



Queensland University of Technology
Brisbane Australia

This may be the author's version of a work that was submitted/accepted for publication in the following source:

[McGregor-Lowndes, Myles & Hannah, Frances](#)
(2020)

ACPNS Legal Case Notes Series: 2020-151 McLachlan & South Ozz Shelter (Charity Licence No. CCP3261) An Incorporated Charitable Institution v Hamilton.

[Working Paper]

This file was downloaded from: <https://eprints.qut.edu.au/207236/>

© The Australian Centre for Philanthropy and Nonprofit Studies (ACPNS)

Disclaimer: The material included in this document is produced by QUT's Australian Centre for Philanthropy and Nonprofit Studies (ACPNS) with contribution from some authors outside QUT. It is designed and intended to provide general information in summary form for general informational purposes only. The material may not apply to all jurisdictions. The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

License: Creative Commons: Attribution 4.0

Notice: *Please note that this document may not be the Version of Record (i.e. published version) of the work. Author manuscript versions (as Submitted for peer review or as Accepted for publication after peer review) can be identified by an absence of publisher branding and/or typeset appearance. If there is any doubt, please refer to the published source.*

<http://www.austlii.edu.au/au/cases/sa/SASCFC/2020/123.html>

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.



MCLACHLAN & SOUTH OZZ SHELTER (CHARITY LICENCE NO. CCP3261) AN INCORPORATED CHARITABLE INSTITUTION V HAMILTON [2020] SASCFC 123

Supreme Court of South Australia, Full Court, Kourakis CJ, Blue, Stanley JJA, 17 December 2020

An application to appeal in a case concerning public donations from a website page and whether and by whom they were held in trust for an animal shelter.

Key words: Fundraising, South Australia, Appeal, Webpage, Crowdfunding, Volunteer, Charitable Trust, Animal Shelter, Charity Jurisdiction

1. This is an appeal from [McLachlan & South Ozz Shelter v Hamilton](#) [2020] SASC 126.
2. McLachlan (M) operated an animal rescue premises in Moorook, South Australia, operating as the South Ozz Shelter (the Shelter). Although now incorporated, the Shelter originally had no separate legal identity from that of M who met expenses for it from her personal income, supplemented by fundraising. There was no evidence that anyone associated with the Shelter held a Collections for Charitable Purposes Licence as required by the *Collections for Charitable Purposes Act 1939* (SA).
3. Hamilton (H) volunteered to build a website for the Shelter and, later, to build a donation facility on it in order to raise money for the Shelter online. This type of charitable crowdfunding is becoming more common.
4. Although a copy of the relevant webpage was not in evidence, it was common ground that a donation button appeared on the website promoting the Shelter and advertising its activities. H testified that her name did not appear on the website but when donations were made, they were deposited into a Progress Saver bank account operated by her personally. H gave evidence that the details of the bank account were visible to donors after making a donation, including her name as the holder of the account.
5. H's evidence was that she added the donation page at M's request and her account was used because M was too concerned about 'hacking' to use her own account. Approximately \$114,000 was deposited in H's account between 2010 and 2013.
6. M brought an action to recover some \$75,000 which she alleged was wrongfully paid into another of H's bank accounts which was used for her personal purposes. H denied the claim saying that cash withdrawals from her personal account were paid to M to pay for, amongst other things, an unregistered vet to de-sex animals at the

Shelter. H claimed that she had shredded all her hardcopy records in a manic episode in 2013 and that she threw out her computer after it crashed.

7. The use of the funds was the primary factual issue before the Magistrate at first instance. However, the Magistrate did not decide that issue, finding instead that the moneys were subject to a charitable purpose trust and that the dispute therefore fell within the exclusive jurisdiction conferred by [s 60](#) of the [Trustee Act 1936](#) (SA). On appeal to the Supreme Court, Peek J confirmed that decision.
8. The decisions of the Magistrate and Peek J proceeded on the premise that the charitable purpose trust was constituted with H as trustee because she held the chose in action connected to her Progress Saver bank account. Therefore, the courts below characterised the action as one brought by a beneficiary, or person interested, in a remedy for a breach of trust (by H), and not as a claim for damages or equitable compensation by M, as the true trustee of charitable trust, against her agent H.
9. It was accepted that the money was donated for the purposes of the operations of the Shelter. Agreeing that an outright gift by the donors to M was correctly excluded, the Court of Appeal held that there was a real question as to whether the trustee of the donated money was H or M (at [10]):

It seems to me that it is arguable that the intention of the donors was that the money be held on a trust administered by the operator of the Moorook Shelter which could only be Ms McLachlan. If Ms McLachlan was the trustee, her action is a claim in law and or in equity for Ms Hamilton to account for the money she held as the trustee's agent or for equitable compensation or damages for any defalcation. It is, of course, not uncommon for a trustee to collect money through an agent, who may be a collector on a street corner, or a professional fundraising business.

10. Thus, as the appeal had merit, leave to appeal was granted.

IMPLICATIONS



The ultimate order may be one remitting the action to the Magistrates Court to receive further evidence on the contents of the webpage and to make a finding as to who the trustee is.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/au/cases/sa/SASCFC/2020/123.html>

Read more notable cases in [The Australian Nonprofit Sector Legal and Accounting Almanac series](#).

Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

Date of creation: January 2021

Number of case: 2020-151

Disclaimer: The material included in this document is produced by QUT's [Australian Centre for Philanthropy and Nonprofit Studies](#) (ACPNS) with contribution from some authors outside QUT. It is designed and intended to provide general information in summary form for general informational purposes only. The material may not apply to all jurisdictions. The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

Creative Commons Licence:



This work is licensed under a [Creative Commons Attribution 4.0 International License \(CC-BY\)](#)



ACPNS SUPPORTING THE SECTOR

QUT's Australian Centre for Philanthropy and Nonprofit Studies is a small centre with BIG impact. Since 2001 it has taken a leading role in nonprofit teaching and research, benefiting the sector here in Australia and beyond.

RESEARCH

COURSES

RESOURCES

EVENTS

QUT Business School
The Australian Centre for Philanthropy
and Nonprofit Studies

qut.edu.au/business/acpns