Appeal No. VA07/2/047

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

NAOMI - BILLINGS IRELAND LIMITED **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Office(s) at Lot No. 16 Flr. -1, North Great Georges Street, Rotunda A, Rotunda, County Borough of Dublin

B E F O R E

John O'Donnell - Senior Counsel	**Chairperson**
Joseph Murray - B.L.	**Member**
Aidan McNulty - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF DECEMBER, 2007

By Notice of Appeal dated the 22nd day of June, 2007, the appellant appealed against the determination on the Commissioner of Valuation in fixing a rateable valuation of €29.20 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:
"(a) Property should be relevant property not rateable under Schedule 4 Paragraph 16, Valuation Act, 2001. (b) Exempt under Schedule 4 Valuation Act 2001. MCC - happening of event whereby property ceases to be treated as relevant property".

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 17th September, 2007. At the hearing the appellant was represented by Mr. Owen Hickey, BL, instructed by Giles J. Kennedy & Co., Solicitors. Ms. Mavis Keniry, Chairperson of the appellant company, gave evidence on its behalf. Ms. Sheelagh O'Buachalla, BA, ASCS, the appellant's Consultant Valuer also attended. Mr. James Devlin, BL, instructed by the Chief State Solicitor appeared on behalf of the respondent. Mr. John Kirwan, a Staff Valuer with the Valuation Office also attended.

INTRODUCTION

The appellant's appeal is essentially based on the contention that by virtue of the passing of the Valuation Act, 2001 a material change of circumstances has occurred which now renders the subject property no longer rateable. Despite the fact that the non-body corporate predecessor of the appellant (with substantially the same aims and objects) was deemed rateable, essentially the issue is whether or not the passing of the Act constitutes in the instant case a material change of circumstances. Section 28(4) of the Act allows a Revision Officer "*if he or she considers that a material change of circumstances which has occurred since a valuation under section 19 was last carried out in relation to the rating authority area in which the property concerned is situate* …to *(ii) exclude that property from the list on the ground that the property is no longer relevant property, that the property no longer exists or that the property falls within Schedule 4."*

The appellant's contention is that having regard to the matters set out in Schedule 4, both at paragraph 10 and at paragraph 16, the property is no longer rateable. In this regard a material change of circumstances is defined in Section 3 of the Act as meaning a change of circumstances which consists of:

> *"(a) the coming into being of a newly erected or newly constructed relevant property or of a relevant property, or*
> *(b) a change in the value of a relevant property caused by the making of structural alterations or by the total or partial destruction of any building or other erection by fire or any other physical cause, or*
> *(c)the happening of any event whereby any property or part of any property begins, or ceases, to be treated as a relevant property, or*

(d) the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within Schedule 4, or

(e) property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties, or

(f) property previous valued as 2 or more relevant properties becoming liable to be valued as a single relevant property;"

In essence the contention of the appellant is that the passing of the Act constitutes the happening of an event which meant that the relevant property herein ceased to be rateable having regard to the provisions of Schedule 4 of the Act. Both sides were agreed that the Act could constitute the happening of an event for the purposes of this definition of material change of circumstances.

The issue, however, was whether or not such a material change of circumstances had occurred in the instant case.

THE EVIDENCE

The subject property is part of a Georgian building located at 16, North Great George's Street, Dublin 1. The basement accommodation comprises reception area, meeting room, store kitchen and toilets. The property is occupied by Naomi-Billings Ireland Limited, a limited liability company. The main objects of the Memorandum of Association are:

" (i) To educate society in the authentic Billings method, recognising the natural moral law.

(ii) To serve God by preserving the sanctity of marriage and the dignity of the family through the promotion of the ovulation method of the natural family planning as researched and defined by Dr. Billings and his team of workers in Melbourne, Australia.

(iii) To help establish centres to teach and explain human physiology and to promote the understanding and use of the ovulation method in accordance with the rules and standards laid down by Dr. J.J. Billings and his team of workers in Australia.

(iv) To assist and encourage further research into the ovulation method.

(v) To give information to members which will foster a desire to protect and defend the sacredness of human life."

On behalf of the appellant Ms. Mavis Keniry, Chairperson of the appellant company gave evidence. She said that the premises were used for a variety of purposes. A predecessor to the company had been established in 1971. In 1979 as a result of the Family Planning Act the predecessor had received funding to teach members of the public and to train teachers to promote use of the Billings method of birth control. Such teachers as qualify are accredited from Australia. The administration of the organisation takes place on the premises. The appellant offers courses to persons in order to allow them to facilitate or to postpone pregnancy. The appellant currently receives €48,000 per annum from the HSE. Though it does not fundraise it receives the odd subscription from members of the public. It pays a rental of €20,000 per annum. It does not have any full-time staff.

Ms. Keniry indicated that the organisation's role was primarily that of teacher. It promoted its role as a teacher through leaflets in Health Board premises and doctors' surgeries. It also had a website. In addition people call in "off the street". Classes are offered in the morning or in the evening. The services it provides are available to the general public. While no charge is made it is indicated that a donation would be appreciated. Any expenses incurred are defrayed from the HSE funds. Having been used as a method of postponing pregnancy, Ms. Keniry's evidence is that the method is now used more and more as a method of allowing people to achieve pregnancy. She confirmed that the letters in the title of appellant stood for National Association Ovulation Method Ireland.

On cross-examination Ms. Keniry accepted that the entity had been in North Great George's Street since 1979, though it had recently moved to Marlborough Court. Although the valuation date is fixed as October 20th, 2006, by agreement between the parties, no issue arose as to whether or not the appellant was still in occupation on that date. The company had been formed in 2005 but previous to that the entity in question had acted as an unincorporated body. Ms.. Keniry claimed that the promoters had been advised by the HSE to form a company. She was unaware of an appeal in relation to premises in Cork in 1993. She contended that rates had never been paid in respect of this premises though she conceded that there was a rates bill outstanding for a couple of years. She accepted that in its previous form the entity had appealed to the Commissioner of Valuation in 2003 in relation to the

rateability of the property. In response to the query as to whether or not there was any difference between the company now and the previously unincorporated entity, she contended that it was likely they had more meetings in order to comply with HSE requirements. However, in the main the entity was a teaching body which performed the same functions and continued in the same role as it had in the past.

Ms. Keniry was then asked to consider the objects clause of the appellant company. She accepted that the appellant had a particular view on the natural moral law which society as a whole may not share. She accepted that the clause in question referred to the objective of serving God but made it clear that the appellant was not running religious classes. They did from time to time give pre-marriage courses; such advice was also made available to non-married persons. The particular view of the appellant was that human life commenced at the moment of conception. In addition she said it was made clear to users that they must be open to the possibility that the method in question may not work to prevent or to achieve conception. She confirmed that at the end of classes teachers would state to those taking the classes in question that life began at conception.

Ms. Keniry also confirmed the methodology by which classes would occur. Couples would make an appointment. They would then call in and sit through classes in which they were taught how to record temperatures and other relevant matters. They would then be asked to return. On occasion couples would ring up for further advice. Clients would sometimes return on a monthly basis. Ms. Keniry found it hard to put an estimate in respect of numbers but suggested that perhaps "a couple of hundred" had visited the premises in question in the last two years.

No issue arose in relation to quantum. The respondent did not go into evidence.

THE APPELLANT'S SUBMISSIONS

In addition to written submissions presented at the hearing, subsequent additional written submissions were received from the appellant and the respondent. On behalf of the appellant it was submitted that the premises the subject matter of the appeal was an "*educational institution*" within the meaning of paragraph 10 of Schedule 4 of the Valuation Act, 2001. Mr. Hickey submitted that insofar as the institution taught the Billings method of birth control to the general public it came within the meaning of paragraph 10. The fact that it was

a body which was informed by a specific ethos was irrelevant. Mr. Hickey suggested that numerous other educational institutions are driven by particular value systems, e.g. Catholic-run schools. This did not prevent such an institution from being an educational institution.

Mr. Hickey also referred to the objects of the entity. In his view the entity could also be regarded as a charitable organisation within the meaning of paragraph 16 of Schedule 4 of the Valuation Act. A charitable organisation is defined at Section 3 of the Valuation Act, 2001. Mr. Hickey submitted that since the objects of the appellant Company in effect constituted a trust for education and/or a trust for other purposes beneficial to the community, it should be regarded as a charitable organisation.

THE RESPONDENT'S SUBMISSIONS

On behalf of the Respondent, Mr. James Devlin suggested that the Tribunal should utilise the *ejusdem generis* rule of interpretation, i.e. where particular words are followed by general words, the general words are limited to the same kind or genus as the particular words. Applying this maxim to the relevant paragraph of Schedule 4, Mr. Devlin submitted that the entity in question must establish that it corresponds to or falls within the same rubric as a "*school, college, university, institute of technology or any other educational institution*". In his submission the appellant was fostering a particular philosophy. While certain schools may also do so, they don't exist simply to foster a philosophy. They exist primarily to teach various subjects. We were referred to the Determination of the Valuation Tribunal in **VA07/1/003 - Family and Life Limited.** At page 11 of that Determination the Tribunal expressed the following view:

> "*The Tribunal sees the "educational" element of the Appellant as promotional rather than educational. The Educate for Life programme is a secondary object of the company and insofar as there is an educational element involved, this would be the promotion of an understanding of the developing foetus. This involves some degree of biological education as well as promoting the values on the sanctity of life. However, in our view this simply promotes a value rather than developing in an educational way the overall person."*

Mr. Devlin submitted that promotion was not education in this context. The institution in question did not have students. Simply to impart information does not constitute the provision of education.

Mr. Devlin also referred us to the Determination in the earlier 1992 case brought by the same appellant (**VA92/5/016 – N.A.O.M.I.**). At page 3 of that Determination the Tribunal expressed the following view:

> "*The Tribunal having sympathetically considered the valuable work which is being done in all areas by the appellant association does not consider that the objects of the association are such as would attract a charitable exemption under the Valuation Code, notwithstanding the registration of the association for income tax purposes as a charity, and finds that the work actually carried out is of so universal an application that it cannot be regarded as a charity in any event."*

Mr. Devlin submitted that there had been no material change of circumstances in the nature of the appellant's business or the manner in which it conducts same.

In addition in written submissions by way of response to the appellant's submissions on the issue of the applicability of paragraph 10 of Section 4 the respondent reiterated the submissions in relation to how the concept of "*educational institution"* should be interpreted. He referred also to the principle of *noscitur asociis* which means that a meaning of a word may be determined by reference to words which accompany it; i.e. its context. We were referred to the concept of educational institution considered by the Tribunal in **VA04/1/001 - The City of Dublin VEC.** At paragraph 24 of that Determination the Tribunal expressed the following view:

> "*In our view the CDVEC is an educational institution within the meaning of paragraph 10, Schedule 4 of the Act of 2001. Created by statute, the CDVEC provides a variety of programmes for full-time and trainee students as well as night class students. The evidence suggests that it employs large numbers of staff in a variety of colleges and other centres. The fact that the committee is part-time and that most of the work is done by a Chief Executive Officer does not deprive it of the*

status of an educational institution, nor does the fact that the programmes it provides are drawn up on consultation in part with the Department of Education."

The submissions also referred to the decision of **The Governors of Wesley College v Commissioner of Valuation [1984] ILRM 117** where Henchy J observed that Wesley College was "*of course an educational institution in that it provides education of a general character for the pupils it accepts."* Mr. Devlin also submitted that the various educational services must also be construed having regard to the phrase "*school, college, university, institute of technology or any other educational institution*".

In response, Mr. Hickey drew our attention to the concept of charitable organisation. He refers to the decision in the **VA04/1/008 - Clones Community Forum Ltd.** In his submission this Determination expanded the types of entities which could be regarded as being charitable organisations or carrying out charitable purposes. In his submission unless there was a compelling reason for the entity in question not to be found exempt, as a general proposition the entity in question should be deemed to be charitable. In his submission the entity did have students. While lectures on the Billings method might in the past have been regarded as divisive they were no longer so regarded. In his view the decision in **Family and Life** was not strictly relevant. The appellant was not in this case promoting a moral view in any different way to e.g. the manner in which a Catholic run school promoted a Catholic ethos. In his submission the provision of education about a particular topic in a particular way can make the entity in question an educational institution. He noted the submission made by Mr. Devlin that generally students of an "*educational institution*" received some form of certificate of achievement and recognition of standards whereas no such certificate was issued here. However, Mr. Hickey submitted there was no such requirement in the Act that in order to be regarded as an "*educational institution*" the institution in question would have to issue certificates or diplomas of some sort. In any event it appears that some form of certificate was issued by the appellant to the student teachers. Mr. Hickey also suggested that the definition of charitable organisation was sufficiently wide to include other purposes beneficial to the community. He noted Mr. Devlin's submission that not all trusts beneficial to the community would necessarily be regarded as charitable, but submitted that in the instant case the public purpose which the appellant existed to try to provide for was sufficient to bring it within the definition of Schedule 4 of the Valuation Act, 2001.

THE LAW

In essence there are two issues for the Tribunal to consider:

(i) Whether the appellant is not rateable having regard to the provisions of paragraph 10 of Schedule 4 of the Valuation Act, 2001.

(ii) Further or in the alternative whether the appellant is not rateable having regard to the provisions of paragraph 16 of Schedule 4 of the Valuation Act, 2001.

(i) **Schedule 4, paragraph 10 – "*Educational Institution*"**:

In our view the appellant is not an "*educational institution*" within the meaning of paragraph 10 of Schedule 4 of the Act. While the facts in the **Family and Life** case were different to the facts here, it does appear to us that the elements of the appellant's activities which it describes as "*educational*" are in reality promotional. In our view persons who attend talks on the Billings method could not be regarded as students in the true scholastic sense. Undoubtedly they are members of the public who are seeking to become better informed about a certain element of scientific methodology. It does not seem to us however that they fall within the concept of "*student*" in the normally accepted sense. Nor do they fall within the concept of "*pupil*" referred to in **Governors of Wesley College v Commissioner of Valuation**. We accept that there is no express statutory requirement that an "*educational institution"* hands out certificates or in some other formal way recognises standards of achievement. However, it seems to us that it is common in educational institutions that some form of measurement of standards achieved is provided for. This may be provided within the institution itself or it may be that the institution prepares the students for an outside examination of proficiency in particular subjects. Educational activities encourage the development of the person in the area of a particular discipline or disciplines for that matter. People acquire skills and knowledge through instruction or other methods. This may be transmitted through theory or practice, or both. It may involve traditional disciplines (e.g. Maths, English or foreign languages) or it may involve other disciplines like music, drama or even learning to fly. What is important is that the pupil or student acquires knowledge or skills in the particular discipline. Some may even require the pupil to attain certain standards of excellence. Tests may or may not be utilised; if they are they may give an indication of the progress being made. We should add that the absence of an opportunity to measure standards is not fatal. The main thing is that the pupil progresses and develops in the discipline

concerned.

Promotional activities on the other hand are different. They are primarily concerned with promoting the objectives of an organisation. Unlike educational activities, they are not primarily concerned with developing the person, but rather with promoting their objects. If there is an educational element involved it is invariably subsidiary to the main objective. But the main objective of the appellant here is not the acquisition of skills or knowledge to develop the person in a particular discipline. Rather, they are primarily promotional; the organisation and its values and objectives come first.

These matters, combined with the absence of the other elements listed in Determinations such as the **City of Dublin VEC**, together with the fact that the appellant exists in reality to provide information on one particular type of birth control lead us to the conclusion that the appellant is not an educational institution within the meaning of paragraph 10 of Schedule 4 of the Valuation Act, 2001.

(ii) **Schedule 4, paragraph 16 – *"Charitable Organisation"*:**

The administrative requirements of Section 3 of the Valuation Act, 2001 are complied with by the Memorandum and Articles of Association of the appellant.

It is notable, however, that the main objects for which the company is established (later stated to be "*the objects for which the company is established"*) are:

"*(i) To educate society in the authentic Billings method, recognising the natural moral law.*

(ii) To serve God by preserving the sanctity of marriage and the dignity of the family through the promotion of the ovulation method of the natural family planning as researched and defined by Dr. Billings and his team of workers in Melbourne, Australia.

(iii) To help establish centres to teach and explain human physiology and to promote the understanding and use of the ovulation method in accordance with the rules and standards laid down by Dr. J.J. Billings and his team of workers in Australia.

(iv) To assist and encourage further research into the ovulation method.

(v) To give information to members which will foster a desire to protect and defend the sacredness of human life."

It is thus clear that the appellant has a particular view of what constitutes the "*natural moral law*" which society as a whole may not share. It also has a particular view on when human life begins (being the moment of conception). The espousal of particular views does not deprive an entity of being a charitable organisation. However, it is undoubtedly the case that a charitable trust cannot be for the benefit of everyone. We note the observations of the Valuation Tribunal in its decision **VA92/5/016- N.A.O.M.I**. involving the same appellant and respondent. It has been submitted to us on behalf of the respondent that there is no significant or "*material*" change of circumstances in the nature of the appellant's activities or the manner in which it conducts its business such as to justify the appellant being now deemed non-rateable. We would echo the words of the Tribunal's decision in that earlier case to a considerable degree. In our view the work actually carried out by the appellant remains of so universal an application that it cannot be regarded as having a "*charitable purpose*". Its target audience (for want of a better phrase) appears to be much wider than the target audience in the **Family and Life** case.

In **Family and Life** the organisation was deemed to offer particular options for women who face crisis pregnancies. The Tribunal in that case was also of the view that there was a public benefit to its purposes and that the beneficiaries of the activities of the appellant were not numerically negligible.

In the instant case, however, the numbers of persons who benefited from the activities of the appellant are unclear but would certainly appear to be extremely small. While "*a couple of hundred*" "*probably*" visited the premises in recent years it is unclear what, if any, benefit was derived by them from such a visit. Having regard to the population this number does appear to be extremely small. Nor it is clear that any benefit to the public generally is achieved by the promotion of this particular method of birth control to the persons who do decide to attend the premises.

We note also the comments contained in **Law and Practice Relating to Charities** (Third Edition) (Picarda)) at page 177:

> "*Activities which are designed to sway public opinion on controversial social issues are not charitable but are rather political in the sense understood by the law. As often as not, such activities involve the dissemination of literature of a predominantly tendentious or polemical character. And most attempts to inculcate an attitude of mind tend to abandon objectivity in favour of partial propaganda. By embrangling itself with controversy over divisive social issues a charity runs the risk of alienating sections of the public and giving charity a bad name. This, probably more than any of the other articulated reasons, is perhaps the most compelling justification for a rule against politics."*

We accept that the appellant would not regard itself in any sense as being political. We note also that the appellant does not seek to reform the law on birth control.

It does appear to us however that the primary objective of the appellant is to promote a particular method of birth control above (if not to the exclusion of) others. Having regard to, not alone the nature of the activities, but the size of its target audience, as well as the absence of any discernible public purpose achieved by the promotion of this objective, we are of the view that it does not have as its main object or objects a charitable purpose and is therefore not a charitable organisation within the meaning of Section 3. For avoidance of doubt we do not accept that any material change in circumstances has occurred which would justify the exclusion of the subject property from the rateable list. The activities of the appellant are essentially the same as in 1992. In our view the passing of the 2001 Act does not materially change the circumstances in such a way as to render the appellant non-rateable. Accordingly the appellant does not escape rateability under the provisions of paragraph 16 of Schedule 4 of the Valuation Act, 2001. In the circumstances therefore the appellant is rateable.

DETERMINATION

The property the subject matter of this appeal is rateable, as the only issue in this appeal was the rateability or otherwise of the property. The rateable valuation of €29.20 stands. The appeal is dismissed.

And the Tribunal so determines.