

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



ROTARY CLUB OF MELBOURNE INC V COMMISSIONER OF STATE REVENUE (REVIEW AND REGULATION) [2018] VCAT 1257

Victorian Civil and Administrative Tribunal, R Tang (Member), 13 August 2018

A Rotary club did not have solely charitable objects.

Key words: Charitable Purpose, Victorian Civil Administration Tribunal, Charity, Private Benefit, Ethical & Business Standards, Moral Improvement, Member Benefit, Independent Non-charitable Object

1. The issue in this case was whether the Rotary Club of Melbourne Inc (RCM) was a ‘corporation or body of persons established for ... charitable purposes’ under section 45 of the *Duties Act 2000* (Vic) (the Act). There was no contention that the RCM was a ‘corporation or body of persons’. Therefore, the issue was only whether the RCM was established for ‘charitable purposes’.
2. Duties of \$41,270 were levied on the transfer of an office suite costing \$770,196.37 in a building in Collins Street, Melbourne, which was to be used as an administrative office for RCM. RCM’s objection to this assessment was based on its being established for charitable purposes. The Commissioner disallowed the objection on 7 June 2017. This case was the appeal from that disallowance.
3. The RCM is not a registered charity in Australia, and, despite some authority to the contrary in other jurisdictions overseas, there was no ruling on point as to the charitable status of a Rotary Club in Australia. Therefore, the Tribunal followed the usual process of looking at the legal or technical meaning of the word ‘charitable’ under the heads of charity in Pemsel’s case. Having considered the relevant cases, the Tribunal summarised the authorities as follows (at [32]-[33]):

In my view, distilling the cases down, the following propositions emerge:

- the provision of private benefits to members is not necessarily fatal to a finding that an organisation is established for a charitable purpose (CCI(WA));
- an organisation will remain charitable if any private benefits provided to members (or other non-charitable activities) are ‘ancillary’ to the charitable purpose (CCI(WA)), in aid of and directed to the larger charitable object (VWL) or carried out in furtherance of the charitable purpose (Word Investments); and

- an organisation will not be charitable if the benefits provided to members (or other non-charitable activities) are independent objects or activities (LIV).

Clearly, it will be a matter of fact and degree whether the provision of benefits to members, or the pursuit of other non-charitable activities, is an independent object or activity, or to be considered as a means of fulfilling, or ancillary to, the charitable purposes of an organisation.

4. Moving then to consider the objects of the organisation, the Tribunal concluded that (at [9]-[10]):

Ultimately, while the considerations are finely balanced, I have come to the view that RCM is not a body established for charitable purposes...while I accept that any social and networking activities undertaken by RCM are directed to the achievement of 'higher and larger' purposes relating to those activities of a charitable nature that RCM undertakes, a significant and independent object of RCM is the moral improvement of its members as they conduct themselves in their own personal, business and community lives, divorced from the activities of RCM. The moral improvement of members, while 'admirable and, indeed, praiseworthy', is 'beyond the purposes accepted by the law as charitable'.

5. This conclusion was based on the RCM Rules, which provide at Article 4:

Article 4 – Object

The Object of Rotary is to encourage and foster the ideal of service as a basis of worthy enterprise and, in particular, to encourage and foster:

First The development of acquaintance as an opportunity for service;

Second High ethical standards in business and professions; the recognition of the worthiness of all useful occupations; and the dignifying of each Rotarian's occupation as an opportunity to serve society;

Third The application of the ideal of service in each Rotarian's personal, business and community life;

Fourth The advancement of international understanding, goodwill, and peace through a world fellowship of business and professional persons united in the ideal of service

6. The Tribunal agreed with the Commissioner that TCM's objects were 'so broad and so vague' that they authorised the pursuit not only of charitable purposes, but also of non-charitable purposes (at [40]). However, having non-charitable purposes was not necessarily fatal to RCM's claim (at [58]-[59]):

Accordingly, in my view, the RCM Rules do, at least in theory, allow RCM to engage in community service activities beyond those that are strictly charitable. However, this is not fatal to RCM's claim, as the holistic approach called for in VWL requires that the objects be considered in light of the activities of the organisation. Just as having charitable objects is not sufficient if they cease to be carried out, having objects which potentially

permit non-charitable activities should not be fatal if in fact the activities of the organisation are limited to charitable activities.

7. In considering the RCM's activities in detail, the Tribunal said (at [115]-[117]):

...the promotion of high ethical standards in business and professions cannot be characterised as a means to a charitable end; rather it is an end in, and of, itself. If RCM abandoned that end, it would not satisfy one (or possibly two) of the four objects for which it was established. In CCI(WA), the activities which were of benefit to members were the same activities that lead to achievement of that organisation's charitable purpose. The same can be said of the social and networking activities discussed in VWL. However, the improvement of the ethical standards of RCM members in the conduct of their own business or profession is distinct from the charitable activities which RCM itself pursues. It follows that the second, and to some extent the third, object in clause 4 'constitute a substantial and independent objective' of RCM, which prevents it from being characterised as a body established for charitable purposes.

8. Therefore, the Commissioner's disallowance of the RCM's objection to assessment was upheld. The RCM was not established for charitable purposes.

IMPLICATIONS



The case comes after a number of state court decisions about the charitable nature of chamber of commerce and professional associations which are examined in the judgment. The issue of private benefit raised by such cases can be summarised as:

- the provision of private benefits to members is not necessarily fatal to a finding that an organisation is established for a charitable purpose;
- an organisation will remain charitable if any private benefits provided to members (or other non-charitable activities) are 'ancillary' to the charitable purpose, in aid of and directed to the larger charitable object or carried out in furtherance of the charitable purpose; and
- an organisation will not be charitable if the benefits provided to members (or other non-charitable activities) are independent objects or activities.

In Australia, the Word Investments case established that it is the 'purpose' of an organisation, not its activities that is the key issue in the charity status determination. The critical question is not about the nature of the activities, but rather as to the purpose of which those activities are carried on. There is a boundary which is not any activity will be in furtherance of a charitable purpose, as well as those activities that are judged as an independent object which is non-charitable.

It was a matter of fact and degree in this case whether the provision of benefits to members was a means of fulfilling, or ancillary to, the charitable purposes of an organisation or an independent non-charitable activity in its own right. The court found that “a significant and independent object of RCM [Rotary] is the moral improvement of its members as they conduct themselves in their own personal, business and community lives, divorced from the activities of RCM [Rotary]. The moral improvement of members, while ‘admirable and, indeed, praiseworthy’, is ‘beyond the purposes accepted by the law as charitable’ “[at 10].

VIEW THE CASE



The case may be viewed at: <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT//2018/1257.html>

The cases abbreviated in the quotations from the Tribunal are:

CCI(WA) - Re Chamber of Commerce and Industry of Western Australia (Inc) and Commissioner of State Revenue [\[2012\] WASAT 146](#)

LIV - Law Institute of Victoria v Commissioner of State Revenue [\[2015\] VSC 604](#)

Pemsel’s case - Commissioners for Special Purposes of Income Tax v Pemsel [\[1891\] UKHL 1](#)

VWL - Victorian Women Lawyers’ Association Inc v Commissioner of Taxation [\[2008\] FCA 983](#)

Word Investments - Commissioner of Taxation v Words Investments Ltd [\[2008\] HCA 55](#)

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Date of creation: August 2019

Number of case: 2018-45

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