examines the

nature, cause and extent of the poverty. Mr. Johnston said that lesbian and gay persons are a marginalised group in our society.

In further testimony, Ms. Johnston said that it was the view of the Combat Poverty Agency based on the research that discrimination and prejudice disadvantaged lesbian and gay men and excludes them from full participation in society. This exclusion has effects in education, training, employment and lack of access to resources such as housing.

Ms. Johnston then gave evidence as to the current government definition of poverty which was to the effect that persons are living in poverty if their material, cultural and social resources are so inadequate as to exclude them from having a standard of living which is regarded as acceptable by Irish Society generally. As a result of having inadequate resources people can be excluded and marginalised from participating in activities which are considered the norm for other people in society. Finally Ms. Johnston stated that a community which is socially excluded has the characteristics of poverty.

Under cross-examination by Ms. Quinn, Ms. Johnston admitted that the research in the book was not representative of the gay community. The research was geared towards ascertaining the processes, which give rise to the exclusion of the gay community.

Ms. Quinn then asked Ms. Johnston about the “snowballing” technique used in the research. This is a technique which involved asking each person interviewed for the names of potential participant. Ms. Quinn also questioned the use of gay and lesbian interviewers in distributing and administering the questionnaires.

In reply Ms. Johnston said there was a weakness in the “snowballing” technique. However it was not the only technique used in the research.

In further replies Ms. Johnston said the research report had been refereed by two independent experts one of whom was from the E.R.S.I.

Ms. Quinn put it to Ms. Johnston that page VIII of the foreword of the book stated that time and resource constraints prevented the researches from gaining access to a random sample of gay community.

In reply Ms. Johnston said that 159 respondents were not an unreasonable sample of the gay community.

Mr. Owen Collins gave sworn testimony on behalf of the appellant. He said he had a master's degree in economics. He also had ten years experience of working for the European Commission, Irish Government Agencies and community groups in exploring issues of social exclusion.

Mr. Collins stated that he was the director of Nexus research and was initially involved in the proposal to the Combat Poverty Agency to commission the research project. Subsequently he was the main co-ordinator of the research, which took place in 1993.

Mr. Collins stated that the main conclusion of the report is that the lesbian and gay community are discriminated against or there is that fear of discrimination that affects this community in areas that are crucial to economic and social well being. He said the report had demonstrated an established link between discrimination in the social and economic areas and the general risk of poverty and disadvantage for the lesbian and gay community.

Mr. Collins said that the conclusions of the research were contained at page 88 of the book. Here it stated that "*the survey results clearly show that there are significant cumulative and interlocking processes of discrimination operating in key economic and social areas which increase the risk of poverty for lesbians and gay men and further disadvantage those living in poverty*".

In further testimony Mr. Collins said that all lesbians and gay men are excluded to some extent from what is considered the norm in society.

Mr. Collins said that some members of the lesbian and gay community who were socially excluded relied on voluntary services like those provided by Outhouse.

Mr. Collins then dealt with the sampling issues in the research. He said the research was qualitative as well as being quantitative. Very lengthy questionnaires were used and he doubted if the report could have been completed if there had been more respondents.

Again it was simply not possible to get a representative sample of the gay community due to the nature of the discrimination against that community. The sample was geared towards persons under thirty five years of age due to the problems in accessing older members of the gay community.

Finally Mr. Collins said the book described in Chapter Three the difficulties encountered in coming out to families. This resulted in some cases of young people being thrown out of home and becoming homeless.

Under cross-examination by Ms. Quinn, Mr. Collins was asked about a statement contained at paragraph two of page two of the book. This stated that “the rationale for this study is that lesbians and gay men experience systematic, cumulative and serious discrimination in those areas crucial to economic and social well being”. Ms. Quinn put it to Mr. Collins that the research was starting from a conclusion.

In reply Mr. Collins said that almost every piece of social research examines a hypothesis. In the research here they had tested the rationale for the study and they felt they had proved the rationale.

In further replies Mr. Collins said the respondents did not come solely from a population that accessed gay community services. The researchers had also interviewed people from the inner city of Dublin who had never contacted the gay community.

Again in reply to Ms. Quinn, Ms. Collins stated that in the research they had tried to get as diverse a sample as possible including women and men, people from different social backgrounds and people who had not accessed the gay community as well as those who had done so.

In reply to a question from the Tribunal that of the 159 respondents, 33 persons constituted the poverty sample and consequently how did the research show that this poverty arose as a result of discrimination. Mr. Collins stated that the definition of poverty was based on the E.S.R.I. definition. This definition of poverty was adapted to include respondents who were either unemployed or had incomes of less than 70% of average household income (at 1993



prices) and who did not have access to at least one of the primary items identified by the E.S.R.I. Mr. Collins further stated that the research found that the group who were living in poverty as defined by the E.S.R.I. in some respects experienced discrimination differently. Mr. Collins added that the economic exclusion found in the poverty sample was a result of a number of grounds including the ground of sexual orientation.

In response to further questions from the Tribunal, Mr. Collins said that the total sample showed that lesbian and gay men were discriminated against in terms of employment, social networks, education and other services and this put those people in general more at risk of poverty. For lesbian and gay men who are living in poverty discrimination can worsen that poverty. These were the people Outhouse catered for.

Ms. Quinn asked some further questions. In reply Mr. Collins said the survey was limited to Dublin and Cork.

Ms. Quinn asked Mr. Collins whether the research showed that the level of education among the respondents was higher than that among the majority of the general population.

Mr. Collins said in reply that she was misinterpreting the nature of the study. What the research was looking at was the processes and experiences of discrimination. It was not looking at the incidences of poverty. The study was looking at the risk of poverty. In conclusion Mr. Collins said that the findings of the research as to the risk of poverty had not been challenged.

At this stage Mr. Hickey made a submission. He said he was not making a case that the lesbian and gay community was marked by poverty in the traditional sense. His case was that the community of lesbian and gay men, their relatives and friends, who are assisted by the activities carried on at the subject hereditament, were a group who were definitely socially marginalised and socially excluded. Mr. Hickey further submitted that the activities carried on at the subject premises to assist this group of persons were charitable activities for the purpose of the statute.

Mr. Rowbotham then resumed his sworn testimony. He said that better off people do not use the facilities at Outhouse. It was the poorer section of the lesbian and gay men's community

that used its facilities. Mr. Rowbotham said that during the daytime a lot of unemployed or young people used the centre. One of the services provided was helping people to find accommodation. Finding appropriate accommodation is a major problem for lesbian and gay men.

Mr. Rowbotham said the people who used Outhouse were marginalised and socially excluded. In further testimony he said that the indications for this marginalisation and exclusion was that these people did not have money to use the commercial activities that existed in the gay community. They were thereby debarred from benefiting from these social networks. This manifested itself in a denial of opportunities by way of, for example in the area of employment.

By way of contrast the community employment programme at Outhouse had enabled its participants to get jobs in the guesthouses and public houses in the commercial area of the gay community. Again participants in the production of the newspaper at Outhouse had gone on to find work in publishing.

Finally Mr. Rowbotham said that Outhouse did not engage in commercial activities. There was no personal gain for anyone. Outhouse helped people in the gay community and in particular those who were encountering personal difficulties either as young people or as people who were at different stages of coming out.

Under cross-examination by Ms. Quinn, Mr. Rowbotham said the newspaper produced at Outhouse could be obtained at other locations. Also information about housing and health could be accessed elsewhere.

Ms. Quinn put it to Mr. Rowbotham that the position of young lesbian and gay men was analogous to the situation of young heterosexuals, in as much as the latter had few non-commercial venues where they could meet and socialise. In reply Mr. Rowbotham said the gay community had different networks of support. He illustrated this by saying that in small rural G.A.A. club he would be very surprised to find several travellers or several lesbian and gay men who are out there.

Ms. Quinn itemised a number of groups who used the subject premises such as Dublin Pride, Tuesday Talkshop, Muted Cupid (theatre group) and the Dublin Lesbian and Gay Film Festival. Ms. Quinn put it to Mr. Rowbotham that these were cultural and social groups and could not be characterised as socially disadvantaged groups.

In reply Mr. Rowbotham said these groups had grown out of the gay community. The groups helped to build self-esteem and led to the formation of social networks.

In reply to questions from the Tribunal, Mr. Rowbotham said Outhouse had provided a location for the community employment programmes funded by Fás for the last three years. Access to these schemes is for the long-term unemployed. In the last three years over one hundred people had gone through the scheme. Currently the community employment scheme had twelve to fifteen workers.

As to the effect of the Fás enterprise worker who had joined the centre in December last Mr. Rowbotham said that six or seven people had got employment or were going into employment.

In a further reply to the Tribunal Mr. Rowbotham said that a few hundred people used the other facilities of Outhouse every month. In this respect the Tribunal notes that in the appellants annual report for 1998 (Appendix Three of Mr. McBride's written submission) at the usage section it states that "*the community and resource centre has been very successful and approximately 1,000 people per week use the centre in one way or another*".

In his sworn testimony Mr. McBride adopted his written submission as his evidence to the Tribunal.

Mr. McBride confirmed that quantum was not an issue in this appeal.

He said he had not recommended exemption because the subject did not satisfy the necessary criteria in the Poor Relief (Ireland) Act 1838.

He had based his recommendation on the memorandum of the appellant which stated at number (2) "the main object for which the company is established is:- to provide a

community and resource centre to serve gay, lesbian, bi-sexual, transvestite, and transgendered people and those who identify with or support such people. He also adverted to item number four of the memorandum.

A second ground for the recommendation was contained in the appellant's accounts for the year ending 31<sup>st</sup> December 1998. These showed an overhead contribution of £23,352. This represented 31% of total income for that year.

The third ground was precedent. The National Gay and Lesbian Federation, from which Outhouse emerged, had been rateable in 1980. Again L.O.T. (Lesbians organising together) had withdrawn their appeal to the Valuation Tribunal – VA96/3/086.

In further testimony Mr. McBride said the subject was a community centre for people with a particular interest. He said a waiver could be obtained from the local authority by Outhouse. The 1978 local government act made provision for the granting of waivers with respect to community centres.

Mr. Donal O'Huallachain gave sworn testimony on behalf of the respondent. He said he was the revising valuer in the Cairde case. Mr. O'Huallachain has a degree in economics and statistics and a masters degree in public administration. He also has a graduate diploma in Planning and Development Economics. He had 29 years experience in the Valuation Office, and was now a staff valuer.

Mr. O'Huallachain said his recommendation in the Cairde case that it should be distinguished as exempt was based on the grounds that it supported and helped people who suffered from H.I.V. and A.I.D.S. In making the recommendation he was conscious of the Barrington's Hospital Case where relief of poor health grounded the exemption and economic criteria were not taken into account.

Under cross-examination by Mr. Hickey Mr. O'Huallachain said he was unaware of the economic status of the clients of Cairde. It did not come into the reckoning.

In his closing submission Mr. Hickey referred to the Cork City Partnership, VA97/5/011. At page 10 of the judgment he pointed to the statement that the extent of the charitable

exemption had never been finally determined in Irish Law. He also pointed to the obiter of Palles C.B. on the same page of the judgment.

Mr. Hickey said the constituency resourced at the subject property is disadvantaged, marginalised and socially excluded. This constituency also had low self-esteem and was alienated from family and friends.

Again Mr. Hickey referred to the activities carried on by Outhouse to prevent the spread of A.I.D.S.

Mr. Hickey said that four state organisations support Outhouse and see it as beneficial.

Mr. Hickey reviewed the evidence of some of the witnesses for the appellant. Ms Johnston said that issues of social exclusion and marginalisation were characteristic of poverty. Mr. Collins suggested that social exclusion and marginalisation are characteristic of the gay community as a whole.

With reference to the main purpose of Outhouse as contained in its memorandum of association this did not exclude it from being exclusively charitable. Mr. Hickey said in this respect the Tribunal should look at the well-established distinction in rating law between actual occupation and legal occupation. There the Courts had said look to the facts and not the legal instrument.

Finally Mr. Hickey said the work of Outhouse was exclusively charitable. Where certain activities dented the charity this did take away from its exclusively charitable status. In this respect he referred to the two Cork Cases, VA97/5/011 and VA97/5/027.

In her closing submissions Ms. Quinn said that Outhouse did not reach the threshold for charitable exemption. The appellant had not established that poverty affects the gay community to a greater extent than other members of the community.

What the appellant had established was that some people attended Outhouse because they may believe they cannot access networks available to the heterosexual community.

Ms. Quinn then referred to page six of the Tribunal's judgment in *Cork City Partnership – VA97/5/011*. She said the present appeal was distinguishable from the Cork case. In the Cork appeal the main object of the appellant company was to help the long-term unemployed which was not the case of the appellant company here.

Ms. Quinn said the main purpose of Outhouse is to provide an environment to network which may increase opportunities in life.

Ms. Quinn also submitted that the appellant did not reach the threshold for exemption as providing education exclusively for the poor.

Ms. Quinn referred the Tribunal to its decision in *Trustees of Knights of Columbanus – VA90/3/080 – VA90/3/082*. There the appellant was not entitled to exemption, as the premises were not used solely for charitable purposes.

Ms. Quinn also referred to *Clancy and others –v- Commissioner of Valuation K.B. 1910, 173*. In that case it was held that substantial payments made for the use of a premises by persons not within the charitable object made the user not exclusively charitable and not therefore exempt from the payment of rates. Furthermore she related the second paragraph of the judgment at page 188 to Mr. McBride's evidence about the finances of Outhouse.

The Tribunal has considered the written submission and the evidence offered by the appellant and the respondent. The Tribunal has also considered the legal submission of both parties.

The Tribunal finds that there is a significant lacuna in the evidence produced by the appellant in as much as it did not present the Tribunal with a generally accepted definition of the marginalised and socially excluded analogous to the generally accepted definitions of poverty as developed by the E.S.R.I. and the National Anti Poverty Strategy. This creates obvious problems in identifying accurately the constituency, which uses Outhouse.

The Tribunal finds that the premises occupied by Outhouse are a community centre. This is based on the evidence of the memorandum of association at number two and the 1998 annual report of Outhouse which described the premises in those terms. The evidence as to the user of the premises by a substantial number of specific groups also leads the Tribunal to this

finding. In this respect also the Tribunal took into account the finances of Outhouse in the year ending 31<sup>st</sup> December 1998.

The Tribunal finds that the facts in the instant appeal are distinguishable from the two Cork appeals – VA97/5/027 and VA97/5/011. In the Cork cases the primary purpose of the appellants was to help the long-term unemployed gain employment and thereby provide the most effective means for reducing poverty in the community. The Tribunal thus granted exemption to the appellants on the basis that their premises were used exclusively for charitable purposes namely the relief of poverty.

It is clear in the present case that the specific activities to help the unemployed form only a small fraction of the multifaceted activities of Outhouse. This finding is based on the evidence of Mr. Rowbotham as to the specific employment creation activities of the appellant.

It was not contended by Mr. Hickey in his submissions that the subject was used exclusively for the education of the poor. This exemption is construed narrowly in Irish Rating Law following the Barrington's Hospital case. For the avoidance of any doubt the Tribunal finds that the premises are not used exclusively for the education and therefore exemption from rates is not available on that ground.

The Tribunal finds that the subject premises does not satisfy the criteria for exemption contained in Section 63 of the Poor Relief (Ireland) Act 1838.

The Tribunal therefore affirms the decision of the Commissioner of Valuation and determines the rateable valuation of the subject hereditament to be £90.