

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.



Chen v Bread of Life Christian Church in Auckland [2023] NZERA 298

Employment Relations Authority, Member Larmer, 9 June 2023

A minister sought reinstatement to his position within a church.

Key words: Minister, New Zealand, Church, Employment, Termination, Reinstatement

1. The Bread of Life Church is based in Auckland (the Church), and is an unincorporated body of persons who share a common religious belief. There are eight Bread of Life churches in Auckland and one in Christchurch.
2. There are more than 600 Bread of Life Christian Churches around the world. It is part of the global Bread of Life church network, established by the Bread of Life Church in Taipei (the Mother Church). The Mother Church provides spiritual leadership, and trains and ordains pastors of the Church.
3. The Church's assets (funds and property) were held by the "Bread of Life Christian Church in Auckland" (Charitable Trust) which is a charitable trust incorporated as a board under the [Charitable Trusts Act 1957](#) and which was registered as a charity on the Charities Register.
4. Mr Chen was ordained as a preacher and senior pastor in the Church in 2015, and he had been affirmed and authorised in that role by the Taipei Mother Church.
5. There were six trustees of the Charitable Trust who were evenly divided in opposing the continued employment of Mr Chen.
6. The Trustees were at the same time engaged in High Court litigation against each other, and they took opposing and contradictory positions in this matter.
7. In 2022 one of the trustees, who was also treasurer of the Charitable Trust, stopped Mr Chen's remuneration.
8. Mr Chen claimed that the unilateral stopping of his remuneration amounted to an unjustified dismissal, and he sought interim reinstatement. He continued to perform his usual duties as senior pastor since his remuneration was stopped, but has done so without pay.
9. Although Mr Chen had held a salaried Preacher/Pastor position since 2015, he did not initially have a written employment agreement until the parties signed a written employment contract in 2019.

10. The Authority found that the parties intended there to be an employment relationship, and they acted consistently with there being an employment relationship. Therefore, it had jurisdiction to hear the matter.
11. The calling of Mr Chen by the Taipei Mother Church to the spiritual position did not amount to a contracting out of employment law protections.
12. The failure to pay an employee their salary, and the failure to recognise the existence of the employment relationship, amounted in law to a dismissal.
13. Although the opposing trustees put forward information that they claim showed Mr Chen was unsuitable for the senior pastor role, their concerns were considered by the Mother Church and not upheld, and there was evidence that the majority of the congregation members support Mr Chen.
14. The Authority considered that the balance of convenience strongly favoured interim reinstatement, and the overall justice of the matter weighed heavily in favour of allowing Mr Chen to be reinstated so he could continue undertaking his duties as the senior pastor of the Church, but be paid for doing so until his dismissal grievance can be determined.
15. The Authority found for Mr Chen.

COMMENT



The Authority noted that (at [225]-[226]):

It may be in the best interests of the Church and its congregation if an investigation is conducted into whether the three Opposing Trustees are acting consistently or inconsistently with their duty of fidelity as trustees regarding their dealings with Mr Chen and regarding the High Court litigation they have commenced and these Authority proceedings. An objective assessment of that appeared to be long overdue.

The Authority notes its view that the Respondent would also be far better served if it had trustees who could work together in constructive manner for the best interests of the Church and its congregation. The Authority recommends that action should urgently be taken to achieve that.

Common law courts have traditionally conceived of the relationship between a church and its clergy as the conferral of an office known as a benefice, not a relationship of master and servant. A benefice is not a contract. The parties do not bargain or negotiate its terms. Though it deals with interests similar to a contract, civil courts do not enforce it. They treat it as an essentially spiritual product of the unique consensual compact among members of a church that could only be enforced under ecclesiastical law. More importantly, they have generally considered bargain and benefice to be mutually exclusive modes of appointment.

The underlying legal concepts came to Australia from the United Kingdom, where the relationships were characterised historically as benefice appointments. A benefice is a proprietary estate given to clergy. In state-established churches, this entailed similarities to the way the state commissioned, empowered and enabled a military officer to fulfil military duties, or a police officer to perform executive duties pertaining to law enforcement.

Australian law has altered, both in the common law and statute.

Where the circumstances of engagement of a minister of religion by a church or other organisation show the characteristics of an employment relationship, the relationship will be governed by employment law. It is prudent to record the understanding of the parties in a written agreement to reduce the risk of the relationship being characterised by circumstances rather than the expressed intention of the parties.

For a complete treatment of the issue of clergy employment refer to: Mills, Christopher J.R. (2018) [Bargain or benefice? Understanding the legal relationship between an Australian church and its clergy](#). Masters by Research thesis, Queensland University of Technology.

VIEW THE CASE



This case may be viewed at: <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZERA/2023/298.html>

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

Email: acpns@qut.edu.au

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