

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.



TILLSONBURG SCOUT ASSOCIATION V. SCOUTS CANADA, 2020 ONSC 747

Ontario Superior Court, Tranquilli J, 6 February 2020

A land ownership dispute between a scout branch and its national association about whether a campsite was held in a trust.

Key words: Charitable Trust, Canada, Unincorporated Association, Charitable Trust

1. Tillsonburg Scout Association (TSA) is an unincorporated association that traces its inception to in or about 1952. It conducts scouting activities. Scouts Canada (Scouts) was incorporated by an Act of Parliament in 1914 and is a registered charity. In Canada, a trust for the benefit of scouting constitutes a valid charitable purpose trust if it is made for the advancement of education: *Boy Scouts of Canada, Provincial Council of Newfoundland v. Doyle*, 1997 CanLII 14620 (NLCA) at [183].
2. A related corporation, the Ontario Incorporated Body (OIB), holds title to all Scouts property in Ontario (except for the Scouts' national office) and operates a reserve fund to maintain and operate these properties. Camps operating under a Scouts council are operated by a camp committee, which is responsible for the management, operations and funding of the camp. The land subject to the dispute in this case is known as Camp Jackson and the camp committee historically responsible for Camp Jackson is TSA.
3. Mr Jackson originally owned the land and transferred it to TSA in 1960 subject to transfer conditions, being that Camp Jackson was only to be used "for the purposes of promoting youth welfare". Any future disposition required Mr. Jackson's written approval. The Tillsonburg Camp Committee worked with service organizations and other members of the Tillsonburg community to raise the necessary funds to purchase Camp Jackson and then improve the property. As the TSA was an unincorporated entity and could not hold property in its name, three individuals held title to Camp Jackson as trustees for the TSA.
4. In 1971, with Mr. Jackson's written approval, the three trustees transferred title of Camp Jackson to the Kinsmen Club of Tillsonburg (Kinsmen) to hold as trustee for TSA (1971 Transfer). Subsequently, TSA and Scouts agreed on a transfer of Camp Jackson to the Scouts, as Scouts enjoyed tax exemption status and TSA were satisfied the Scouts real estate policy stipulated any eventual disposal of real estate would be on the recommendation of the local Scouting council and include a plan for the proceeds of sale, provided the proceeds would be used for scouting purposes in the relevant area.

5. In 1983, with Mr. Jackson's written consent, Kinsmen transferred Camp Jackson to the "Provincial Council for Ontario; Boy Scouts of Canada" (which is required by Scouts policy to hold all real estate in Ontario for Scouts) on the same conditions as in the 1960 and 1971 transfers, which were to remain in force until 1985 (1983 Transfer).
6. The issue was who was the owner to the land - TSA, Scouts or did Scouts hold title to Camp Jackson as trustee pursuant to the terms of a charitable purpose trust for the purpose of promoting youth welfare? TSA did not have the requisite capacity to be either the settlor or beneficiary of a trust in respect of Camp Jackson as it was an unincorporated association.
7. The court found that the 1960 transfer was in fact a charitable trust with a charitable object being the promotion of youth welfare through scouting. A 1979 declaration of trust by the Kinsmen was found to be a nullity and did not negate the existence of a charitable purpose trust. It was held that Scouts took full legal title to Camp Jackson on the 1983 transfer, as a trust is unnecessary given the Scouts' charitable purposes and obligations under legislation. The conclusion was that TSA had never held ownership of the property.

IMPLICATIONS



The issues in dispute touched upon a number of historical transactions and communications that occurred approximately sixty years ago and which evolved over the next 23 years. Most of the individuals with direct knowledge of the matters in issue were no longer available to give evidence.

With the passing of corporate knowledge it is important to document land dealings between branches and national bodies with clarity. The members of the unincorporated association who had found the funds to purchase, maintain and develop the property no doubt felt a little exasperated about the outcome, with the judge remarking (at [48]):

My findings in no way diminish the important role TSA has served through its members' assistance in securing and maintaining Camp Jackson for the benefit of local youth and one appreciates its attachment to the property. However, those efforts cannot in themselves demonstrate a proprietary interest in these circumstances. In fact, the philanthropic and civic-minded nature of the association's efforts tend to confirm the charitable nature of this endeavour.

VIEW THE CASE



This case may be viewed at

<https://www.canlii.org/en/on/onsc/doc/2020/2020onsc747/2020onsc747.html?autocompleteStr=TILLSONBURG%20SCOUT%20ASSOCIATION%20V.%20SCOUTS%20CANADA%2C%202020%20ONSC%20747&autocompletePos=1>

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