

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 38/2020  
[2020] NZSC 102

BETWEEN

COMMISSIONER OF INLAND  
REVENUE  
Applicant

AND

THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS TRUST BOARD  
First Respondent

PAUL ROSS COWARD  
Second Respondent

Hearing: 15 September 2020  
Court: O'Regan, Ellen France and Williams JJ  
Counsel: H W Ebersohn and C M Kern for Applicant  
R A Green and N B Bland for Respondents  
Judgment: 30 September 2020

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**JUDGMENT OF THE COURT**

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- A The application for leave to appeal is dismissed.**
- B The applicant must pay costs of \$4,500 plus usual disbursements.**
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**REASONS**

[1] This application for leave to appeal raises for consideration the requirements of s LD 1 of the Income Tax Act 2007, which provides that a donor of “a charitable or other public benefit gift” is entitled to a tax credit.<sup>1</sup>

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<sup>1</sup> Income Tax Act 2007, s LD 1(1).

[2] The case concerns payments made to the first respondent, The Church of Jesus Christ of Latter-Day Saints Trust Board (the Board), an entity associated with The Church of Jesus Christ of Latter-Day Saints in New Zealand (the Church), by donors who are, or are associated with, missionaries selected by the Church to proselytise overseas.

[3] The Commissioner of Inland Revenue (the Commissioner) wishes to challenge a decision of the Court of Appeal in which that Court found the payments in issue were gifts.<sup>2</sup>

### **Background**

[4] The Church sends missionaries to proselytise in other countries on missions lasting between 18 and 24 months. The Church expects the missionaries, their families and other supporters to make sacrifices to support these missions. The missionary is expected to live frugally while on a mission. Their New Zealand-based families and supporters are expected to make donations to the Board in light of the mission, though the recommended sum does not reflect actual cost. It is currently set by the Board at NZ\$385 per month, but it fluctuates from time to time.

[5] These donations are applied at the Board's discretion towards the New Zealand activities of the Church. They are not in fact applied either directly or indirectly towards the missionary work undertaken by the missionary overseas. Instead, the basic travel and living expenses of the missionary are paid by the Church organisation of the country in which the missionary is serving (or, if the Church in the host country is unable to meet those costs, then the Church in Salt Lake City meets them).

[6] The link (or lack of link) between the payments made by donors and the mission undertaken by the missionary is at the heart of the present dispute.

[7] It was common ground that all of the payments under consideration had been voluntary, were not refunded, and, once received, could be applied by the Board at its sole discretion towards the activities of the Church and would not be applied directly

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<sup>2</sup> *Church of Jesus Christ of Latter-Day Saints Trust Board v Commissioner of Inland Revenue* [2020] NZCA 143, (2020) 29 NZTC ¶24-066 (Cooper, Collins and Stevens JJ) [CA Judgment].

or indirectly towards missionary work that the missionary performs overseas. So these attributes of a gift were met.

[8] However, the Commissioner's case was that, as the donors received a material benefit from the payments made to the Board, the payments did not meet the requirements of a gift.

### **High Court**

[9] The High Court found that the requirements of s LD 1 for a gift were met in relation to some payments, but not others.<sup>3</sup> The High Court Judge held that payments made by missionaries, their parents, their grandparents and their legal guardians were not gifts in terms of s LD 1. These donors received a material benefit from the missionary undertaking missionary service.<sup>4</sup> There was also a clear link between the payment and this benefit (the activities of the missionary).<sup>5</sup> Donors in this category made the payments to facilitate the missionary being able to travel and carry out their mission. Although there was no legal obligation to make the payments to ensure the candidate to be a missionary was accepted, there was a clear moral obligation on the Church and a strong understanding on the part of donors that their payments would enable the missionary to go and to have their expenses met while on the mission.<sup>6</sup>

[10] However, the High Court Judge held that other donors, including siblings, cousins and friends, did not receive any material benefit, so their payments were gifts in terms of s LD 1.<sup>7</sup> They were therefore entitled to tax credits in respect of these payments.

### **Court of Appeal**

[11] The Court of Appeal reversed the finding of the High Court in relation to donations by missionaries, their parents, grandparents and legal guardians. It held that

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<sup>3</sup> *Church of Jesus Christ of Latter-Day Saints Trust Board v Commissioner of Inland Revenue* [2019] NZHC 52, (2019) 29 NZTC ¶24-000 (Hinton J) at [127]–[128].

<sup>4</sup> At [113]–[114] and [117].

<sup>5</sup> At [103].

<sup>6</sup> At [105]–[106].

<sup>7</sup> At [119]–[120].

these donors received no more than a spiritual or moral benefit.<sup>8</sup> Nor did the Court consider that there was a sufficient connection between the payments and any material benefit received.<sup>9</sup> The payments were therefore gifts in terms of s LD 1. The Court upheld the High Court finding in relation to donations by other donors. So all donors were entitled to tax credits under s LD 1.<sup>10</sup>

### **Grounds on which application is advanced**

[12] The Commissioner argues that leave should be granted because two issues arise, both of which are points of public importance or of commercial significance.<sup>11</sup>

[13] The first of these involves the approach taken by the Court of Appeal to the interpretation of the Income Tax Act. The Commissioner argues that the Court evaluated the link between the payments and the benefit based upon whether there was a *legal* arrangement connecting the two. This, it is argued, involved an application of the *Duke of Westminster* doctrine.<sup>12</sup> The Commissioner argues that the Court of Appeal took an unduly legalistic approach to its assessment as to the nature of the link between the payments and the alleged benefits, in contrast to the substance-based approach taken by the High Court.

[14] The Commissioner wishes to argue on appeal that tax statutes should, like other statutes, be interpreted purposively, following the approach in s 5 of the Interpretation Act 1999. Although the Court of Appeal said that it would determine the meaning of “gift” by reference to the text and purpose of the legislation and then apply that meaning by considering all of the arrangements that were actually entered into and carried out,<sup>13</sup> the Commissioner argues that the Court did not, in fact, adopt a purposive interpretation.

[15] We accept that the correct approach to the interpretation of tax statutes is a matter of public importance and commercial significance. But we are not persuaded

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<sup>8</sup> CA judgment, above n 2, at [59]–[63].

<sup>9</sup> At [64]–[69].

<sup>10</sup> At [74]–[75].

<sup>11</sup> Senior Courts Act 2016, s 74(2)(a) and (c).

<sup>12</sup> *The Commissioners of Inland Revenue v The Duke of Westminster* [1936] AC 1 (HL) at 19–20 per Lord Tomlin.

<sup>13</sup> See CA judgment, above n 2, at [28] and [54].

that this is an appropriate case for that issue to be considered by this Court. First, it is not clear to us that the Court of Appeal did, in fact, apply the *Duke of Westminster* doctrine. Second, the question at issue in this case, namely whether the alleged benefit derived by donors was such that it meant the payments should not be categorised as gifts, is an intensely fact-specific question, and the facts in this case are relatively unusual. We are not satisfied that a matter of general and public importance arises. We do not therefore grant leave on this ground.

[16] The second issue, which is really a subset of the first, is the meaning of the term “gift” in the context of s LD 1. Again, we see the difference between the approaches of the Court of Appeal and High Court as being matters relating to the interpretation of the facts of the case, rather than matters of legal significance. We are therefore not satisfied that the criteria for the granting of leave to appeal are met in relation to this issue either.

### **Result and costs**

[17] The application for leave to appeal is dismissed. The Commissioner must pay the respondents costs of \$4,500 plus usual disbursements.

Solicitors:  
Crown Law Office, Wellington for Applicant  
Simpson Grierson, Auckland for Respondents