

# 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.



## Leduc Society for Christian Education v. The King 2022 TCC 114

**Tax Court of Canada, Wong J, 5 October 2022**

Whether a contracted payment for school services qualified as a tax-deductible gift.

**Key words: Tax, Canada, School, Deduction, Gift, Voluntary**

1. This matter involved three private religious schools operating in Alberta that were charities.
2. The schools operated under an Alberta statute that required them to provide access to education for all children who are residents of a district, and no tuition is required to attend public schools.
3. However, the statute allows for the schools to offer alternative education programs, and the schools may charge parents of children in those programs fees to cover all or part of the associated non-instructional costs.
4. Each of the schools offered a religious program that was integrated into the curriculum.
5. The enrolment forms signed by parents to attend the schools included a fee for a religious program and formed a contract.
6. The schools issued official tax receipts to parents for 100% of the religious program fees.
7. The Court was requested to decide two questions being:
  - Was the payment of religious program fees by parents to the schools voluntary?
  - Did the parents receive a benefit or consideration from the schools in return for their payment of the religious program fees?
8. The Court noted that the term 'gift' was not defined in the taxation legislation, but had been judicially considered as:

...a voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the donor.<sup>1</sup>

9. 'Consideration' was understood as (at [22]):

(a) the inducement to a contract, (b) the cause, motive, price or impelling influence which induces a contracting party to enter into a contract, (c) some right, interest, profit, or benefit accruing to one party, or (d) some forbearance, detriment, loss, or responsibility given, suffered or undertaken by the other party.

10. The Court found that the payment of the fees was not voluntary.

11. The parents may have made a voluntary choice to enrol their children, but the requirement to pay a fee was compulsory, and the payment was part of a contract that was enforceable.

12. The schools argued that the parents received subjective rather than objective value for their payment, but the Court found that the fees covered the cost of the religious program activities and materials, all of which directly benefited the children enrolled in the program. The Court held that parents did receive a benefit or consideration for the payments.

## IMPLICATIONS



Australia has a similar approach to the meaning of a gift for tax deductibility purposes. Taxation Ruling [TR 2005/13](#) explains the ATO's view of a gift. As in Canada, the term 'gift' is not defined in the tax legislation and is left to judicial interpretation.

The Australian courts have described a gift as having the following characteristics and features:

- there is a transfer of the beneficial interest in property;
- the transfer is made voluntarily;
- the transfer arises by way of benefaction; and
- no material benefit or advantage is received by the giver by way of return.
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In doing so, the courts have recognised that the criteria may not be absolute and may involve a matter of degree. In relation to schools and gifts, tax issues often arise in relation to parent contributions to school building funds particularly where the request for contributions is included in the demand for payment of school fees.

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<sup>1</sup> Her Majesty the Queen v. Friedberg, 1991 CarswellNat 669 at paragraph 4, affirmed by [1993] 4 SCR 285.

## VIEW THE CASE



This case may be viewed at <https://www.canlii.org/en/ca/tcc/doc/2022/2022tcc114/2022tcc114.html>

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