

IN THE MATTER of the Charitable Trusts
Act 1957

a n d

IN THE MATTER of the Evan Gibb Hudson
Scholarship Fund

Counsel: R J Bollard for Applicant
C J McGuire for Attorney-General

Date: 9 June 1983

RULING OF THORP J

The Court is asked to approve a scheme proposed under the provisions of Part III of the Charitable Trusts Act 1957 varying the conditions of a scholarship fund established pursuant to the will of Harold Willey Hudson who died in 1934, in memory of his son, Lieutenant Evan Gibb Hudson NZE, who was killed in action in France on 9 September 1918, the scholarship being known as the Evan Gibb Hudson Scholarships.

The Trusts were amended by an earlier scheme approved in this Court by order of Stanton J on 23 December 1948. Since that date the Auckland University which administered the scholarships has found that changing circumstances have made it inexpedient and impracticable to continue to administer the Fund on the terms settled in 1948 and proposed a new scheme involving:

1. The removal of a requirement that applicants for scholarships be persons serving in an engineering corps of the New Zealand Army;

2. Removing the limitation of the benefit of scholarships to males; and
3. Removing a number of minor difficulties of a mechanical nature which arose from the form of the scheme as settled in 1948.

Upon the proposed scheme being referred to the Attorney-General he prepared a report which in general terms supported the amendments proposed to remove mechanical difficulties but queried whether sufficient grounds had been raised to justify the alteration of the scheme in either of the first two manners just described. This report resulted in further discussion and consideration of the matter as between the University, the Armed Services and the Crown Law Office, as a result of which I have today been handed an Amended Scheme. This incorporates the mechanical amendments in the first proposed scheme. Again it discontinues the limitation of benefits to male applicants but reinstates the requirement that applicants be persons who are serving with one of the engineering corps or their equivalent so long as there is in New Zealand a military organisation for the training of citizen soldiers.

I am content that in general terms the amendments to the original proposals were appropriate and such that the scheme as now proposed should be approved. It is my view that the one matter within it which the Attorney-General originally regarded as a matter for concern, that is the removal of the limitation of benefit to male applicants, comes within the class of amendments which the authorities indicate may be approved by a Court as being necessary to meet changed circumstances which very probably could not have been contemplated by the original settlor or testator. At the time when the late Mr H W Hudson made his will it seems to me entirely unlikely that he would have contemplated either that

there would be female engineering graduates from the University of New Zealand as it then was, or that there was any significant likelihood that there would be women members of the engineering corps. It is on that ground and not on any ground related to such matters as the current sensitivity over discrimination on the basis of sex that the amendment deserves the support of the Court.

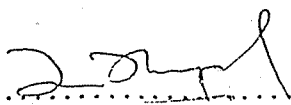
The only matter which seemed to me to deserve some further consideration was the provision in para (d) of the Scheme now presented dealing with definition of the organisations to which applicants must belong, simply on the ground that it is likely that there will be continuing changes in the form of our Armed Services and defence organisations. It seemed to me that the Scheme might be given greater longevity and usefulness if some mechanism were inserted to ensure that there need not be any further references back to the Court to determine whether or not any organisation was a successor or equivalent of the named organisations.

The wording suggested by Mr Bollard for that purpose as a final clause of para (d) was -

" If a doubt shall arise whether any particular organisation is a successor or equivalent to any of the abovenamed corps that question may be resolved by the Council of the University of Auckland after consultation with the Ministry of Defence or the Attorney-General. "

With the addition of that clause to para (d) I am prepared to make an order in terms of the draft order presented.

The costs provision in the draft order is to be completed by allowing to the Applicant by way of costs the sum of \$1710 together with disbursements to be fixed by the Registrar and by allowing the sum of \$200 for the costs of the Attorney-General.


.....