

# 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.



## UNIVERSITY OF ADELAIDE V ATTORNEY GENERAL (SA) [2018] SASC 82

**Supreme Court of South Australia, Stanley J, 15 June 2018**

University seeks judicial approval in relation to three charitable trusts for education purposes.

**Key words: Charity, South Australia, Education, University, Variation**

1. In this case, the University of Adelaide (the University) applied to the court for various orders in relation to three charitable trusts: the Frank Perry Scholarship Trust, the Simms Trust, and the Southcott Trust. All were charitable trusts for the purpose of advancing education. The Attorney-General, as guardian of the public interest in the administration and enforcement of charitable trusts, neither consented to nor opposed the proposed orders, but raised certain matters for the consideration of the Court.
2. The court held that in relation to the Frank Perry Scholarship Trust, it was appropriate to make an order directing that the terms of the relevant trust be varied under section 69B of the *Trustee Act 1936 (SA)* such that the requirement that the trustees of the relevant trust consent or agree to any variation of the terms of the said scholarship be removed. The original trustees of the Frank and Hilda Perry Trust were now deceased.
3. The Frank Perry Scholarship was established through a gift to the University by the trustees of the Frank and Hilda Perry Trust. The terms of the Frank Perry Scholarship are set out in the rules of the Frank Perry Scholarship in Engineering, with the purpose of the scholarship originally being a travelling scholarship. However, over the years quite substantial changes had been made to the rules. The court held that all these were unauthorised. The court made an order directing that the terms of the Frank Perry Scholarship in Engineering be varied such that the requirement that the trustees of the Frank and Hilda Perry Trust consent or agree to any variation of the terms of the said scholarship be removed. This change would make alterations in the rules of the Scholarship easier to make, whilst not being unauthorised.
4. In relation to the Muriel Faulkner Simms Trust, it was held that it was not reasonably practicable, having regard to the value of the trust property, for the University to apply the trust property in accordance with its original purposes. As at 30 June 2016, the assets of the Simms Trust amounted to \$704,995, which amount could not generate enough income to support the original purpose of the trust. It was therefore appropriate to approve a trust variation of the kind proposed by the University to vary the purpose of the gift from endowing a Chair in Therapeutics to providing for scholarships in that field, or a closely related field. This accorded, as far as was reasonably practicable, with the spirit of the trust.

5. The William Thomas Southcott Trust was established to provide an annual scholarship to assist outstanding post-graduate students in advanced medical research in nuclear medicine, or a closely related field. However, although the Trust was well-endowed (\$3,544,260.73 as at 30 June 2016), there had only ever been three student applicants for the scholarship, one of whom subsequently withdrew. The University's proposal was that the Trust should be varied to have a purpose of funding one or more academic fellowships, or post-graduate scholarships to conduct research in nuclear medicine. The court agreed that it was not reasonably practicable, having regard to the value of the trust property, for the University to apply the Southcott Trust property in accordance with its original purposes. It was therefore appropriate to approve a trust variation to permit the trust funds also to be used to fund academic fellowships in that field. This accorded, as far as was reasonably practicable, with the spirit of the trust, whilst allowing the University to attract academics in the field to the University.
6. Orders were also made to relieve the trustees of any breach of trust in relation to the scholarships.

## IMPLICATIONS



Trustee should abide by the terms of the charitable trust and seek the directions of the court where frustration of the purpose of the trust arise.

## VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/sa/SASC//2018/82.html>

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