

Special
Consideration

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.No. 333/84

538

IN THE MATTER of the Charitable
Trusts Act 1957

A N D

IN THE MATTER of an Application by
the LES WOOD MASONIC
TRUST INCORPORATED
for the approval of a
Scheme under Part III
of the abovementioned
Act

APPLICANT

Hearing & Minute : 3rd May 1984
Counsel : C.R. Hutchinson Q.C. and A.C. Wright
for applicant

MINUTE OF CHILWELL J.

This is an application under Part III of the Charitable Trusts Act 1957 (the Act) for the approval of a scheme varying the trusts in order to dispose of accrued and accruing income in excess of the needs of the purposes contained in the original deed of trust executed on 29th September 1970. The trustees are incorporated as a Board under Part II of the Act under the name Les Wood Masonic Trust Incorporated (the applicant). The application is essentially founded on

Section 32(2) of the Act which provides for a scheme where the income of a charitable trust is more than necessary for the charitable purpose. The Court is given additional powers under Section 33 of the Act in regard to varying and extending the powers of the trustees (in this case called "the Council") and the mode of administration of the trusts.

The Solicitor-General's statutory report on behalf of the Attorney-General certifies that the scheme is a proper one and should carry out the desired purpose or proposal, is not contrary to law or public policy or good morals, can be approved under Part III of the Act; that every proposed purpose is charitable within the meaning of Part III and can be carried out and the requirements of Part I have been complied with in respect of the scheme. The report is dated 27th July 1983. There has been no change in any relevant circumstance since then. The settlor died on 15th June 1982. His death has no effect upon the scheme or upon the present motion.

The scheme is in the form of a new deed which was executed by the settlor, the applicant and the trustees on 21st October 1980. The Solicitor-General commented that this method of propounding a scheme was unusual. Mr. Hutchinson submitted that it is far simpler to administer the trusts by reference to one only document than by reference to the original document and its amendments. He stated that in his experience the practice had been accepted in this Court on prior occasions. I agree with Mr.

Hutchinson. Anyone with experience of company articles of association or rules of clubs will comprehend the desirability of having the regulations expressed in one document. Parliament recognises the principle by its process of reprinting Statutes and Regulations.

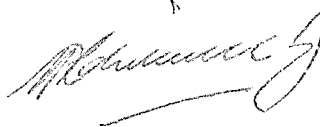
The documents in this case have been carefully and thoughtfully prepared. The Court expresses its appreciation to counsel. Moreover, when Mr. Hutchinson appeared in support of the motion he handed me a folder of all relevant documents collected in the sequence of his helpful written submissions. The folder has an index: each page is numbered. I commend this course not only in cases such as the present but in all cases where the evidence is wholly or substantially in affidavit or document form. Too often the Court is faced with a plethora of affidavits and documents many of which are of an interlocutory nature and no longer relevant. Moreover, with respect to relevant material, often no attempt is made to link the affidavits and the documents in any logical form. This hit or miss process prolongs the hearing: it frequently prevents the Judge from giving an oral judgment for fear that he may have overlooked some important fact or because he has not had the necessary assistance in linking the evidence and documents together in the correct way.

Mr. Hutchinson described the folder as an "American brief". The time has come to follow our American cousins. There is no reason why a "New Zealand brief" ought not to

be as well prepared. I invite counsel generally to attend the Court Registry to examine the brief and accompanying submissions as a precedent approved by me for the general run of cases involving evidence wholly or substantially in affidavit or document form. The submissions are signed by both counsel: So I infer that Mr. Wright assisted Mr. Hutchinson in preparation of the submissions and the "American brief".

It remains to note that the Solicitor-General did not appear. Appearance by him was not necessary in view of the complete and helpful nature of his report. There were no objectors.

There will be an order, in terms of the motion, approving the scheme. At Mr. Hutchinson's suggestion I also direct the Council to file a certified copy of the new deed together with a sealed copy of the order of this Court with the Registrar of Incorporated Societies. Section 6 of the Act is relevant. The costs of the Solicitor-General acting on behalf of the Attorney-General are fixed at \$250. They are to be paid by the applicant.



Solicitors :

Applicant	:	Wright & Co. Auckland.
Attorney-General	:	Crown Law Office, Wellington.