

Appeal No. VA91/2/067

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 1988**  
**VALUATION ACT, 1988**

**Clanwilliam Institute Personal Marriage &  
Family Consultants Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Offices at Lot No. 1B/18 Clanwilliam Terrace, Lower Grand Canal Street, South Dock A, County Borough of Dublin  
Exemption - Charitable purposes

**B E F O R E**

**Henry Abbott**

**Barrister Chairman**

**Mary Devins**

**Solicitor**

**Padraig Connellan**

**Solicitor**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 26TH DAY OF FEBRUARY, 1992**

By notice of appeal dated 24th day of July, 1991, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £80.00 on the above described hereditament.

The Grounds of Appeal as set out in the Notice of Appeal are that:-

- 1) Both the premises in question i.e. "offices" 18, Clanwilliam Terrace and "right of car parking" 38.42.44.44C/18 Clanwilliam Terrace have been occupied by the Marriage and Family Institute (subsequently changed to the Clanwilliam Institute Personal Marriage and Family Consultants Ltd. on the 22nd May, 1989) and has at all times been used by the Marriage and Family Institute exclusively for its charitable purposes.

- 2) Under Section 3 of the Poor Relief Act, 1838 such exclusive charitable use and purpose expressly exempts from rates any hereditament or tenure put to such exclusive charitable use.
- 3) Under Section 2 of the Rateable Valuation Ireland (Amendment) Act, 1854 the Commissioner of Valuation "shall distinguish all hereditaments and tenements or portions of same of a public nature or used for charitable purposes..... and all such hereditaments or tenements or portions of the same so distinguished shall so long as they continue to be of a public nature and occupied for the public service or used for the purpose of foresaid be deemed exempt from all assessment (inter alia) from Rates".
- 4) The Marriage and Family Institute is a company limited by guarantee. "We have forwarded copies of memorandum and articles of association to the Valuation Office from which it is clear beyond any doubt that the objects of the Marriage and Family Institute are exclusively charitable in nature. Accordingly we would submit that these valuations should be exempted."

### **The Property**

The property consists of a three-storied terraced office building in the own-door development on Grand Canal Street known as Clanwilliam. The development is on the site of the old Bolands Bakery between the Railway and the refurbished old Bolands Building. The building is 116 square metres net, there is a reception area on the ground floor and an office for the director. The upper two floors are used as offices. The subject property is held under a lease between Marriage, Family and Personal Health Centre Ltd. and Marriage and Family Institute for 20 years from the 1st January, 1989 at the initial rent of £17,000 per annum, the lease incorporating 5-yearly rent reviews. The offices are constructed with concrete floors, brick and concrete block walls, plastic framed windows and a pitched tiled roof. Internally there are carpeted floors and smooth plastered walls and ceilings. The subject property was revised during the 1990 revision

and a valuation of £90 was placed on the offices. This was reduced to £80.00 at first appeal stage.

### **Written Submissions**

A written submission was received from Mr. Joe Bardon, A.R.I.C.S. of Spain Courtney Doyle, Valuation Commercial Property Consultants and Building Surveyors on the 24th October, 1991 on behalf of the Appellants. In this Mr. Bardon describes the property and outlines the valuation history. Mr. Bardon also included correspondence relating to the appeal as follows:

- 1) Letter dated 17th May, 1990 to the Dublin City Manager appealing the Determination of the Commissioner of Valuation in not granting exemption and in fixing a rateable valuation of £90 on the premises.
- 2) Copy of the Notice of Appeal to the Tribunal.
- 3) A map of the property.

A written submission was received from Mr. Terence Dineen, B.Agr. Sc., a District Valuer in the Valuation Office on behalf of the Respondent on the 1st November, 1991. In this submission Mr. Dineen gives details of the property and comments on the grounds of the appeal submitted by the Appellant. He says that the purchase price on the 6th May, 1988 was £94,000 plus VAT. He said that it is held in the name of Clanwilliam Institute Personal, Marriage and Family Consultants Ltd. from Marriage and Personal Health Ltd. on a 20/5 F.R.I. lease at £17,000 per annum from 1st January, 1989. He said that this is not an arms length lease. He said that the rateable valuation is agreed at £80. Mr. Dineen made the following points in his precis in response to the grounds of appeal as outlined:

- 1) That the Commissioner of Valuation is not precluded from finding that an organisation accepted as charitable under the income tax acts is rateable under the valuation code.
- 2) Because fees are charged to some clients - to the extent of 56% of total income in 1990 - usage cannot be said to be exclusively charitable.
- 3) A further 32% of total income in 1990 was provided by training courses - analogous to private educational institutions.
- 4) None of the 1990 income was derived from public appeals based on what the public would perceive as a charitable cause.
- 5) The rental of £17,000 per annum from January 1989 in a non-arms-length transaction compares to an estimated Valuation Office figure of £12,000 for November 1988. He said that the rateable valuation is based on this second figure.
- 6) By increasing consultants fees etc. no profit need ever arise from the activities of the institute. Mr. Dineen attached copies of the Memorandum and Articles of Association of Clanwilliam Institute Personal, Marriage and Family Consultants Ltd.. He attached a report and financial statements for the year ended 31st December, 1990 of Clanwilliam Institute Ltd..

### **Oral Hearing**

The oral hearing took place on 8th November, 1991 and 22nd November, 1991. Mr. Robert Houghton, Barrister, instructed by Ms. Jane Fitzgerald, Solicitor of Beauchamps Solicitors represented the Appellant. Mr. Aindrias O'Caoimh instructed by the Chief State Solicitor

represented the Respondent. Also present was Mr. Joseph Bardon, Valuer with Spain Courtney Doyle and three directors of the Clanwilliam Institute Personal Marriage & Family Consultants Ltd., Mr. Edward Mc Hale, Mr. Declan Roach and Mr. Philip Kearney. Mr. Terence Dineen, Valuer with the Valuation Office was also present on behalf of the Respondent. Mr. Haughton said that the grounds for exemption is that the Institute is a charity and that he would be relying on the Tribunal judgment of the National Association of Widows in Ireland appeal (Ref. VA/88/130). He also referred the Tribunal to Section 3 of the Poor Relief (Ireland) Act, 1838. Mr. Haughton said that the Institute is in existence since 1984. He said that it was then known as the Marriage and Family Institute and was formerly situated in Clare Street. He said that in 1989 they moved to Clanwilliam Court and changed their name to "Clanwilliam Institute Personal Marriage and Family Consultants Ltd.". Mr. Haughton said that it is a company limited by guarantee and that they have applied to have the "Ltd" removed from the name and are awaiting a letter of consent. Mr. Haughton referred the Tribunal to the Memorandum of Association of the Clanwilliam Institute Personal, Marriage and Family Consultants Limited and specifically to Article 2 of the Memorandum outlining the objects for which the Institute is established as follows:-

- "(a) The support, treatment and study of the family as the fundamental social unit and the provision to that end of:-
- (1) Counselling and therapy for families, couples and individuals
  - (2) Training and consultation for health and social service workers
  - (3) Educational programmes to enhance family life
  - (4) Research in the area of marriage and the family".

Mr. Haughton also referred the Tribunal to Article 2 (4)(b)(xviii) "to apply, petition for or promote any Act of the Oireachtas with a view to the attainment of the above objects or any of them."

He referred the Tribunal to Article 3 of the Memorandum in which it says that no profit or bonus shall be made by any of the members, and to Article 6 whereby, on the dissolution of the Institute, assets are to be transferred to some other Institution having objects similar to those of the subject.

Mr. Joe Bardon gave evidence that the Clanwilliam Institute rents the premises from The Marriage Family and Personal Health Centre on a 20 year lease from the 1st January, 1989 at £17,000 per annum. Under cross examination by Mr. O'Caoimh, Mr. Bardon agreed that the net annual value as at November 1988 was £12,600. Both parties agreed that the lease was not an arms length transaction.

Mr. Edward Mc Hale, Director of the Institute gave evidence that the building was bought for £95,000 and that after it was furnished and fitted out the total cost of the Holding Company was £147,000. He said that this was funded by personal contribution and by a loan of £110,000. The personal contribution, he said was made by the five directors. He said that they all worked in Health Board Centres prior to the setting up of the Clanwilliam Institute. Mr. Mc Hale said that the Institute was set up because of the many advantages it would have over a hospital. He said that in 1982 they had set up a service providing counselling and in 1984 the Marriage and Family Institute was founded. He said that the Articles of Association are the same now as then and that only the name has changed. Mr. Mc Hale said that their policy was to treat people irrespective of their ability to pay. He said that they received a grant of £10,000 from the Department of Health

in 1984 through the Eastern Health Board. The amount, he says, remains the same today. Mr. Mc Hale outlined the services provided by the Centre as follows:

- (1) Family Therapy - child and adolescents
- (2) Marriage Counselling
- (3) Individual group and psychotherapy
- (4) Out-patients treatment for addiction
- (5) Treatment for sexually abused children and their families
- (6) Treatment for depression and anxiety
- (7) Mediation for couples separating (introduced in 1982)
- (8) Psychological assessment for learning difficulties
- (9) Bereavement and psycho-sexual counselling

Mr. Mc Hale said that the Institute also runs training courses in family and marriage therapy, he said that these are paid for by individuals and in some cases by employers including the Health Boards. Mr. Mc Hale said that the Institute also gives educational presentations to local community groups. He said that the charitable status of the Institute has been recognised by the Revenue Commissioners and the Eastern Health Board and that the Institute was the only organisation in Ireland providing such a service. He said that in areas outside Dublin these services would be run by Health Boards. Mr. Mc Hale supplied accounts of the Institute showing the income from clients fees as follow:-

<u>1989</u>	<u>1990</u>
£53,785	£86,291

He said that this represents over 50% of total income, the other sources being:-

- (a) Eastern Health Board Grant

(b) Training Programmes

Mr. Mc Hale said that any profit is used to purchase new equipment for the Institute. He gave details of the salaries of the Staff for 1989 and 1990, which he said were below the average that similar staff employed in the Health Boards would receive. He said that there is no paid Administrator but that there is a full and part time secretary. Under cross-examination from Mr. O'Caomh, Mr. Mc Hale said that in relation to the training courses there is a fee of £1,750 per annum for a two year course which covers the costs of running and providing the course. He said that the courses are for professionals and the public. He said that the majority of people taking the course are employed by the Health Boards and in Social Services generally. He said that with regard to counselling the full fee is £42 per session which usually lasts for one hour. He said that people unable to pay the fee would pay a nominal sum of £5 and in some cases perhaps nothing at all.

Mr. Terence Dineen relied upon his written submission which is summarised above. He said that in his opinion the rent of £17,000 is high. He considered a fair rent at November 1988 to be less than £12,640. He said that 40 units were valued at £12,500 approximately.

Mr. Aindrias O' Caoimh said that he accepted that many of the activities carried on would be considered as charitable but that one must have regard for the Valuation Acts as to the meaning of the term "charitable" and whether the user of the premises comes within the proviso of the Poor Relief (Ireland) Act, 1838 which uses the term "exclusively charitable purposes". Mr. O'Caomh submitted that even though many of the activities are charitable the user is not exclusively charitable. Mr. O'Caomh said that the educational nature of the Institute's work and the income derived therefrom is not exclusively for the poor. He said that the educational aspect is not confined to any particular part of the premises which are capable of being distinguished

under the terms of Section 2 of the 1854 Valuation Act. Referring to Mr. Haughton's reliance on the National Association of Widows in Ireland V Commissioner of Valuation case Mr.

O'Caomh said that if in that case there was any educational activity it was minimal, the main purpose being the counselling of distressed widows. Mr. O'Caomh said that it was evident from the accounts (fees received) that a lot of the activity of the Institute is educational and therefore it is not used exclusively for the poor.

In reply Mr. Haughton said that it is not fair to describe the Clanwilliam Institute as an educational establishment as in the Wesley College case. He said that there was an element of education in the case of the National Association of Widows in Ireland.

### **Authorities Relied Upon**

The following are the legal submissions on the grounds of appeal as submitted by the appellants;-

- (1) The Institute relies on the grounds of appeal set forth in the letters of appeal dated 17th May 1990 and 31st May 1990 sent by Messrs Hickey Beauchamp Kirwan & O'Reilly, the Institute's Solicitors to the Dublin City Manager.
- (2) The Institute is entitled to exemption from rates under Section 63 of the Poor Relief (Ireland) Act, 1838. In this regard the Institute's premises come within the definition of "other buildings used exclusively for charitable purposes".
- (3) The objects of the Institute are "charitable purposes". The Institute is a company limited by guarantee and its primary objects are set forth in Clause 2 (a) of its Memorandum of Association in the following terms:-

"The objects for which the Institute is established are as follows:-

- A. The support, treatment and study of the family as the fundamental social unit and the provision to that end of:
- (i) Counselling and therapy for families, couples and individuals
  - (ii) Training and consultation for health and social service workers
  - (iii) Educational programmes to enhance family life
  - (iv) Research in the area of marriage and the family

provided nevertheless that if at any time a Court of competent jurisdiction hold either that any of the said purposes or objects are not charitable then the purposes and objects of the Institute shall be those which are either then held to be charitable or not held to be non-charitable (as the case may be) or that if all of the foregoing purposes or objects of the Institute shall be of such charitable purposes as are as similar as reasonably practical to the original and foregoing purposes and objects of the Institute."

- (4) These objects and the work of the Institute are charitable in so far as they come within the fourth limb of Lord Mac Naghten's definition in Commissioners for Special Purposes of Income Tax V Pemsel (1891) A.C.531, i.e "trusts for other purposes beneficial to the community".
- (5) The Institute's work is concerned with the social, physical and psychological health of those whom it treats. Its principle work is with couples or families, and in this it supports in a practical way the constitutional guarantees to protect the family and the children of the family. In so far as the Institute deals with marital

breakdown it does so in order to reduce confrontation, minimise distress and other psychological sequelae, to keep cost to minimum and, so far as possible, avoid the cost and trauma of Court confrontation. The Institute's help and service are open to all members of the public. The effect of the Institute's work is often:

- (a) To avoid or reduce mental or physical illness;
- (b) To cure or aid in the cure of mental illness or psychological disorder;
- (c) To reduce recourse by patients or clients to hospitals or other institutions;
- (d) To provide a necessary social service and to provide counselling and mediation required under the Judicial Separation and Family Law Reform Act, 1989

In the foregoing the Institute's work is beneficial to the community.

- (6) For the "charitable" status of its objects the Institute also relies on
  - a) "Re Osmund" (1944) CH 206
  - b) Clancy V Commissioner of Valuation (1911) 2 I.R. 173
  - c) and by analogy all the cases in which hospitals and clinics have been held to be charitable.
  - d) Irish Statute 10 Car I Sess. 3.C.1.
  - e) By analogy S 8 (1) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955 (England) and S 40 of The General Rates Act, 1967
  
- (7) Alternatively the Institute's premises are "used for charitable purposes" within the meaning of Section 2 of the Rateable Valuation Ireland (Amendment) Act, 1854 and the Commissioner has a duty so to distinguish them, and they should therefore be deemed exempt from all assessment of rates.

The Institute relies on this statutory exemption on the authority of Governors of Campbell College, Belfast V Commissioner of Valuation for Northern Ireland (1964) 2AER HI 705.

- (8) The Commissioner of Valuation appears to take the view that the Institute is not a charity because fees are charged to some patients/clients.

- In fact:
- a) Fees are charged but only based on the patient's/client's ability to pay;
  - b) Frequently no fee is charged or collected;
  - c) The Institute is non-profit making. See Clause 3 of Memorandum of Association:  
 "The income and property of the Institute whencesoever derived shall be applied solely towards the promotion of the objects of the Institute .....".
  - d) Fees collected are used only to sustain the charity/improve its service.
  - e) The Institute in fact runs at a loss and could not survive without grant aid from the Eastern Health Board (presently £10,000 per annum).

The fact that fees are charged does not render the Institute's purposes non-charitable. There is well established authority for this. The Institute relies on:-

Pemsel's Case (op cit)

Barrington's Hospital and the City of Limerick Infirmary V Commissioner of Valuation (1954) IR 299

Guardians of Limerick Union V Slattery (1892)

The Guardians of Belfast Union V Ryan (1894)

U.C.C. V Commissioner of Valuation (1912) 2 I.R. 328

Queen's University V Commissioner of Valuation (1911) 40 ILTR 96

The Good Shepherd Nuns (1930) I.R. 646

Inland Revenue V Peebleshire Nursing Association (1927) S.C.

Cawse V Committee of Nottingham Lunatic Hospital (1891) 1 QB 585

- (9) The Institute is registered as a charity with the Revenue Commissioners being a body "established for charitable purposes only" within the meaning of Section 333 of the Income Tax Act, 1967 (as extended to companies by Section 11 (6) of the Corporation Tax Act, 1976). It is submitted that the definition of "charitable purposes" for the purpose of Section 333 of the Income Tax Act, 1967 and for the purpose of Section 63 of the 1838 Act is, in this instance, one and the same.
- (10) The Eastern Health Board by its grants to the Institute recognises:
- (a) the Institute's on-going service to "health" within that Board's functional area;
  - (b) the Institute's non-profit making status;
  - (c) by implication, the Institute's charitable status;

- (d) by implication that the Institute fulfils purposes which the Eastern Health Board would otherwise have to fulfil as part of its statutory function.
- (11) Alternatively the revisions (£80.00 for offices and £8.00 for car parking) are excessive having regard to the nature of the work carried on by the Institute and the fact that it is non-profit making.

The Respondent relied on the following authorities;-

- (1) Poor Relief (Ireland) Act, 1838
- (2) Judgment of Mr. Justice Kingsmill-Moore in the Barrington Hospitals Case [1957] IR 333
- (3) Brendan V Commissioner of Valuation [1969] IR 202
- (4) Judgment of Supreme Court in Wesley College Case
- (5) The Campbell College Case

## **FINDINGS**

The Tribunal is mindful of its decision in the National Association of Widows in Ireland Limited case of the 25th November, 1988. In the judgment of that case it was stated:

"Social science has expanded over the years and the range of services provided by the modern State has expanded. The Law cannot remain stagnant and in particular, the Tribunal takes the view that the invocation of the constitutional provisions as regards the family is relevant in deciding whether this Association is entitled to exemption on the grounds of its charitable purposes.

The Tribunal is in no doubt that the loss of a spouse must be a most traumatic happening in any persons life and any Association which is formed to ameliorate the distress calls to such persons must on any definition be regarded as charitable".

Having regard to the forgoing considerations the Tribunal finds that the services provided by the appellants in the subject premises are primarily for the relief of distress within the family. The Tribunal adopts the legal reasoning of the Widow's case. The appellants argued that the definition of charity should be expanded in this case along the lines suggested in the Campbell College case cited above. The Tribunal finds that, in view of the fact that the Campbell College rational did not find favour with the Irish Courts, it is unwilling to find for the appellants solely on the basis of expanded "Campbell College" criteria in relation to the charitable nature of the activities carried on in the subject premises.

However, the Tribunal finds that another question must be answered to satisfy the tests as to whether the premises comes within the proviso of the Poor Relief (Ireland) Act, 1838. This proviso provides for the charitable exemption except were:

"any private profit or use should be directly derived therefrom, in which case the person deriving such profit or use shall be liable to be rated as an occupier according to the annual value of such profit or use".

While the Respondents, through their counsel accepted that the appellants were operating bona fide as a Company limited by guarantee, expecting to receive a licence to the use of their name without the word Limited, the Tribunal was apprehensive during the hearing that the manner of holding the lessors interest in the building might be contrary to the policy of the exemption in the 1838 Act. The apprehension arises from the fact that the main movers of the appellant Company bought the Lessors interest in the property for £95,000 and leased the same to the appellant on a

long lease with periodic reviews having expended a total of £147,000 thereon. They held the lessors interest by what was described as a Holding Company which was never suggested to have the special attributes required so as to entitle it to charitable exemption under the income tax code. The Holding Company is in fact a Private Company and the single asset of that Private Company seems to be the lessors interest in the premises which, with rent reviews in the future, will appreciate in value after the considerable loan of £110,000 is paid off. While the Tribunal accepts that the principals of both Companies who appear to be common to the Holding Company and the appellant Company are not mindful to increase the rent to the detriment or strain of the appellant Company in the immediate future, the Tribunal is apprehensive that the means by which a private profit may be secured for the principals of the appellant Company are ever present through the structure of the lease and the Holding Company. The respondents argued that the rent of £17,000 per annum from the 1st January, 1989 was an excessive rent. However, when it was explained that this rent was not fixed until much later in the year it was accepted and the Tribunal accepts that the suggested rent of £12,600 which was the basis of the agreed Net Annual Value as of November 1988 would not be a realistic rent to be agreed in or about July 1989 having regard to the considerable improvements in rental values which occurred during 1989. While both parties agree that the lease was not an arms length transaction, the Tribunal accepts that the £17,000 per annum rent was a reasonably arms length type rent which reflected market rental values in mid 1989.

Nevertheless, the Tribunal is apprehensive that the holding structure of the premises permits a substantial opportunity indirectly to take a profit from the venture in the event of it becoming widely used (as, no doubt, in the light of the tremendous service being given in an area of high demand, it will be). While the point was not canvassed at all by the respondents the Tribunal is mindful that the Tribunal is the sole arbiter in relation to the question of exemption and is moved by the judgment of Danckwerts J. in the case Abbey Malvern Wells L.D. -V- Ministry of Local Government and Planning 1951 Chancery Division page 728 where the applicant Company

applied to the Minister of Town and Country Planning in England for a ruling under Section 92 of the Town and Country Planning Act 1947 that the land occupied by the Company was land to which Section 85 subsection (1) & (2) of the Act applied so as to be exempted from payment of development charges. One of the conditions required to be fulfilled by Section 85 subsection (1) of that Act was that the interest in the land must be held in Charitable Trusts or for charitable purposes of some description. The case was complicated by the fact that while the structure of the Company was such that the Company had power to make profits and to distribute dividends, the Company was administered by a Council consisting of Trustees for the time being of a trust which undoubtedly had a charitable purpose.

Danckwerts J. dealt with the issue on page 738.

"The next question is: can it be said that the property, which is vested technically in the Company, is held upon Charitable Trusts or for charitable purposes? The strength of Mr. Buckley's case in this respect rests upon the fact that it is not the trustees who own or hold the property; they hold the shares only, and he says, accepting for the sake of argument, that the trusts of the trust deed are charitable, that they are trusts only of the shares, not of the land; and for the purpose of the section it is the trusts of the land which are material. I think that Mr. Upjohn is quite right when he says that it is wrong to treat these two documents, the memorandum and the articles of association and the trust deed, as if they were entirely divorced from each other, and that regard must be had to the facts of the case.

The first fact is that this company is an artificial person. It is just as much, though formed under the Company's Act, an artificial person as a corporation formed by statute or by Royal Charter or in any other manner. It is certain, that if it is a person which exists in the eyes of the law, it is not a physical entity, and can only operate by means of human beings. Therefore, one must ascertain the persons who operate the company and see what

their position is. A similar question arose in a case before me a short time ago in re. French Protestant Hospital (1951 Chancery Division page 567). That case was concerned with the remuneration of trustees; technically the trustee was a corporation formed by Royal Charter, but I found that it was controlled by a body of persons called the governor and directors, and when considering whether the governor or directors ought to receive remuneration, I held that I must look at the substance of the matter, and see who really control the situation. I held, accordingly, that the governor and directors were just as much in a fiduciary position and in the position of trustees as the corporation itself.

It seems to me in the present case that one is entitled, and indeed bound, to look at the constitution of the company to see who in fact is in control."

In this case the Tribunal finds that those in control of the appellant Company also control the Holding Company and are in a position to make private profit from that by operating the rent reviews on the basis of arms length operations. The Tribunal therefore finds that the reality of the situation in relation to the holding structure, over-all, of the appellants premises is such that private profit is directly derived therefrom within the meaning of the Act of 1838. The Tribunal would be of a different view of the matter and hold entirely for the exemption status of the appellant premises if the position of the Holding Company were different, so that any surplus or equity might be covenanted back into the Trusts of the appellant Company, or, whereby the Holding Company might have as its main objects the Trust of the appellant Company.

The Tribunal accordingly holds against the appellants in relation to the issue of exemption and finds that the subject premises are not entitled to exemption. Other issues in relation to car parking facilities were dealt with at another hearing and the Tribunal makes no finding in relation to same in this judgment.

