

# 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.



## COONEY V ST COLUMBANS MISSION SOCIETY OF LOWER HUTT [2020] NZHC 1958

High Court of New Zealand, P J Andrew AJ, 7 August 2020

Application to vary the terms of a charitable trust in order to distribute capital

**Key words:** Charitable Trust, New Zealand, Winding Up, s 64A of the *Trustee Act 1956*

1. A solicitor and a parish priest of a specific parish were the trustees of the trust known as the B R Berry Charitable Trust (the Trust), established by the late Beatrice Ream Berry in her will of 19 May 1983. The beneficiaries of the Trust were the St Columbans Mission Society of Lower Hutt and the Pacific Leprosy Foundation, previously known as the Leprosy Trust Board Incorporated.
2. The trustees sought an order under s 64A of the *Trustee Act 1956* to vary the terms of the Trust to authorise them to wind up the Trust and distribute the net proceeds to the beneficiaries in equal shares as a capital distribution. The capital of the Trust was an investment of \$116,000. After administrative costs in the mid-1990s, about \$7,500 was distributed to each of the beneficiaries, but this had dropped to around \$2,500 a year.
3. The trustees considered that it would be in the best interests of the beneficiaries that the Trust be wound up and the capital be distributed to the beneficiaries, and that such a course would be consistent with the settlor's desire to adequately support both beneficiaries, with whom she had a lifelong connection. The beneficiaries agreed.
4. The Court granted the order.

## IMPLICATIONS



As this trust was a charitable trust, it should have run in perpetuity. However, a statute may give the courts power to vary the trust, which is what happened in this case.

## VIEW THE CASE



This case may be viewed at <http://www.nzlii.org/nz/cases/NZHC/2020/1958.html>

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