

Deregistration decision: Family First New Zealand (CC42358)

Executive Summary

1. The Charities Registration Board (the Board) has determined that Family First New Zealand (the Trust) is not qualified for registration as a charitable entity and that it is in the public interest that it be removed from the Charities Register.¹
2. The Board considers that the Trust does not qualify for registration for three reasons. First, the Trust's main purpose is to promote points of view about family life, the promotion of which is a political purpose because the points of view do not have a public benefit that is self-evident as a matter of law. The Board's view on the Trust's main purpose is as outlined in paragraph 3 below. Secondly, the Board considers that the Trust's purpose to promote points of view about family life is not a charitable purpose to advance religion or education, nor a purpose beneficial to the public within the fourth category of charity at general law. Thirdly, the Board considers that the Trust has an independent purpose to procure governmental actions (including legislation, policies and governmental decisions) consonant with the Trust's point of view. This purpose to procure governmental actions is a political purpose that is not charitable, and is not ancillary to any valid charitable purpose of the Trust.
3. Having considered the Trust's rules document in light of its activities and submissions, the Board considers that the Trust has a main purpose to promote the view that the "natural family" (defined by the Trust as the union of a man and a woman through marriage) is the fundamental social unit, and should be supported as such to the exclusion of other family forms (described by the Trust as "incomplete or fabrications of the state").²
4. The Board is satisfied that it is in the public interest that the Trust be removed from the Charities Register.³ The purposes of the Act include purposes to promote public trust and confidence in the charitable sector, and the effective use of charitable resources.⁴ The Board considers that

Section 32(1)(a) of the *Charities Act 2005* provides, 'The Board may direct that an entity be removed from the register if – (a) the entity is not, or is no longer, qualified for registration as a charitable entity.' Section 35(1) further provides that, if an objection to removal is received, the Board must not proceed with the removal unless satisfied that it is in the public interest to proceed with the removal.

See <http://familyfirst.org.nz/about-us/frequently-asked-questions/> [accessed 22 January 2013].

That is, the register established under section 21 of the *Charities Act 2005* and published at <http://www.charities.govt.nz>.

See section 3(a) and (b) of the Act.

it would not promote these purposes if an entity that does not qualify for registration were allowed to remain on the Charities Register.

5 The Board's reasons appear below, organised under the following headings:

- A. Background
- B. Legal Framework for Deregistration
- C. The Board's Analysis
 - C.1 Overview
 - C.2 Political purposes to promote controversial points of view and the Trust
 - C.3 Religious purposes and the Trust
 - C.4 Educational purposes and the Trust
 - C.5 Purposes beneficial to the community and the Trust
 - C.6 Political purposes to secure governmental actions and the Trust
- D. Section 5(3) of the Act
- E. Section 35(1) of the Act
- F. Determination

A. Background

6 The Trust was established by deed on 26 March 2006 and incorporated under the *Charitable Trusts Act 1957* on 6 April 2006 under the name Family First Lobby. The Trust changed its name to Family First New Zealand in November 2006.

7. The Trust's stated purposes at clause 4 of the deed are

A. To promote and advance research and policy supporting marriage and family as foundational to a strong and enduring society;

B. To educate the public in their understanding of the institutional, legal and moral framework that makes a just and democratic society possible;

C. To participate in social analysis and debate surrounding issues relating to and affecting the family being promoted by academics, policy makers, social service organisations and media, and to network with other like-minded groups and academics;

D. To produce and publish relevant and stimulating material in newspapers, magazines, and other media relating to issues affecting families;

E. To be a voice for the family in the media speaking up about issues relating to families that are in the public domain;

F. To carry out such other charitable purposes within New Zealand as the Trust shall determine.

8 The Trust deed at clause 20 requires that trustees sign a statement of faith, annexed to the deed.

- 9 The Trust applied for registration under the *Charities Act 2005* (the Act) in February 2007, and was registered effective 21 March 2007.
- 10 The Trust has filed annual returns, as required under the Act, for its financial years to 31 March 2008, 2009, 2010, 2011 and 2012. The Trust has provided information about its activities to the Charities Commission: in support its application for registration in 2007; and in response to inquiries sent by the Charities Commission in February 2008 and June 2009.⁵ The Trust also maintains a number of websites that document its activities.⁶
11. On 11 September 2012, after reviewing the purposes and activities of the Trust, Charities Services sent a notice of intention to remove the Trust from the Charities Register, on the ground that it has a main non-charitable purpose of advocating and promoting a point of view that is a political purpose outside the scope of charity.
12. At the Trust's request, staff from Charities Services met with a trustee of the Trust in Wellington on 31 October 2012 to discuss the matters raised in the notice of intention to remove.
- 13 On 28 November 2012, the Trust submitted a written objection to the notice of intention to remove, enclosing a letter dated 26 November 2012 from Queen's Counsel providing supplementary submissions on the notice of intention to remove.
14. In its letter of 28 November 2012, the Trust reproduces the text of its earlier correspondence with the Charities Commission about the Trust's activities. The letter continues:

Since that time, nothing has changed. The nature and balance of our work remains the same. As with the anti-smacking law which raised our public profile (along with other groups who were either arguing with us or against us), our profile has now been raised by the 'marriage debate'. But our charitable purposes remain the same –

Education – research, publishing and advocacy leading to an increase in the store of knowledge improving learning in the field of education – this being family, marriage and moral issues

Advancement of religion – advancing values specific to religion – including pro-life, pro-marriage, pro-moral value advocacy. It is also amongst the public and a significant section of the community.

⁵ The Board has reviewed correspondence between the Trust and the Charities Commission, comprising letters exchanged on 1 March and 5 March 2007; 21 and 25 February 2008; 25 June 2009, 28 July 2009 and 16 March 2010.

⁶ <http://familyfirst.org.nz/> [accessed 1 March 2013]; <http://valueyourvote.org.nz/> [accessed 1 March 2013]; <http://www.protectgoodparents.org.nz/>; <http://www.protectmarriage.org.nz/> [accessed 1 March 2013].

Other purposes beneficial to the community – for the public good. All discussion, research, publishing and debate on what is best for family and civil society is a charitable purpose.

It now appears that while our work hasn't changed, the opinion of the Commission has.

We maintain that political advocacy is not the primary reason for our existence. They are secondary to being involved in the public domain and researching, informing and advocating on family issues for the public benefit.

We would continue to exist and provide research, conferences and education even if we weren't participating in the democratic aspects of making submissions on certain family based legislation.

15. The letter also contains submissions on specific activities of the Trust noted in the 11 September 2012 notice of intention to remove.

16. The supplementary letter from Queen's Counsel describes the Trust's purpose as "promotion of the family and encouraging discussion, research, publishing and debate on what is best for family and civil society". It submits that the Trust's activities in pursuit of these purposes qualify as educational, and that they are beneficial to the community under the fourth head. This last point is supported by reference to New Zealand's international treaty obligations under the Convention on the Rights of the Child, and New Zealand legislation establishing the Families Commission with the function to "act as an advocate for the interests of families generally" and "identify and have regard to factors that help to maintain or enhance families [resilience and strengths]". The letter submits that, once it is established that an entity is pursuing purposes that are charitable under the second or fourth head, "the particular perspective or point of view on which the entity approaches those objects ceases to be relevant":

Clearly viewpoints on how the family may best be supported will differ, but once it is accepted that this primary purpose is charitable, then provided that the Trust is acting consistently and within that purpose (and is not supporting some extraneous agenda), and is open to other perspectives, then the fact that the Trust may approach matters from a particular viewpoint or perspective and includes in this respect a Statement of Faith in its Trust deed does not disqualify it from being registered as a charity.

17. The letter from Queen's Counsel also contains submissions on procedural matters. The Board has read and considered these submissions, and addresses them set out in section E, below.

B. Legal framework for deregistration

18. Section 50 of the Act provides that the chief executive of Charities Services may examine and inquire into any registered charitable entity, including into its activities and proposed activities, and its nature, objects and purposes.

- 19 Section 32(1)(a) of the Act provides that the Board may direct that an entity be removed from the register if the entity is not, or is no longer, qualified for registration as a charitable entity, provided that the entity has been given notice under section 33. Under section 35(1)(a) of the Act, if an objection to the removal of an entity from the register is received, the Board may proceed with the removal if it is satisfied that it is in the public interest to proceed with the removal and (among other things) at least one ground for removal has been satisfied.
- 20 The power under section 32(1)(a) is to be exercised on the grounds set out in sections 32 and 35, and for the purposes of the Act set out in section 3 of the Act.⁷
21. The essential requirements for registration as a charitable entity are set out in section 13 of the Act. Under section 13(1)(a) of the Act a trust qualifies for registration if it is a trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes. This criterion is not met unless the income is derived for exclusively charitable purposes.⁸
22. Section 5(1) of the Act defines charitable purpose as including every charitable purpose "whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community". This statutory definition adopts the well-established fourfold classification of charitable purpose at general law.⁹
23. To be charitable at law a purpose must be for the public benefit.¹⁰ Public benefit must be expressly shown where the claimed purpose is benefit to the community.¹¹ Further, in every case, the direct benefit of the entity's

⁷ *Greenpeace of New Zealand Incorporated* [2012] NZCA 533 ("*Greenpeace, CA*") at [34], [37], [38].

⁸ See *McGovern v Attorney-General* [1982] 1 Ch 321 ("*McGovern*") at 340. In New Zealand, see *Canterbury Orchestra Trust v Smitham* [1978] 1 NZLR 787 at 794-796; *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 ("*Molloy*") at 691. See also the assumption evident in the provision set out in section 5(3) and (4) of the Act, that a trust will not be disqualified from registration because it has *ancillary* non-charitable purpose.

⁹ This statutory definition adopts the general law classification of charitable purposes in *Commissioner for Special Purposes of Income Tax v Pemsel* [1891] AC 531 extracted from the preamble to the *Statute of Charitable Uses 1601* (43 Elizabeth 1 c 4) and previous common law: *Greenpeace, CA* at [42]; *In Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 ("*Education New Zealand Trust*") at [13]; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] ("*Draco*") at [11].

¹⁰ Authorities include: *Oppenheimer v Tobacco Securities Trust Co Ltd* [1951] AC 297; *Verge v Somerville* [1924] AC 496; *Dingle v Turner* [1972] AC 601. See also: *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 ("*Accountants*") at 152-155; *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 ("*Latimer, CA*") at [32]; *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 (HC) ("*Travis Trust*") at [54], [55]; *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818, 24 June 2011 ("*Queenstown Lakes*") at [30]; *Education New Zealand Trust* at [23]

¹¹ *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 ("*CDC*") at [45].

purposes must flow to the public or a sufficient sector of the public.¹² Any private benefits arising from an entity's activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it.¹³

24. Section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not preclude registration if it is merely ancillary to a charitable purpose. Pursuant to section 5(4) of the Act, a non-charitable purpose is ancillary if the non-charitable purpose is:

(a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society or institution; and

(b) not an independent purpose of the trust, society or institution.

25. It is clear that determining whether a non-charitable purpose is ancillary includes a qualitative assessment of whether it is a means to advance the charitable purpose.¹⁴ It also involves a quantitative assessment, focusing on the relative significance of the purpose as a proportion of the entity's overall endeavour.¹⁵

Relevance of entity's activities in registration decision-making

26. Section 18(3)(a)(i) and (ii) of the Act provide that the activities of an entity must be taken into consideration when determining whether that entity qualifies for registration under the Act.¹⁶ The courts have confirmed that consideration of activities is a mandatory aspect of decision-making

¹² See discussion in *Latimer, CA* at [32] - [37]. The courts have held that the downstream benefits of an entity's activities do not serve to characterise the purpose of the entity: see *Accountants* at 153 (the "generalised concept of benefit" identified with the public satisfaction of knowing that the fund is there to safeguard and protect clients' interests is too "nebulous and remote" to characterise the purpose of the fund); *Travis Trust* at [30] - [35] (holding that where the express purpose was to "support the New Zealand racing industry by the anonymous sponsor a group race known as the Travis Stakes", the purpose was to support that single group race and not to support the racing industry or racing public as a whole). See to the same effect *Queenstown Lakes* at [68] - [76] (held that the purpose of the Trust was to provide housing for individuals not to advance the overall welfare of the community by enabling workers to stay in the area); *CDC* at [67] (primary purpose is the assistance of individual businesses and the "hope and belief" that the success of those businesses would increase the economic wellbeing of the Canterbury region does not establish public benefit as a primary purpose). See for example *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 ("*Professional Engineers*") at 578; *Re New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] ("*Computer Society*") at [42]; *Education New Zealand Trust* at [23]; *Queenstown Lakes* at [68] - [76]; *CDC* at [67]. Compare: *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218 ("*Oldham*"); *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294.

¹⁴ For recent judicial comment on the qualitative test see *Greenpeace, CA* at [62], [83] - [91].

¹⁵ The quantitative requirement was applied by the High Court in *Re Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011] ("*Greenpeace, HC*") at [68]; *Computer Society* at [16]; *Education New Zealand Trust* at [43]-[44]; *Re The Grand Lodge of Antient Free and Accepted Masons in New Zealand* [2011] 1 NZLR 277 (HC) ("*Grand Lodge*") at [49]-[51]. The Board notes the Court of Appeal's observation in *Greenpeace, CA* at [92], including footnote 95.

¹⁶ See also section 50(2)(a) of the Act.

under the Act.¹⁷ Section 13 of the Act focuses attention on the purposes for which an entity is *at present* established.¹⁸ This focus is justified in the broader scheme of the Act¹⁹ and the fiscal consequences of registration under the Act.²⁰

27. Activities are not to be elevated to purposes,²¹ but reference to activities may assist, for example, to make a finding about:
- the meaning of stated purposes that are capable of more than one interpretation;²²
 - whether the entity is acting for an unstated non-charitable purpose,²³
 - whether the entity's purposes are providing benefit to the public,²⁴
 - whether a non-charitable purpose is within the savings provision set section 5(3) of the Act.²⁵
- 28 Further, it is well established that the charitable status of an association is determined by construing its objects and powers in context as a whole, rather than construing objects and powers individually.²⁶

¹⁷ *Greenpeace, CA* at [48] and [51]. See also the approach taken in the High Court in *CDC* at [29], [32], [44], [45] - [57], [67], [84] - [92]; *Queenstown Lakes* at [57] - [67]; *Grand Lodge* at [59], [71]; *Computer Society* at [35] - [39], [60] and [68]; *Greenpeace HC* at [75].

¹⁸ *Greenpeace CA* at [40]. See to the same effect *Institution of Mechanical Engineers v Cane* [1961] AC 696 (HL) at 723; *Guaranty Trust Company of Canada v Minister of National Revenue* [1967] SCR 133 at 144; *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited* [2008] HCA 55 ("*Word Investments*") at [25] - [26] (Gummow, Hayne, Heydon and Crennan JJ) and [173] - [174] (Kirby J, dissenting); *Cronulla Sutherland Leagues Club Ltd v Commissioner of Taxation* (1990) 23 FCR 82 at 89.

¹⁹ Including the statutory functions set out in section 10 of the Act, "promote public trust and confidence in the charitable sector" and "encourage and promote the effective use of charitable resources".

Compare *Greenpeace, CA* at [34]. While the statutory criteria for eligibility for fiscal privileges are in tax legislation administered by Inland Revenue, one of the benefits of registration is that it qualifies entities to be eligible for tax exemption on charitable grounds.

²¹ *McGovern v Attorney-General* [1982] 1 Ch 321 ("*McGovern*") at 340 and 343; *Latimer v Commissioner of Inland Revenue* [2004] 3 NZLR 157 ("*Latimer, PC*") at [36]. Compare *Public Trustee v Attorney-General* (1997) 42 NSWLR 600 ("*Public Trustee*") at 616; *Vancouver Society of Immigrant and Visible Minority Women v the Minister of National Revenue* [1999] 1 SCR 10 ("*Vancouver Society*").

²² See *Professional Engineers* at 575 (Tipping J).

²³ *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380 ("*Glasgow Police Athletic Association*"); compare *Word Investments* at [25] (Gummow, Hayne, Heydon and Crennan JJ).

²⁴ See for example *Glasgow Police Athletic Association*; *CDC* at [29], [32], [44], [45] - [57], [67], [84] - [92]; *Queenstown Lakes* at [57] - [67]; *Grand Lodge* at [59], [71]; *Computer Society* at [35] - [39], [60] and [68].

²⁵ See for example *Greenpeace, CA* at [40], [48], and [87] - [92], [99] and [102], [103]. Earlier authorities to same effect include *Molloy* at 693 and the authorities cited there.

²⁶ Gino Dal Pont, *Law of Charity in Australia and New Zealand* (2nd ed., LexisNexis Butterworths, Australia, 2010) ("*Dal Pont*") at [13.17]. For example, in *Travis Trust* at [30] - [35], [58], Joseph Williams J determined that a purpose to "support the New Zealand racing industry by the anonymous sponsor of a group race known as the Travis Stakes" was not charitable. His Honour rejected a submission that the purpose was to benefit the racing industry. Despite the opening words of the purpose clause, his Honour held that the purpose was to support a single group race. See to the same effect: *Glasgow Police Athletic Association* (where machinery provisions in the association's rules were taken into account to identify the purposes of the Association);

Characterisation of an entity's purposes

- 29 Once an entity's purposes are established as a matter of fact, whether or not they are charitable is a question of law.²⁷ The Board is bound to apply the law as declared by the courts and legislature, and set out in the Act.
- 30 Determining whether an entity's purposes are charitable involves an objective characterisation, and a declaration in an entity's rules document that the entity's purposes are charitable in law will not be determinative.²⁸ Similarly, the subjective intentions of the individuals involved in a charity do not establish its charitable status.²⁹

C. The Board's Analysis

C.1 Overview

31. The Trust has submitted that it is established to advance religion; to advance education (in the field of family, marriage and moral issues); and to be beneficial to the community through promotion of discussion, research, publishing and debate on what is best for family and civil society. The Board has therefore considered whether the Trust is established for these charitable purposes, and has also considered whether the Trust is established for a charitable purpose to provide a benefit to the community through promotion of moral and spiritual wellbeing. The Board has taken into consideration the Trust's stated purposes, information about the Trust's activities,³⁰ the relevant case law, and the Trust's submissions on the notice of intention to remove.
32. The Board considers that the Trust does not qualify for registration under section 13(1)(a) of the Act, for three reasons. First, the Board considers that the Trust's main purpose is to promote points of view about family life, the promotion of which is a political purpose in New Zealand law because the points of view do not have a public benefit that is self-evident as a matter of law. Secondly, the Board considers that the Trust's purpose to promote points of view about family life is not a

Professional Engineers (where Tipping J looked to the rules as a whole to resolve the uncertainty in the way in which the primary object was stated).

²⁷ *Molloy* at 693.

²⁸ *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405 at 407; CDC at [56].

²⁹ *Dal Pont* at [13.18], and see also the discussion at [2.8] – [2.11]. See for example *Latimer, PC* at 168 (PC) ("whether the purposes of the trust are charitable does not depend on the subjective intentions or motives of the settlor, but on the legal effect of the language he has used. The question is not, what was the settlor's purpose in establishing the trust? But, what are the purposes for which trust money may be applied?"); *Molloy* at 693; *Keren Kayemeth Le Jisroel Ltd v Inland Revenue Commissioners* [1932] AC 650 at 657 (Lord Tomlin), 661 (Lord Macmillan); *Oldham* at 251 (Lightman J).

³⁰ Reference to activities is a mandatory feature of decision-making under the Act (see e.g. discussion in *Greenpeace, CA* at [48], [51]), and activities information will assist to establish an entity's purposes where the stated purposes are open to more than one interpretation (see e.g. *Professional Engineers* at 575 (Tipping J); *Glasgow Police Athletic Association* at 751-752).

charitable purpose to advance religion or education, nor a purpose beneficial to the public within the fourth category of charity at general law. Thirdly, the Board considers that the Trust has an independent purpose to procure governmental actions (including legislation, policies and governmental decisions) consonant with the Trust's point of view. This purpose to procure governmental actions is a political purpose that lies outside the scope of charity.

C.2 Political purposes to promote controversial points of view and the Trust

33. In determining whether an entity is established for charitable purposes, the Board is bound to follow and apply legislation and case law on the scope of charitable purpose in New Zealand law. In New Zealand law, a political purpose is not charitable. An entity that has a political purpose will only qualify for registration if that purpose is ancillary to a valid charitable purpose of the entity.

C.2.1 Law on political purposes and charity

34. The proposition that political purposes lie outside the scope of charity derives from English authorities,³¹ and has been approved and applied in New Zealand by the Court of Appeal³² and the High Court.³³
35. The proposition is recognised in section 5(3) of the Act, which specifically provides that advocacy is an example of a non-charitable purpose, which will disqualify an entity from registration under the Act unless it is ancillary to the valid charitable purposes of the entity.³⁴
36. The case law and legislation in New Zealand New Zealand makes a distinction between "political" and "charitable" purposes that is similar to the distinction drawn in Canadian legislation and case law³⁵ and English case law; and dissimilar to the position in Australian law.³⁶
37. New Zealand law's position on political purposes and charity is conceptually tied to the public benefit requirement for charity, and as such operates across all established heads of charitable purpose.³⁷ Thus, even if a political purpose otherwise appears to fall within an established head of charity, it cannot qualify as a charitable purpose

³¹ *Bowman v Secular Society Ltd* [1917] AC 406 (HL) ("*Bowman*") at 442; *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31 (HL) ("*Anti-Vivisection*"); *McGovern* at 340; *Southwood v Attorney-General* [2000] EWCA Civ 204 ("*Southwood*") at [29].

³² *Molloy, Greenpeace, CA* esp at [63] (note leave to appeal granted by Supreme Court).

³³ *Re Wilkinson (deceased)* [1941] NZLR 1065 (HC) ("*Wilkinson*"); *Re Collier (Deceased)* [1998] 1 NZLR 81 ("*Collier*") at 90; *Draco* at [58]-[60]; *Greenpeace, HC* at [44] – [59].

³⁴ Compare *Greenpeace, CA* at [45].

³⁵ See Income Tax Act RSC 1985 c 1 (5th Supp) ss 149.1(6.1) and 149.1(6.2); *Vancouver Society* at [169], and see also *Human Life International in Canada Inc v Minister of National Revenue* [1998] 3 FC 202 ("*Human Life*").

³⁶ See *Aid/Watch Inc v Commissioner of Taxation* (2010) 241 CLR 539 ("*Aid/Watch*").

³⁷ *Greenpeace, CA* at [63].

because it can never be regarded as being for the public benefit in a manner that the law regards as charitable.³⁸

- 38 The courts have recognised three categories of political purposes excluded from the scope of charity.³⁹ These are first, purposes to further the interests of a particular political party or representative;⁴⁰ secondly, purposes to procure governmental actions, including through legislation,⁴¹ and other regulatory, administrative and/or judicial actions;⁴² and thirdly, purposes to promote a point of view, the public benefit of which is not self-evident as a matter of law.⁴³
- 39 The *third* mentioned category of political purpose covers the dissemination of opinions that are not found to be for the advancement of education or religion, and which fail to be justified as charitable under the fourth head of charity because there is no established beneficial value.⁴⁴
40. The Court of Appeal describes the touchstone for the third category of political purpose as the promotion of a view, the public benefit of which is not “so self-evident as a matter of law” that the requisite public benefit is achieved. Thus, in *Molloy*, the Court of Appeal held that a purpose to promote the view that abortion ought to be restricted was political in the relevant sense:⁴⁵

we are unable to accept ... that the public good in restricting abortion is so self-evident as a matter of law that such charitable prerequisite is achieved. The issue in relation to abortion is much wider than merely legal. And the fact, to which we have already referred, that this public issue is one on which there is clearly a division of public opinion capable of resolution (whether in the short or the long term) only by legislative action means that the Court cannot determine where the public good lies and that it is relevantly political in character.

41. In *Greenpeace*, the Court of Appeal affirmed and applied the test stated in *Molloy*.⁴⁶ The Court explained that a purpose to promote peace by a particular means will not be charitable unless there is a self-evident

³⁸ See *McGovern* at 333G-334B and 340B-E. See also *Southwood* at [5], [6].

³⁹ See *Collier* at 89-90. Slade J's influential non-exhaustive categorization in *McGovern* at 340 is similar, but expands on the second category and omits the third category. *Collier* at 90, and see also *McGovern* at 337.

⁴⁰ See e.g. *Bowman* at 441-442 (Lord Parker of Waddington); *Anti-Vivisection* at 49 – 51 (Lord Wright) 62-63 (Lord Simonds; Viscount Simon concurring), 76-77 (Lord Normand); and note the extension to purposes to maintain current legislation against calls for reform in *Molloy* at 695-698.

⁴¹ See e.g. *McGovern* at 339; *Anti-Vivisection* at 77; *Re Hopkinson* [1949] 1 All ER 346 at 352; *Wilkinson* at 1076; *Draco* at [54].

⁴² *Collier* at 90; *Molloy* at 697; *Greenpeace, CA* at [61], [72], [76]; *Draco* at [67]. Compare Canadian authorities recognising this category of political purpose: *Human Life* at [12]; *Action by Christians for Abolition of Torture v Canada* [2002] 225 DLR (4th) 99 (“ACAT”) at [38]-[42] (obiter); *Human Life International in Canada Inc v Minister of National Revenue* [1998] 3 FC 202.

⁴³ *Molloy* at 697; *Greenpeace, CA* at [61], [72], [76]. Compare *Human Life*.

⁴⁴ *Molloy* at 697.

⁴⁵ *Greenpeace, CA* at [61].

public good in the promotion of peace *by that means*.⁴⁷ The Court observed that a purpose to promote peace *through disarmament* is not charitable because it pursues “one view in a contentious debate”.⁴⁸

The question whether peace should be achieved through disarmament or through maintaining military strength is undoubtedly contentious and controversial with strong, genuinely held views on both sides of the debate. An entity seeking to promote peace on the basis of one or other of these views would be pursuing a non-charitable political purpose.

42. In contrast, the Court of Appeal held that a purpose to promote peace *through nuclear disarmament and the elimination of all weapons of mass destruction* is a valid charitable purpose: “applying the test from *Molloy*, the Court is not required to determine where the public good lies as that is now self-evident as a matter of law”.⁴⁹ In reaching that decision, the Court referred to New Zealand’s international obligations as a signatory to the Nuclear Non-Proliferation Treaty; New Zealand’s domestic law enacted in the *New Zealand Nuclear Free Zone Disarmament and Arms Control Act*; and the fact that successive New Zealand Governments have confirmed their intentions to support the Treaty and retain the legislation.⁵⁰

C.2.2 Application of law to the Trust

43. The Board considers that the Trust has a political purpose within the third category proscribed in New Zealand law, i.e. a purpose to promote a point of view, the benefit of which is not self-evident as a matter of law.⁵¹ In the balance of this section we explain our finding on three aspects – (a) that the Trust affirms a specific point of view; (b) that this point of view is controversial in the relevant sense; and (c) that it is a purpose of the Trust to promote that point of view.

(a) The Trust’s point of view on family

44. The Board considers that the Trust promotes a specific point of view about what is best for family and civil society. The Trust’s point of view is set out in the FAQ section of the Trust’s website, under the question “What Do You Mean by Family?”:⁵²

1. We affirm that the natural family, not the individual, is the fundamental social unit.

⁴⁷ *Greenpeace, CA* at [73], following *Southward* at [29].

⁴⁸ *Greenpeace, CA* at [75].

⁴⁹ *Greenpeace, CA* at [76].

⁵⁰ *Greenpeace, CA* at [77] - [80]. The Court went on to hold (at [81]) that the public benefit in promotion of peace through nuclear disarmament and elimination of all weapons of mass destruction fell within the scope of the fourth head of charity.

⁵¹ See also the Board’s conclusion that the Trust’s dissemination of opinions does not advance education or religion, or otherwise provide a benefit to the community within the scope of the fourth head, below.

<http://familyfirst.org.nz/about-us/frequently-asked-questions/> [accessed 22 January 2013].

2. We affirm the natural family to be the union of a man and a woman through marriage for the purposes of sharing love and joy, raising children, providing their moral education, building a vital home economy, offering security in times of trouble, and binding the generations.

3. We affirm that the natural family is a fixed aspect of the created order, one implanted in human nature. Through time it may grow weaker or stronger. However, the natural family cannot change into some new shape; nor can it be re-defined by eager social engineers.

4. We affirm that the natural family is the foundational family system. While we acknowledge varied living situations caused by circumstance or dysfunction, all other "family forms" are incomplete or fabrications of the state.

5. We acknowledge the tremendous contribution made by single parents and step-parents in society. We wish to ensure they receive appropriate levels of assistance, without denying the clear empirical evidence that the best environment in which to raise children is the natural two-parent, husband-wife family.

6. We affirm the marital union to be the authentic sexual bond, the only one open to the natural and responsible creation of new life.

7. We affirm the sanctity of human life from conception to death; each newly conceived person holds rights to live, to grow, to be born, and to share a home with his or her natural parents bound by marriage.

8. We affirm that the natural family is prior to the state and that the task of government is to shelter and encourage the natural family.

9. We affirm that the world is abundant in resources. The breakdown of the natural family and the consequential moral and political failure, not human "overpopulation," account for poverty, starvation, and environmental decay.

10. We affirm that the complementarity of the sexes is a source of strength. Men and women exhibit profound biological and psychological differences. When united in marriage, the whole becomes greater than the sum of the parts.

11. We affirm that lasting solutions to human problems rise out of families and small communities. They cannot be imposed by bureaucratic and judicial fiat. Nor can they be coerced by outside force.

Adapted from "The Natural Family: A Manifesto" – World Congress of Families.

45. The Board considers that the Trust's perspective on family can be fairly described as an opinion on what is best for families and civil society. Each of the propositions affirmed by the Trust in the above is a matter of opinion or value-judgment.

(b) Trust's point of view on family is controversial

46. The Board also considers that the Trust's perspective on family is one that is controversial in the relevant sense, i.e. that its benefit to the public is not self-evident as a matter of law. The Board considers it can be taken as given that there is no relevant self-evident benefit to specific positions on conscience issues such as procreation outside of marriage (point 6), the definition of marriage as a union between a man and woman (point 2), the sanctity of life from conception to death (point 7).

Moreover, the Board considers that the Trust's opinion that the government must shelter and encourage the "natural family" (point 8); its opinions regarding the consequences of the demise of the "natural family" (points 5 and 9); its prescription for the role of men and women in family life (point 10); and its advocacy against an individual rights perspective (point 1) are fairly described as controversial in contemporary New Zealand society.

47. The Board considers that the controversial nature of the Trust's advocacy for "the natural family" is apparent from the list of policies Trust has developed and promotes to political parties and politicians.⁵³ These include:

- *protect marriage in law as one man – one woman;*
- *abandon the concept of no fault divorce, and place the weight of the law on the side of spouses seeking to defend their marriages;*
- *establish joint custody following divorce, not just shared responsibility;*
- *end discrimination against stay-home parents;*
- *create incentives and subsidies for lower income parents to attend parenting programs;*
- *amend section 59 to decriminalise parents who use light smacking for correction of children;*
- *presume child abuse when under-age girls are pregnant or infected with STDs;*
- *age-appropriate sex education which is values based, investing equal amounts into abstinence and comprehensive sex education;*
- *amend the law to protect the unborn children from conception (18,000 abortions per year represents the worst of child abuse);*
- *parental notification automatically of teenage pregnancy and abortion except in exceptional circumstances approved by the court;*
- *promote married couple adoption;*
- *oppose euthanasia – increase resourcing of hospices and palliative care;*
- *amend Prostitution Reform Act to prosecute the buyer;*
- *criminalise the act of pimping and brothel keeping;*
- *reduce the availability of pornography;*
- *[broadcasting and advertising] standards should be developed according to a family perspective, not an individual rights perspective.*

48. The Board considers that these policy priorities published by the Trust relate to outcomes that are controversial in the sense used in *Molloy* and *Greenpeace*. In particular, the Board rejects the submission that the Trust's point of view accords with New Zealand's international and domestic law recognising the rights of the child and support for families. Neither New Zealand's international law obligations nor New Zealand's domestic law favour "the natural family" over other forms of family, and the Board is unable to accept that the Trust's advocacy against an individual rights perspective on social issues is clearly beneficial as a matter of law in New Zealand.

53

<http://familyfirst.org.nz/about-us/family-policy-priorities/> [accessed 22 January 2013]

(c) It is a purpose of the Trust to promote its points of view

49. The Board considers that it is a purpose of the Trust to *promote* its opinions relating to the place of the “natural family” in civil society. That is to say, the Trust advocates and campaigns for wider acceptance of those opinions among the public and governmental actors.

50. First, the Trust’s purpose to promote its points of view is apparent in its stated purposes, specifically its purposes to “promote and advance research and policy *supporting marriage and family as foundational* to a strong and enduring society” (emphasis added), to “network with other like-minded groups and academics” and to “be a voice for the family”. The stated purposes are proactive and engaged in support of “marriage and family”, and the specific construction placed on these terms by the Trust is apparent from the Trust’s publications and activities (including the material published under the FAQ section of the website and set out above).

51. Secondly, the Trust presents itself to the public as an active proponent for families. The Trust is branded as “the Family Watchdog”,⁵⁴ and its official publications position it as an advocate, “speaking up”, “defending”, and “presenting a strong united voice” for families. Similarly, the Trust seeks the financial and in-kind support of the public “to promote the ideas and policies that will help strengthen New Zealand families, through defending the role of parents and the wellbeing of our children” and urges individuals to make contact with ideas about ways to “increase the voice and impact of Family First in your area”.⁵⁵

52. Thirdly, the Trust undertakes a range of activities to publicise its point of view about family:

- issuing media statements highlighting the Trust’s point of view on issues in the public domain, publishing opinion pieces and commentaries, and giving media interviews to highlight the Trust’s perspective on those social issues;
- actively campaigning on policy priorities identified on its website,⁵⁶ including retention of the definition of marriage as a union between a woman and a man;⁵⁷
- publishing a “report card” indicating whether members of parliament agree or disagree with the Trust’s position on social issues;⁵⁸

⁵⁴ <http://familyfirst.org.nz/> [accessed 22 January 2013]

⁵⁵ <http://familyfirst.org.nz/contribute/> [accessed 22 January 2013].

⁵⁶ The Board notes the Trust’s campaign to decriminalize light smacking of children: <http://familyfirst.org.nz/issues/anti-smacking-amendment/> [accessed 1 March 2013] and <http://familyfirst.org.nz/research/anti-smacking-polls/> [accessed 1 March 2013]; <http://www.voteno.org.nz/faq.htm#why-referendum> [accessed 1 March 2013]. The Trust has established this website to “highlight cases of families who have been traumatised by the anti-smacking law” and to criticise the government’s review of the law.

⁵⁷ The Trust has partnered with the National Marriage Coalition, a group formed to oppose the *Marriage (Definition of Marriage) Amendment Bill*, and has published and distributed print resources to “help strengthen the resolve of those wanting to maintain the current definition of marriage as one man one woman” and to identify politicians who may consider voting against the bill to defeat it at the second or third reading: see <http://www.protectgoodparents.org.nz/> [accessed 1 March 2013].

- encouraging members of the public to lobby on the policy priorities identified on the Trust's website, and facilitating that in various ways;⁵⁹ and
- seeking financial and in-kind support for its campaigning activities.⁶⁰

53. Fourthly, for the reasons given below, the Board considers that the Trust's activities to promote its point of view do not qualify as dissemination of the results of educational research or provide any other benefit to the community that is charitable under the fourth head.

54. Thus, having regard to the stated purposes of the Trust, its presentation of itself to the public on its website, and its activities, the Board considers that the Trust has a purpose to promote its point of view. This purpose is a political purpose in New Zealand law, as it involves the promotion of points of view, the benefit of which is not self-evident as a matter of law.

C.3 Religious purposes and the Trust

55. The Trust has submitted that its purpose is to advance religion. For the following reasons, the Board rejects this submission.

56. In order to advance religion, a purpose must be to spread the message of the religion and to sustain and increase religious belief.⁶¹ The case law recognises the validity of purposes to advance religion by activities which in and of themselves are secular.⁶² However, in order to qualify as advancing religion, secular activities must be undertaken as a means to sustain and increase religious belief. Speaking of a mortgage scheme operated on biblical financial principles, the High Court has observed:⁶³

To advance religion the scheme must do more than have a connection with religion, be motivated by it or be conducive to it. Here it is said that the scheme advance religion because it teaches the Bible's financial principles ... and that by joining the scheme contributors help many others. Teaching religion through a lending scheme intended to be operated in accordance with Scripture, and

⁵⁸ <http://valueyourvote.org.nz/end-of-year-2012.html> [accessed 1 March 2013].

⁵⁹ The Trust provides a facility to assist people to email members of parliament directly: <http://haveyoursay.org.nz/home.php> [accessed 1 March 2013].

⁶⁰ For example, text posted under the donation link on the webpage for the vote no campaign reads: "This website is run by Family First, so please click the link below to be taken to Family First's donation page. Simply include "vote no" in the reference when you make your donation, to ensure that the funds are directed to the vote no campaign.": <http://www.voteno.org.nz/donate.htm> [accessed 1 March 2013].

⁶¹ *Liberty Trust v Charities Commission* HC WN CIV-2010-485-831 [2 June 2011] ("*Liberty Trust*") at [58], [94]; *United Grand Lodge of Ancient Free and Accepted Masons of England v Holburn Borough Council* [1957] 1 WLR 1080 at 1090.

⁶² *Liberty Trust* and examples given in that judgment at [92]

⁶³ *Liberty Trust* at [94], and see the Court's comment at [96] that there was an overt connection with the Christian faith and the two churches under which Liberty Trust operated; and that the overwhelming message promoted by Liberty Trust was a religious one – throughout its website there are references to the Bible and God and the religious message is reinforced with newsletters that go out to those who have signed up to the scheme. "Participants in the scheme would struggle not to notice the constant religious message Liberty Trust promotes".

which is promoted as being such, is to spread the message of the religion or is to take positive steps to sustain and increase religious beliefs.

57 The Board considers that the Trust's purposes are not for the advancement of religion. There is no reference to religion in the Trust's stated purposes, and scant reference to religion in the Trust's publications. The effect of clause 20 of the Trust deed is that only persons with religious faith may be trustees of the Trust, and the Trust does state on its website that it will "speak from a family friendly perspective with an emphasis on the Judeo-Christian values which have benefited New Zealand for generations".⁶⁴ However, the Board considers that these factors at best make the Trust "conducive to" or "motivated by" religion.⁶⁵

58 The Board considers that in their (lack of) relationship to the charitable purpose to advance religion, the Trust's purposes are analogous to the purposes of the Society for Protection of the Unborn Child, held not to advance religion in *Molloy*.⁶⁶

There have been many, and there are still some, provisions of law, the maintenance or abrogation of which has been a matter of deep concern to adherents of one or other religious faith. But these have been considered, not charitable religious purposes, but political objects.

C.4 Educational purposes and the Trust

59 The Trust has submitted that its purposes are to advance education. For the reasons given below, the Board considers that the Trust's activities do not meet the threshold criterion for legitimate targeted educational purposes, and that its main purpose is to promote a point of view rather than to advance education.

C.4.1 Law on charitable educational purposes

(a) Threshold criterion – legitimate targeted educational purpose

60. New Zealand law recognises that a purpose to advance education for the public benefit is a valid charitable purpose in law. Education may be advanced through formal tuition or training, and research that improves a useful branch of human knowledge⁶⁷ and is disseminated to the public.⁶⁸

⁶⁴ <http://familyfirst.org.nz/about-us/> [accessed 1 March 2013].

⁶⁵ Compare the comment in *Liberty Trust* at [93]: "[The mortgage scheme] would not become a scheme which advances religion merely because it is operated by those who subscribe to the Christian faith (or other faith that would qualify as a religion). That might at best give it a connection with religion but it would not advance religion. Nor would it be enough that it was set up because its founder believed it was what the Bible teaches or that it was the will of God. That would mean that it was inspired by religion but it would not be advancing religion ..."

⁶⁶ *Roman Catholic Archbishop of Melbourne v Lawlor* (1934) 51 CLR 1 at 32-33 quoted and applied in *Molloy* at 698. See to the same effect *Human Life*.

⁶⁷ See for example in *Re Shaw's Will Trusts* [1952] Ch 163 ("*Shaw's*").

Further, it may include “information or training provided in a structured way for a genuinely educational purpose – that is, to advance the knowledge and abilities of the recipients – and not solely to promote a particular point of view or political orientation”.⁶⁹

Disseminating information distinguished from educational research

61 The advancement of education does not extend to activities that disseminate information but do not have any teaching or learning component. In *Draco*, for example, the entity’s stated purpose was to educate citizens about public issues and involvement in democratic processes. The entity advanced this purpose by maintaining a website to which it posted information and opinion pieces. The High Court held that the information published on the website did not have independent educational value: it “did not provide unique material or provide otherwise unavailable essential material” and the plain language material provided on the site was “at best the provision of material for self-study”.⁷⁰

62 *Draco* adopted threshold requirements for education articulated in Canadian cases including *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue*.⁷¹

63 *Draco* accords with a number of other cases where entities have failed to meet the educational threshold because they disseminate information without providing formal training of the mind or improvement of a useful branch of human knowledge.⁷²

64 *Draco* also approved comments in the guidelines published by the Charities Commission for England and Wales, to the effect that entities advancing education must provide positive, objective and informed evidence of educational merit or value where it is not clear, citing examples of “wiki” sites that contain information that is not verified in any way, blogging of uninformed opinion, and any other process which is “so unstructured that whether or not education is in fact delivered is a matter of chance”.⁷³

Workshops, conferences and forums as an educational purpose

65 The organisation and provision of a conference can advance education, provided that there is a sufficiently targeted attempt to educate.⁷⁴ In *In re Koeppler’s Will Trusts*,⁷⁵ the court recognised that a programme of

Re Besterman’s Will Trust (January 21, 1980, unreported, referred to *McGovern* at 352-3. See also *Shaw’s; Taylor v Taylor* (1910) 10 CLR 218; *Re Hopkins’ Will Trusts* [1965] Ch 669.

⁶⁹ *Vancouver Society* at [169]. See also *Draco* at [42] - [43], [74];

⁷⁰ *Draco* at [41], and see also [41].

⁷¹ *Vancouver Society* at [171]. See further Canada Revenue Agency, *Research as a Charitable Activity* published at <<http://www.cra-arc.gc.ca/chrts-qvng/chrts/plcy/cps/rsrch-eng.htm>> at [11], [17].

⁷² See e.g. *Positive Action against Pornography v Minister for National Revenue* [1988] 2 FC 340 (“*Positive Action*”); *News to You Canada v Minister of National Revenue* [2011] FCA 192 (“*News to You*”) at [17].

⁷³ *Draco* at [74].

⁷⁴ *Draco* at [45] – [49].

⁷⁵ [1986] 1 Ch 423 (CA).

annual ten to twelve week-long residential conferences at which there was a process of presentation and small group discussion that aimed to elicit an exchange of views “in a manner familiar in places of higher education”, covering a wide range of topics that were “recognised academic subjects in higher education” advanced education. The Court held that the conferences were designed “to capitalise on the expertise of participants who were there both to learn and instruct” and that the conferences “sought to improve the minds of the participants, not necessarily by adding to their factual knowledge but by expanding their wisdom and capacity to understand”.⁷⁶

66 The decision in *In re Koeppler’s Will Trusts* can be contrasted with decisions in cases where conferences are not carried out in a structured way so as to amount to formal training, or the material presented at the conferences is of a predominantly polemical and tendentious character not normally associated with formal training of the mind.⁷⁷ The fact that the activities of an entity are in form “educational” will not suffice if the substance does not qualify as genuinely educational.⁷⁸

(b) Persuasion not an educational purpose

67. The courts have held that a purpose to “educate people about a point of view in a manner that might more aptly be described as persuasion or indoctrination”⁷⁹ does not advance education in the relevant sense. There is a distinction between advancement of education on the one hand, and “propaganda or cause under the guise of education”.⁸⁰ To “promote an attitude of mind” is not an educational purpose.⁸¹

68 Whether an endeavour is political or educational degree turns on the degree of objectivity or neutrality surrounding the endeavour, and assesses whether support for a “political” point of view or outcome is merely a by-product or is instead the principal purpose of the activity. The distinction is made between propagating a view that can be characterised as political and the desire “to educate the public so that they could choose for themselves, starting with neutral information, to support or oppose certain views”.⁸²

69 Educational research is objective and based on well-reasoned arguments.⁸³ The methodology, analysis, structure and evaluation

⁷⁶ [1986] 1 Ch 423 at 436.

⁷⁷ Compare *Human Life*.

⁷⁸ See to the same effect *Southwood* and *In re Tetley* [1923] 1 Ch 258 (entities giving seminars and lectures did not advance education because content was not substantively educational).

⁷⁹ *Vancouver Society* at [169], see also *Draco* at [54].

⁸⁰ *Collier* at 91. In the United Kingdom, see for example *Re Bushnell (deceased) Lloyds Bank Ltd and others v Murray and others* [1975] 1 All ER 721 (“*Bushnell*”) as applied by *Public Trustee* at 608; *McGovern*; *Southwood*. In Canada, see for example *Positive Action* at 349; *Alliance for Life v Minister of National Revenue* [1999] 3 FCR 504 (“*Alliance for Life*”); *Challenge Team v Revenue Canada* [2000] 2 CTC 352.

⁸¹ *Anglo-Swedish Society v Inland Revenue Commissioners* (1931) 16 TC 34 at 38, see also *Buxton v Public Trustee* (1962) 41 TC 235 at 242; *Re Hopkinson* [1949] 1 All ER 346 at 350.

⁸² *Bushnell* at 729.

⁸³ *Positive Action*.

techniques must be appropriate to the research objectives, and the data and analysis must present a well-reasoned position and substantiate all conclusions and recommendations.⁸⁴ Information is researched and presented in a neutral and balanced way that encourages awareness of different points of view, considers arguments in an appropriate way related to the evidence, and if it reaches conclusions, those are based on evidence and analysis.⁸⁵

70 In *In re Draco Foundation (NZ) Charitable Trust*, the High Court held that the entity's purpose was to influence local or central government or other officials to a particular point of view, and that this did not fall within the charitable purpose to advance education.⁸⁶

In a democracy citizens are free to pursue [advocacy] but the activity is essentially political and therefore not a charitable purpose. Publicising one side of a debate is not advancing education.

C.4.2 Application to the Trust

71. The Board has considered the Trust's submission that its activities advance education. The Board has considered the Trust's activities in:

- publishing and disseminating opinion and information by posts to its website and media releases;⁸⁷
- commissioning polls on issues;⁸⁸
- hosting the "New Zealand Forum on the Family";⁸⁹
- providing links to publications regarding research on various topics;⁹⁰
- providing information about administrative and court actions involving child welfare and smacking;⁹¹
- commissioning research on various topics.⁹²

72. For the following reasons, the Board considers that the Trust's activities do not show a main purpose to advance education.

73. First, the Board considers that some of the above activities do not advance research. Specifically, the Board considers that the Trust's

⁸⁴ Compare Canada Revenue Agency, *Research as a Charitable Activity* published at <<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/rsrch-eng.html>> at [20] - [27].

⁸⁵ Compare Charities Commission for England and Wales, *The Advancement of Education for the Public Benefit* (December 2011) published at <[http://www.charity-](http://www.charity-educ.aspx#c)

[educ.aspx#c](http://www.charity-educ.aspx#c)> at C5

⁸⁶ *Draco* at [54].

⁸⁷ <http://familyfirst.org.nz/category/news/> [accessed 1 March 2013] and <http://familyfirst.org.nz/category/media/> [accessed 1 March 2013].

⁸⁸ <http://familyfirst.org.nz/research/family-polls/> [accessed 1 March 2013] and <http://familyfirst.org.nz/research/anti-smacking-polls/> [accessed 1 March 2013]. These activities were undertaken by Curia Market Research.

⁸⁹ <http://familyfirst.org.nz/forum/2011-2/> [accessed 1 March 2013].

⁹⁰ <http://familyfirst.org.nz/research/research-on-family-meals/> [accessed 1 March 2013].

⁹¹ <http://familyfirst.org.nz/research/smacking-cases/> [accessed 1 March 2013].

⁹² <http://familyfirst.org.nz/research/why-marriage-matters/> [accessed 1 March 2013];

<http://familyfirst.org.nz/research/who-cares-daycare-report/> [accessed 1 March 2013];

<http://familyfirst.org.nz/research/the-value-of-family/> [accessed 1 March 2013];

<http://familyfirst.org.nz/research/young-people-and-alcohol/> [accessed 1 March 2013].

activities in commissioning polls do not advance research but rather canvas support for political outcomes advocated by the Trust;⁹³ and that its activity in providing information about administrative and court actions involving child welfare and smacking does not advance education as it constitutes the provision of information and opinion only.

- 74 Secondly, the Board considers that, viewed holistically, the Trust's publications to its website are predominantly opinion pieces intended to promote the Trust's point of view on controversial social issues. The Board considers that this description is apt for the news items and media releases.
75. Thirdly, the Board considers that the research papers commissioned by the Trust do not advance an educational purpose and do constitute propaganda for the points of view promoted by the Trust. The Board recognises that the Trust has commissioned research publications on subjects that are appropriate subjects for educational research, including the emotional and physiological effects of attendance at a childcare centre;⁹⁴ the social and economic effects of divorce;⁹⁵ and the effects of alcohol on teenage brains.⁹⁶ The Board considers that these publications do not establish that the Trust is pursuing a genuinely educational purpose. The papers do not present original research. With the exception of *The Value of Family: Fiscal Benefits of Marriage and Reducing Family Breakdown in New Zealand* (2008), the reports: (i) do not contain a balanced and rigorous literature review nor do they provide a balanced and rigorous analysis of the empirical evidence for conclusions reported; and (ii) do contain emotive language and calls to action, and engagement with alternative points of view that is fairly described as polemical. Moreover, the Board notes that the Trust's media releases highlight the arguments made in the reports for the Trust's policy priorities.
- 76 Fourthly, the Board considers that the NZ Forum on the Family do not have an exclusively educational purpose. While it would seem that some of the speakers present scholarly work on educational topics, the promotion for the forum highlights headline presentations which are advocating for a point of view on controversial social issues.⁹⁷ The 2012

The questions posed in the polls conducted by the Trust concern preferences and beliefs about current and proposed legislation and judicial and administrative actions on topics including smacking, drinking age, brothel zoning, street prostitution, abortion, sex education in schools, the definition of marriage, same sex adoption etc. The Trust issues media releases stating the level of support for its policy proposals elicited in the polls.

⁹⁴ <http://familyfirst.org.nz/research/who-cares-daycare-report/> [accessed 22 January 2013].

⁹⁵ <http://familyfirst.org.nz/research/why-marriage-matters/> [accessed 22 January 2013]
⁹⁶ <http://familyfirst.org.nz/research/young-people-and-alcohol/> [accessed 22 January 2013].

⁹⁷ <http://familyfirst.org.nz/forum/> [accessed 1 March 2013]. In 2012, the headline presentation was described in these terms: "Dr Grossman says that instead of teaching our children biological truths, sex educators are lying to them, ignoring science in favor of radical and dangerous social agendas. Her politically-incorrect books and lectures

Forum was advertised as an event that “will bring together a national network of family-focused organisations, scholars, lobby groups and leaders who seek to promote and protect the wellbeing of families, the value of life, the role of parents and the welfare of our children”.⁹⁸ This description, and the promotion for the event, emphasises the role that the forum plays in underpinning the lobbying activities of the Trust.

- 77 In summary, the Board considers that the Trust's activities in publication and dissemination of information, opinion and research do not show that it is established for the purpose of advancing education. The Trust's activities disseminate information and promote the Trust's points of view on social issues.

C.5 Purposes beneficial to the community and the Trust

78. The Board has considered whether the Trust is established for purposes that are charitable under the fourth head of charity. Specifically, the Board has considered whether the Trust is established to improve the moral welfare of the community or promote good citizenship.

C.5.1 Improvement of moral welfare of the community

79. For the following reasons, the Board does not consider that the Trust is established for a charitable purpose to improve moral and spiritual welfare of the community.⁹⁹
- 80 So far as purposes to promote specific behaviours or moralities are concerned,¹⁰⁰ the leading cases have been concerned with the promotion of temperance,¹⁰¹ and kindness to animals.¹⁰² The most often-cited judicial test for a purpose to improve moral or spiritual welfare is the test stated in *National Anti-Vivisection Society* – “approval by the common understanding of enlightened opinion for the time being”.¹⁰³ This standard, and its application in the case law, is somewhat opaque.¹⁰⁴

provide families with urgently needed ammunition to counter the hazardous messages that bombard young people”.

⁹⁸ <http://familyfirst.org.nz/forum/> [accessed 1 March 2013].

⁹⁹ *Re Scowcroft* [1898] 2 Ch 638 (“*Scowcroft*”) (religious and mental improvement and temperance); *Re Hood* [1931] 1 Ch 240 (“*Hood*”) at 250, 252 (temperance); *Knowles v Commissioner of Stamp Duties* [1945] NZLR 522 (“*Knowles*”) at 528 (temperance); *Anti-Vivisection* at 49 (kindness to animals), *Molloy* at 696 (kindness to animals).

¹⁰⁰ Distinguish cases concerned with the promotion of moral and spiritual welfare through promotion of ethical or philosophical belief systems, e.g. *Re Price* [1943] 1 Ch 422 (teachings of Dr Rudolph Steiner), *Re South Place Ethical Society* [1980] 1 WLR 1565 (study of secular ethical principles). For recognition of this head of charity in New Zealand cases see *Centrepoin Community Growth Trust v Commissioner of Inland Revenue* [1985] 1 NZLR 673 at 697-698; *Collier*; *Grand Lodge* at [56].

¹⁰¹ *Scowcroft*; *Hood* at 250, 252; *Knowles* at 528.

¹⁰² *Molloy* at 696; *Anti-Vivisection* at 49.

¹⁰³ *Anti-Vivisection* at 49 (Lord Wright), and see to similar effect the discussion at 70-73 (Lord Simonds).

¹⁰⁴ See for example, while judges have been unanimous in the view that temperance and kindness to animals improves moral welfare, they have disagreed on whether anti-

- 81 Certainly, the sincere belief of individuals involved in an entity that its purposes will improve moral and spiritual welfare will not suffice to bring a purpose within this head of charity.¹⁰⁵
- 82 Further, the Board considers that a purpose to promote points of view cannot qualify as charitable for the promotion of moral and spiritual welfare of the community if it is a political purpose according to the test applied by the Court of Appeal in *Molloy* and *Greenpeace*. The Board considers that this accords with the approach taken in *Molloy*, where the Court of Appeal acknowledged that the protection of human life has a salutary effect on public morality, but went on to hold that a purpose to oppose abortion law reform was a political purpose lying outside the scope of charity, on the basis that the public good in restricting abortion was not self-evident as a matter of law.¹⁰⁶ Similarly, in *Re Collier (deceased)*, Hammond J recognised that the dissemination of ethical principles is a valid charitable purpose but a purpose to promote death with dignity is “an attempt to persuade people into a particular frame of mind”, and a “single idea” that lies outside this head of charity.¹⁰⁷
83. For the reasons given above, the Board considers that the Trust’s purpose is to promote a specific model of family life, the promotion of which is political according to the test applied in *Molloy* and *Greenpeace*. The Board considers that, in consequence of this finding, it is not established that the Trust has a purpose to improve the moral and spiritual welfare of the community.¹⁰⁸

C.5.2 Promotion of good citizenship

84. The Trust has submitted that New Zealand law recognises a charitable purpose to promote and inform public debate on issues affecting families and/or moral and spiritual welfare. The Board considers that New Zealand law does not recognise any charitable purpose of the scope contended for by the Trust. Further, the Board considers that any charitable purpose to promote good citizenship or the like would not extend to the Trust’s purpose, which is to promote a controversial point of view rather than to facilitate balanced and informed debate of public issues.

(a) Generation of public debate not itself a charitable purpose

85. The High Court of Australia has recognised that a purpose to generate public debate as to the best methods for the relief of poverty by provision of foreign aid may be charitable under the fourth common law classification (‘other purposes beneficial to the public’).¹⁰⁹ The Court of

vivisection principles and vegetarianism provide moral edification, see generally *Anti-Vivisection Society*.

¹⁰⁵ *Anti-Vivisection* at 46-47 (Wright LJ), 70-73 (Simonds LJ), 78-79 (Norman J)

¹⁰⁶ *Molloy* at 696-697.

¹⁰⁷ *Collier* at 93.

¹⁰⁸ The Board notes that this reasoning accords with the reasoning of the Federal Court of Canada in *Alliance for Life* at [484].

¹⁰⁹ *Aid/Watch* at [46-47].

Appeal has recently considered and rejected a submission that New Zealand law should recognise a charitable purpose to promote and inform public debate on particular issues.¹¹⁰ The Court of Appeal's approach is consistent with the approach taken by courts in Canada, where legislation and case law draws a distinction between political and charitable purposes similar to the distinction drawn in New Zealand law and reflected in section 5(3) of the Act.¹¹¹

86. Moreover, the High Court of Australia affirmed that it is necessary to determine whether, on the facts of the particular case, an entity's endeavour is to generate public debate, e.g. by conducting research, publicly releasing research reports and campaigning for changes in government activity based on the outcomes of those research reports.¹¹² The New Zealand High Court has drawn attention to this requirement in the Australian law, stating that "the promotion of a particular point of view is different from the purpose of generating public debate ... [e]ncouragement of rational debate presupposes that both sides of an argument will be equally considered."¹¹³
87. In our view, for the reasons given above, it is not a purpose of the Trust to encourage rational and considered debate of public issues. Thus, *even if* New Zealand law were to recognise a purpose to promote informed public debate of issues affecting families, we consider it unlikely that the Trust's current activities would be seen as advancing that purpose.

(b) Promotion of good citizenship

88. The Board acknowledges that the promotion of good citizenship for the public benefit may be a charitable purpose which may be advanced by building capacity to engage in existing democratic processes.¹¹⁴
89. However, the Board considers that a charitable purpose to promote good citizenship is not established where an entity's contributions to public debate of an issue simply reflect a specific position and do not advance education or reflect rigorous standards of objective analysis and factual research.¹¹⁵ For the reasons given above, the Board is not satisfied that the Trust's purpose advances education. The Board considers that these same reasons establish that the Trust does not have a purpose to promote good citizenship for the public benefit.

¹¹⁰ *Greenpeace, CA* at [59], [63].

¹¹¹ *News to You* at [29]; *Positive Action* at 82-84.

¹¹² *Aid/Watch* at [5].

¹¹³ *Greenpeace, HC* at [69].

¹¹⁴ Compare discussion, with reference to the position in England and Wales, in *Full Fact v The Charity Commission for England and Wales* CA/2011/0001 [3 December 2010] ("*Full Fact*").

¹¹⁵ See e.g. *Full Fact* at [8.6] - [8.10].

C.6 Political purposes to procure governmental action and the Trust

90. As noted above, the courts have held that a purpose *to procure governmental action* is a political purpose that is not charitable in law. This is the case even if the governmental action will promote a valid charitable purpose. So, for example, in *Greenpeace*, the Court of Appeal held that a purpose to “promote legislation, policies, rules, regulations and plans which further [specified objects] and support their enforcement or implementation through political or judicial processes as necessary” was a political purpose, notwithstanding that the objects referred to were exclusively charitable.¹¹⁶
91. Moreover, the courts have recognised that this second category of political purpose includes purposes to secure governmental action *by mobilising public support for those governmental actions*.¹¹⁷
92. The Board is mindful that this line of authority does not mean that all propaganda in support of charitable purposes will be considered political in nature, simply because it may, indirectly and circumstantially, alter the climate of public opinion in which political actions are considered and debated.
93. The case-law supports a distinction between propaganda for private actions by individuals and corporations to advance charitable purposes on the one hand, and public or governmental actions on the other.¹¹⁸ A propaganda purpose becomes a political purpose if the interlocutor (direct or indirect) is a political actor. That is, a propaganda purpose will fall within the second category of political purposes if it “attempts to sway a government or a member of the government ... or a member of the Parliament in such areas as these organisations or individuals are politically in a position to take action in response to the pressures to which they are subjected”.¹¹⁹

¹¹⁶ *Greenpeace, CA* at [84], [91]. See also *Knowles* (purpose to promote temperance charitable but purpose to promote legislation banning sale of liquor not charitable), and see discussion in *Anti-Vivisection*.

¹¹⁷ See *McGovern* at 346 (‘the primary activity contemplated by [the purpose] is the imposition of moral pressure on governments or governmental authorities’) and 347 (a purpose that in ‘[i]ts very terms suggest the direction of moral pressure or persuasion against governmental authorities’); *Wilkinson* at 1076 (a purpose ‘not so much as to secure legislation as to secure and obtain such an opinion that the people of New Zealand shall accept the League of Nations ... that is, that the central executive authority or the Government shall be influenced to act in a particular way’); *Draco* at [65] (partisan advocacy seen in publication of ‘partisan pieces ... about local government or central government issues’). Compare to same effect *ACAT* at [19], [52], [53], [67].

¹¹⁸ See for example *Jackson v Phillips* (1867) 96 Mass 539 (holding that it was a charitable purpose to promote voluntary manumission of slaves to private individuals); *McGovern* at 346 – 347 (holding that the purpose to secure the release of prisoners of conscience contemplated moral pressure on governments and governmental authorities and not only pressure against individuals and companies); *ACAT* at [48] – [53] (holding that letter and postcard campaign was directed at individuals in a position to take political action).

¹¹⁹ *ACAT* at [66].

94. The Board acknowledges that identifying whether a purpose to promote a charitable purpose through propaganda is directed to private individuals and companies and so charitable in law (on the one hand), or directed to governmental action to advance the charitable purpose and so not charitable in law (on the other) will call for a holistic, case-by-case assessment.¹²⁰
95. Having reviewed the Trust's stated purposes and the Trust's activities, the Board considers that it has a purpose to procure political actions.
96. First, the Board considers that the Trust's stated purposes allow it to pursue governmental actions, as in the reference to promotion of "... policy supporting marriage and family" at clause 4A, and the reference to participation in "debate surrounding issues relating to and affecting the family being promoted by ... policy makers" at clause 4C. The stated purpose at clause 4E (to "be a voice for the family in the media speaking up about issues relating to families that are in the public domain") may also allow the Trust to pursue governmental actions.
97. Secondly, the Board considers that the Trust's activities confirm that it is pursuing a purpose to secure governmental actions consistent with its point of view. We consider it relevant that the Trust:
- invites the public to subscribe for occasional "Action Alert" emails "when we need your voice";¹²¹
 - issues media releases to raise public awareness of the Trust's point of view on proposed laws,¹²² policies and public decisions;¹²³
 - publishes opinion pieces and gives weekly commentaries on issues;
 - lobbies public decision-makers asking them to take actions consistent with the Trust's point of view;¹²⁴
 - issues report cards which rate politicians and political parties on how they have voted on key family and conscience issues,¹²⁵ marking politicians according to whether they vote "consistent with Family First's position" or "contrary to Family First's position"; and

¹²⁰ The Board notes the guidance provided by the Charities Commission for England and Wales in *Speaking Out: Guidance on Campaigning and Political Activity by Charities* (2008) published at <http://www.charity-commission.gov.uk/publications/cc9.aspx> [accessed 14 February 2013] and by Canada Revenue Agency in Canada Revenue Agency, *Policy Statement CPS-022, Political Activities*, published at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cps/cps-022-eng.html> [accessed 14 February 2013].

¹²¹ <http://familyfirst.org.nz/contribute/> [accessed 22 January 2013].

¹²² For example, Media Release 28 December 2012 "Ban on School Drug Searches Labelled 'Dopey', Dangerous"; <http://familyfirst.org.nz/category/media/> [accessed 22 January 2013].

¹²³ For example, Media Release 14 December 2012 "Free Morning-After Pill Morally Bankrupt, Medically Flawed"; <http://familyfirst.org.nz/category/media/> [accessed 22 January 2013].

¹²⁴ For example, submission of Petition to Select Committee opposing the Marriage (Definition of Marriage) Amendment Bill, Media Release 21 January 2013 "72,000 signatures for marriage to be presented to MPs" <http://familyfirst.org.nz/category/media/> [accessed 22 January 2013].

¹²⁵ <http://valueyourvote.org.nz> [accessed 22 January 2013].

- has developed a list of policies consistent with its values that it promotes to all political parties.¹²⁶

98 The Board considers that, viewed holistically, the Trust's activities seek to procure governmental actions consonant with the Trust's points of view regarding models of family life.

D. Section 5(3) of the Act

99 The Board is satisfied that the Trust's non-charitable purpose to promote its point of view of families is its main purpose. That purpose is so pervasive and predominant it cannot realistically be considered ancillary to any valid charitable purpose of the Trust.

100. Moreover, the Board considers that the Trust's purpose to procure governmental actions consistent with its point of view is an independent political purpose that is not within the savings provision set out in section 5(3) of the Act. The Board considers that the Trust's actions to seek political outcomes are at the forefront of its overall endeavour, as evidenced by the calls for political action throughout the Trust's publications, and the policy priorities it promotes to political actors. The Board is satisfied that the purpose to procure governmental outcomes is not merely a means to an end but rather that viewed qualitatively it is an independent purpose of the Trust. Further, the calls for governmental action are pervasive through the Trust's overall endeavour and so cannot be said to be quantitatively ancillary.

E. Section 35(1) of the Act

101. For the reasons given above, the Trust does not have exclusively charitable purposes and does not meet the requirements for registration.

102. Section 10(1)(a) of the Act obliges the Board to promote public trust and confidence in the charitable sector. The Board considers that public trust and confidence in registered charitable entities would not be maintained if entities which did not meet the essential requirements for registration remained on the register. This is particularly relevant for entities such as the Trust which seek funds from the public.

103. Accordingly, the Board considers that it is in the public interest to remove the Trust from the register as this will maintain public trust and confidence in the charitable sector.

104. The Trust has submitted that this Board would breach the rules of natural justice if it were to exercise its power to deregister an entity on the grounds that it does not qualify for registration in the absence of a material change in circumstances or legislation since a decision was taken to register the entity. The Trust seeks to support this submission by reference to the doctrine of legitimate expectations,¹²⁷ and to the

¹²⁶ <http://familyfirst.org.nz/about-us/family-policy-priorities/> [accessed 22 January 2013].

¹²⁷ Letter from P D McKenzie QC dated 26 November 2012 at [5] and [36].

principle that a broad right to reconsider a decision after promulgation can be seen as unfair.¹²⁸

105. The Board is bound to observe the rules of natural justice when considering the exercise of its power to remove an entity from the register.¹²⁹ However, the Board does not accept the Trust's submission that it would be a denial of natural justice for the Board to exercise the power conferred in section 32(1)(a) of the Act in this case.
106. The Board does not consider that general law principles of fairness in revocation of decisions are relevant in this context, which involves the exercise of an express statutory power to direct that an entity be removed from the register,¹³⁰ distinct and separate from the statutory power to register an entity.¹³¹
107. Further, the Board considers that any legitimate expectation raised by registration of an entity must be consistent with the Act. The Act confers an express power set out in section 32(1)(a) to remove the entity from the register where the entity "is not, or is no longer, qualified for registration as a charitable entity".¹³² This power is complemented by the statutory duty to file annual returns¹³³ and the chief executive's power to examine and inquire into any charitable entity, including the activities and proposed activities of the entity.¹³⁴ The chief executive's functions under the Act include monitoring charitable entities and their activities to ensure that entities that are registered as charitable entities continue to be qualified for registration as charitable entities.¹³⁵ The Court of Appeal has observed that the Act gives the chief executive an on-going role in monitoring registered charitable entities and their activities and in ensuring their compliance with the Act and the appropriate use of their tax exemptions.¹³⁶
108. The Board considers that any legitimate expectation engendered by an initial registration decision must be consistent with the clear statutory provision for on-going monitoring of registered entities and their activities, to ensure that they continue to be qualified for registration, *and* with the Board's express statutory power to remove an entity that "is not, or is no longer, qualified for registration as a charitable entity". The Board does not consider that the circumstance of the Trust's initial registration, and subsequent investigation by the Charities Commission, gives rise to a legitimate expectation that the Trust's registration should be maintained where its activities and responses to the notice of intention to remove

¹²⁸ Letter from P D McKenzie QC dated 26 November 2012 at [34] – [36].

¹²⁹ Section 26(1) of the Act; see also section 27 of the *New Zealand Bill of Rights Act 1990*.

¹³⁰ Section 32 of the Act.

¹³¹ Section 19 of the Act.

¹³² The Act does not limit the circumstances in which an entity may be considered to be no longer qualified for registration as a charitable entity, see section 32(2) and 32(3) of the Act.

¹³³ Section 41 of the Act.

¹³⁴ Section 50(1)(a) and 50(2)(a) of the Act.

¹³⁵ Section 10(h) of the Act.

¹³⁶ *Greenpeace, CA* at [38].

sent by the chief executive show that its purposes are not exclusively charitable and it does not qualify for registration.

F. Determination

109. The Board determines that the Trust is not qualified for registration as a charitable entity because it is not established for exclusively charitable purposes as required by section 13(1)(a) of the Act. The Board considers that the Trust's main purpose is to promote a point of view with regard to family life and that this purpose is not a valid charitable purpose and is a political purpose. Further, the Trust has a purpose to procure government action consistent with the Trust's convictions, and this is a political purpose that lies outside the scope of charity. The Trust's non-charitable purpose is not ancillary within section 5(3) of the Act.
110. As the Trust has independent (non-ancillary) non-charitable purposes, it does not meet registration requirements and it is in the public interest to proceed with the Trust's removal from the Charities Register. As such, the grounds for removal under section 32(1)(a) of the Act are satisfied in relation to the Trust.
111. The decision of the Board is therefore to remove the Trust from the register, pursuant to section 31 of the Act, with effect from 27 May 2013.

For the above reasons, the Board determines to deregister the Trust as a charitable entity by removing the Trust from the Register.

Signed for and on behalf of the Board

15th APRIL 2013