IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV 2010-485-829

IN THE MATTER OF	an appeal from a decision of the Charities Commission under the Charities Act 2005
BETWEEN	GREENPEACE OF NEW ZEALAND INCORPORATED Appellant

Hearing: 11 November 2010

Counsel: D M Salmon and K L J Simcock for Appellant
P Gunn for Charities Commission

Judgment: 6 May 2011

JUDGMENT OF HEATH J

This judgment was delivered by me at 4.15pm on 6 May 2011 pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar

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Contents

Introduction

[1] Greenpeace of New Zealand Incorporated (Greenpeace) is an incorporated society through which the wider Greenpeace organisation operates in New Zealand. In the most general terms, Greenpeace's object is to promote a philosophy that encompasses protection and preservation of nature and the environment.

[2] Before enactment of the Charities Act 2005 (the Act), Greenpeace enjoyed charitable status, under a regime administered through the Commissioner of Inland Revenue. When the Act came into force, those organisations that had previously held charitable status were obliged to apply to the Charities Commission (the Commission) for registration as a "charitable entity".[1]

[3] Greenpeace applied to the Commission for registration. The Commission (Messrs Ashton and Ayres) declined the application, holding that Greenpeace was not a society or institution that had been established and maintained exclusively for charitable purposes.[2] Greenpeace appeals against that decision.

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[1] Charities Act 2005, s 17; see also the definition of "charitable entity" in s 4(1).

[2] *Re Greenpeace of New Zealand Incorporated* Charities Commission Decision 2010-7, 15 April 2010 at para 74 [*Re Greenpeace*].

The appeal

[4] Greenpeace's application fell to be determined in relation to those provisions of the Act that deal with a "society".[3] It was necessary for Greenpeace to persuade the Commission that it had been established and was maintained "exclusively for charitable purposes"[4] and was not carried on for the private pecuniary profit of any individual.[5] No issue arises under the private pecuniary profit head.

[5] If Greenpeace could not establish that it had exclusively charitable purposes registration could still be effected if a non-charitable purpose was "merely ancillary to a charitable purpose of the ... society".[6] A non-charitable purpose is regarded as ancillary if it were both "ancillary, secondary, subordinate, or incidental to a charitable purpose" and "not an independent purpose" of the society.[7]

[6] The appeal point was framed as whether a modern law of charities ought to exclude from registration societies that promote charitable objectives through the use of advocacy, interacting with the executive, legislative and judicial branches of government.

[7] Since judgment was reserved on 11 November 2010, there have been two developments on which I have sought and obtained further submissions. The first was the judgment of the High Court of Australia, delivered on 1 December 2010, in *Aid/Watch Incorporated v Commissioner of Taxation*.[8] By a majority,[9] a similar question arising under Australian law was answered in terms favourable to Greenpeace.[10] The second was a judgment of this Court in *Re Draco Foundation (NZ) Charitable Trust*.[11] In that case, Ronald Young J declined to apply the majority

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[3] Charities Act 2005, ss 13(1)(b).
[4] Ibid, s 13(1)(b)(i).
[5] Ibid, s 13(1)(b)(ii).
[6] Ibid, s 5(3).
[7] Ibid, s 5(4).
[8] *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42.
[9] French CJ, Gumow, Hayne, Crennan and Bell JJ; Heydon and Kiefel JJ dissenting.
[10] This assumes some importance because the Commission referred to and applied the decision of the Federal Court in *Commissioner of Taxation v Aid/Watch Incorporated* [2009] FCAFC 128 that was reversed by the High Court of Australia.
[11] *Re Draco Foundation (NZ) Charitable Trust* HC Wellington CIV 2010-485-1275, 15 February 2011.

judgment in *Aid/Watch*, holding that this Court was bound to apply the decision of the House of Lords in *Bowman v Secular Society Ltd*,[12] which remained good law in New Zealand.[13]

The Commission's decision

[8] The application for registration was filed electronically on 25 June 2008. In determining an application, the Commission must consider the applicant's objects and other information relevant to consideration of whether the entity has been established and is maintained exclusively for charitable purposes.[14]

[9] The term "charitable purpose" is defined by s 5 of the Act:

> **5 Meaning of charitable purpose and effect of ancillary non-charitable purpose**
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> (1) In this Act, unless the context otherwise requires, charitable purpose includes 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.
>
> ....
>
> (3) To avoid doubt, if the purposes of a trust, society, or an institution include a non-charitable purpose (for example, advocacy) that is merely ancillary to a charitable purpose of the trust, society, or institution, the presence of that non-charitable purpose does not prevent the trustees of the trust, the society, or the institution from qualifying for registration as a charitable entity.
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> (4) For the purposes of subsection (3), a non-charitable purpose is ancillary to a charitable purpose of the trust, society, or institution if the non-charitable purpose is—
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> (a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society, or institution; and
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> (b) not an independent purpose of the trust, society, or institution.

[12] *Bowman v Secular Society Ltd* [1917] AC 406 (HL).
[13] *Re Draco Foundation (NZ) Charitable Trust* HC Wellington CIV 2010-485-1275, 15 February 2011 at paras [57]-[60].
[14] Charities Act 2005, ss 13(1)(b)(i) and 18(3).

[10] The Commission accepted that most of the purposes for which Greenpeace was maintained were charitable. The reason why the application for registration was declined related to the means by which Greenpeace promoted its philosophy,[15] both in a general and specific sense. In particular, the use of political advocacy assumed some importance, given a line of authority that followed *Bowman*.

[11] Before giving its decision, the Commission sought further information (among other things) about the way in which Greenpeace promoted disarmament and peace, as well as the content of programmes it undertook. In addition, inquiries were made about the status of associated entities known as Greenpeace New Zealand Charitable Trust and the Stichting Greenpeace Council. Extensive information was supplied by Greenpeace. That was taken into account by the Commission in its decision-making process.

[12] The Commission was mindful of Greenpeace's submission that the circumstances in which a "charitable purpose" could be found had been codified. That meant the Commission had to determine whether it was permissible to take account of pre-Act authorities dealing with the categories of charitable purposes stemming from the Charitable Uses Act 1601 (UK),[16] known as the Statute of Elizabeth. A decision on that issue was significant because earlier authorities had held that it was not open for a Court to make a decision on whether a political goal was of "public benefit" because the existence of different policy choices made it inappropriate for a Court to pronounce on which was the better outcome.

[13] The Commission took the view "that case law decisions on charitable purposes decided before the Act came into force are relevant to the determination of whether an entity meets the [charitable purposes] requirements of the Act".[17] However, it gave no reasons for reaching that conclusion.

[14] Greenpeace's objects, as recorded in its rules,[18] are to:

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[15] The philosophy is described in para [1] above.
[16] Charitable Uses Act 1601 43 Eliz 1, c 4.
[17] *Re Greenpeace*, above n 2, at para 66.
[18] Following some amendments made at its Annual General Meeting in June 2009.

2.1 Promote the philosophy that humanity is part of the planet and its interconnected web of life and whatever we do to the planet we do to ourselves.

2.2 Promote the protection and preservation of nature and the environment, including the oceans, lakes, rivers and other waters, the land and the air and flora and fauna everywhere and including but not limited to the promotion of conservation, disarmament and peace.

2.3 Identify, research and monitor issues affecting these objects, and develop and implement programmes to increase public awareness and understanding of these and related issues.

2.4 Undertake, promote, organise and participate in seminars, research projects, conferences and other educational activities which deal with issues relating to the objects of the Society.

2.5 Promote education on environmental issues by giving financial and other support to the Greenpeace New Zealand Charitable Trust.

2.6 Co-operate with other organisations having similar or compatible objects and in particular to co-operate with Stichting Greenpeace Council by abiding by its determination in so far as it is lawful to do so.

2.7 Promote the adoption of legislation, policies, rules, regulations and plans which further the objects of the Society and support the enforcement or implementation through political or judicial processes, as necessary.

[15] In assessing particular objects, the Commission held:[19]

(a) Promotion of the protection and preservation of nature and the environment (being part of cl 2.2) was charitable under the fourth head mentioned in s 5(1) of the Act, "any other matter beneficial to the community".

(b) The objects outlined in cls 2.3, 2.4 and 2.5 were charitable, under the "advancement of education" head.

(c) The object set out in cl 2.1 was aspirational in nature.

(d) Clause 2.6 was ancillary to the accepted charitable purposes.

[19] *Re Greenpeace*, above n 2, at paras 34-35, 49-50, 59, 60 and 72.

(e) The "promotion of ... disarmament and peace" (appearing in cl 2.2) was a political purpose that was not "charitable", as defined in s 5(1); nor was it ancillary to a charitable purpose.

(f) The objects articulated in cl 2.7 were political activities that amounted to an independent non-charitable purpose.

(g) Greenpeace, in undertaking non-violent direct action, may involve itself in illegal activities that disqualified it from registration as a charitable entity.

[16] In reaching its conclusions on the political activity issues, the Commission took account of the reference to "advocacy" in s 5(3) but found that was not conclusive because s 18 of the Act required the Commission "to look at the activities of the entity at the time at which the application was made and the entity's proposed activities".[20] By reference to information on Greenpeace's website, the Commission formed the view that the "focus on political advocacy is so great that the political activities outlined in clause 2.7 are an independent purpose of [Greenpeace], which is non-charitable".[21] In the alternative, the Commission did not consider the objective would be "exclusively charitable", saying that an object of "furthering the promotion of disarmament and peace" could not "be said to be ancillary to a charitable purpose".[22]

[17] In summary, the Commission's decision to decline Greenpeace's application was based on four distinct legal holdings:

(a) pre-existing authorities excluding political activities from being "charitable purposes" survived the Act.

(b) The part of cl 2.2 that deals with "promotion of ... disarmament and peace" was a political purpose.

[20] Ibid, at paras 53-54.
[21] Ibid, at para 59.
[22] Ibid, at para 60.

(c) The objects set out in cl 2.7 involved political advocacy that should properly be characterised as an "independent" non-charitable purpose.

(d) Greenpeace engaged in illegal activity that had no element of public benefit.

Competing submissions

(a) Submissions for Greenpeace

[18] Mr Salmon submitted that the Commission had erred in declining to register Greenpeace as a charitable entity. He submitted that all of Greenpeace's primary purposes were charitable. To the extent that any of them might be considered non-charitable, he contended they were ancillary to the primary purposes or were capable of correction.[23]

[19] Mr Salmon submitted that the engagement of charities in political advocacy is more acceptable now in 21st century New Zealand than at the time earlier cases espousing the rule were determined. He referred to the specific reference to "advocacy" in s 5(3) of the Act to support his general proposition. Mr Salmon highlighted the need to judge what constitutes a charitable purpose in a contemporary social and cultural setting and that this could change with time.

[20] In relation to the specific decisions of the Commission, Mr Salmon submitted:

(a) There was no absolute bar on a charity having the objective of promoting peace and disarmament.

(b) The Commission was right to acknowledge that the promotion of peace, generally, could be charitable, but was wrong to conclude that the aim was brought into the political arena through the means by which Greenpeace contended "peace" should be achieved. Because

[23] Charitable Trusts Act 1957, s 61B. This latter point was not pursued in oral submissions.

Greenpeace's focus was on the general nature of peace, rather than being directed at a particular law, statute, alliance or decision, it had no contentious element.

(c) The particular focus on nuclear disarmament was not politically contentious because it aligned with New Zealand's present nuclear-free policy[24] and with the - Nuclear Non-Proliferation Treaty[25] which, at the time of submissions, had 187 signatories; all but four countries of the world.

(d) To the extent that any part of Greenpeace's objectives of "peace or disarmament" in cl 2.2 could be said to be political, they should be regarded as an ancillary purposes, under s 5(3) and (4) of the Act.

(e) The wording of cl 2.7 plainly indicated that it was an ancillary purpose

(f) In considering whether its purposes were ancillary the Commission had erred in failing to undertake a qualitative and quantitative analysis.[26]

(g) The Commission erred in holding that Greenpeace was involved in disqualifying illegal activities.

(b) Submissions for Commission

[21] While Mr Gunn advanced a number of points to support the Commission's decision, he made it clear that the Commission appeared solely as an "opposer" for the purpose of assisting this Court to determine the issues arising.[27] It is the absence

[24] New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987.
[25] Treaty on the Non-Proliferation of Nuclear Weapons (opened for signature 1 July 1968, entered into force 5 March 1970. This is incorporated into New Zealand law by Schedule 3 to the New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987.
[26] *Re the Grand Lodge of Antient Free and Accepted Masons in New Zealand* [2011] 1 NZLR 277 (HC) at paras [49] and [51]. See also *Re Education New Zealand Trust* (2010) 24 NZTC 24,354 (HC) at [43].
[27] See *Canterbury Development Corporation v Charities Commission* [2010] 2 NZLR 707 (CA) at

of an affected party to argue against the appeal that justifies this course. Ordinarily, it is inappropriate for the tribunal from which an appeal is brought to be heard.[28]

[22] Mr Gunn contended that the relevant law had not changed since the Act came into force. He referred to the well-known decision of the House of Lords in *Commissioners for Special Purposes of Income Tax v Pemsel*,[29] in which the scope of "charitable purposes" was discussed. He submitted that the range of "charitable purposes" listed in s 5(1) of the Act mirrored the observations of Lord Macnaghten in that case and reflected the settled common law position.

[23] Mr Gunn supported the Commission's decision on the "promotion of disarmament and peace" aspect of cl 2.2 of Greenpeace's objects. He submitted that the *Bowman*[30] rule remained applicable, with the consequence that political purposes could not be charitable.

[24] Mr Gunn disputed that Greenpeace's "focus on peace" was of a general nature. He asserted that its campaigns for peace and disarmament were targeted, citing protests against nuclear testing in both Alaska (in 1971) and France (at Mururoa Atoll in 1985) and, more recently, the flying of a banner opposing the invasion of Iraq at the beginning of the America's Cup in New Zealand.

[25] In relation to cl 2.7, Mr Gunn submitted that the wording of the purposes is not conclusive to the question whether they are "ancillary" to the main objects. He referred to s 18, which requires the Commission to have regard to the activities and proposed activities of the applicant entity. Mr Gunn submitted that the Commission was entitled to look at Greenpeace's website, at the time of the registration application.[31] Based on the information it considered, Mr Gunn submitted that the Commission was entitled to consider that Greenpeace's focus on lobbying and activism was an independent non-charitable purpose, rather than one of an "incidental" nature.

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para [108] and r 20.17 of the High Court Rules.

[28] See *Attorney-General v Maori Land Court* [1999] 1 NZLR 689 (CA) at 695-696.

[29] *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531 (HL).

[30] *Bowman v Secular Society Ltd* [1917] AC 406 (HL) at 442.

[31] The Act requires the Commission to have regard to the activities of the entity at the time at which the application was made: s 18(3)(a)(i).

[26] On the topic of illegal purposes, Mr Gunn referred to the possibility of certain types of non-violent direct action that necessarily included illegal activities, such as trespass to property. On that basis, he contended that the Commission was right to consider that possibility as precluding registration as a charitable entity.

A preliminary issue: should further evidence be allowed on appeal?

[27] The right of appeal to this Court is conferred by s 59 of the Act. The Court's appellate powers are set out in s 61:

> **61. Determination of appeal**
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> (1) In determining an appeal, the High Court may—
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> (a) confirm, modify, or reverse the decision of the Commission or any part of it:
>
> (b) exercise any of the powers that could have been exercised by the Commission in relation to the matter to which the appeal relates.
>
> (2) Without limiting subsection (1), the High Court may make an order requiring an entity—
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> (a) to be registered in the register of charitable entities with effect from a specified date; or
>
> (b) to be restored to the register of charitable entities with effect from a specified date; or
>
> (c) to be removed from the register of charitable entities with effect from a specified date; or
>
> (d) to remain registered in the register of charitable entities.
>
> (3) The specified date may be a date that is before or after the order is made.
>
> (4) The High Court may make any other order that it thinks fit.
>
> (5) An order may be subject to any terms or conditions that the High Court thinks fit.
>
> (6) Nothing in this section affects the right of any person to apply, in accordance with law, for judicial review.

[28] Greenpeace seeks leave to adduce further evidence on appeal. There is no provision in the Act entitling a party to put additional evidence before this Court on appeal. Therefore, the issue falls to be determined in the context of the general appellate rules, set out in Part 20 to the High Court Rules.[32] Rule 20.16 provides:

> **20.16 Further evidence**
>
> (1) Without leave, a party to an appeal may adduce further evidence on a question of fact if the evidence is necessary to determine an interlocutory application that relates to the appeal.
>
> (2) In all other cases, a party to an appeal may adduce further evidence only with the leave of the court.
>
> (3) The court may grant leave only if there are special reasons for hearing the evidence. An example of a special reason is that the evidence relates to matters that have arisen after the date of the decision appealed against and that are or may be relevant to the determination of the appeal.
>
> (4) Further evidence under this rule must be given by affidavit, unless the court otherwise directs.

[29] In support of the application to adduce further evidence, Ms McDiarmid (the Executive Director of Greenpeace) deposed that there was an incomplete record before the Court because the Commission had access to the entire website in reaching its conclusions. She stated that the extent to which members of the Commission may have browsed through the websites to extract the information to which the decision refers is unknown. Further, she averred that to take some pages from the website in isolation risks taking them out of context.

[30] Ms McDiarmid accepted the dynamic nature of websites by acknowledging that they had been "altered and updated since the Commission's decision was made". Nevertheless, she deposed that "in substance the Greenpeace Website remains largely unchanged". An attempt has been made to provide, in a compact disk, "an electronic snapshot of the Greenpeace Website as it was on 7th July 2010".

[31] Ms McDiarmid stated that Greenpeace promotes peace primarily through educational means and rarely makes political submissions. She said that only 20 of

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[32] See also *Canterbury Development6 Corporation v Charities Commission* [2010] 2 NZLR 707 (HC) at [105], holding that further evidence should ordinarily be adduced on appeal from the Commission pursuant to r 20.16(2) and (3) of the High Court Rules.

more than 3,000 pages on Greenpeace's website made reference to advocacy and that it was inappropriate to draw any conclusions on that basis.

[32] The application seeks to put before the Court information that was available to the Commission at the time it made its decision but on which Greenpeace had no opportunity to make submissions on the conclusions drawn from its content.[33] Acknowledging that changes that may have been made since the Commission's decision, the content of the websites remains relevant information to which both parties ought to be able to direct submissions for the purpose of an appeal. In some ways, this is an unusual invocation of the Court's power to admit further evidence, which generally is determined by reference to cogency and materiality of evidence not available to the decision-maker at the relevant time.[34]

[33] Rule 20.16(2) and (3) suggests an underlying test based on the interests of justice. In some senses, the application is similar to the type of example given in r 20.16(3), when a party wishes to adduce updating information. Here, the special reason for admitting the evidence is to ensure that Greenpeace has a proper opportunity to meet the grounds on which the Commission found against it on political activity grounds, by providing the best evidence now available of information viewed by the Commission at the time its decision was made. On that basis, I grant leave for the additional evidence to be adduced.

Analysis

(a) Does the pre-existing law on "charitable purposes" remain relevant?

[34] The purpose of the Act was to establish the Commission, to state its functions and powers, to provide for the registration of charitable entities and to require them and other persons to comply with specified obligations.[35] The Act does not (in express terms) state whether it was intended to alter pre-existing law in relation to

[33] See *Re Education New Zealand Trust* (2010) 24 NZTC 24,354 (HC) at [60] and [63].
[34] See, generally *Telecom Corporation of New Zealand Ltd v Commerce Commission* [1991] 2 NZLR 557 (CA).
[35] Charities Act 2005, s 3.

the determination of a "charitable purpose". Nevertheless, the use of a well-known, existing term of legal art points to adoption of the earlier position.

[35] After the hearing, at my request, the parties filed a joint memorandum referring to relevant extrinsic material (Hansard and the select committee report on the Charities Bill 2005) on the intended meanings of "charitable purpose" and "advocacy".

[36] During the second reading of the Charities Bill, the Associate Minister of Commerce, Hon Judith Tizard MP, indicated that many of the submissions received had expressed concern about the definition of a "charitable purpose". She told the House of Representatives that the "test used in the bill comes from case law, and the select committee has not recommended that the test should be changed".[36]

[37] The Associate Minister's reference to the select committee report is accurate. The majority, after referring to the committee's examination of charity law in both the United Kingdom and Australia, expressed concern that any amendment to the definition of "charitable purpose" would be "interpreted by the Courts as an attempt to widen or narrow the scope of charitable purposes, or change the law in this area, which was not the intent of the bill". They also made it clear that the definition set out in the bill was "based largely on the long-established definition of 'charitable purpose' in common law".[37]

[38] The extrinsic aids to interpretation support my initial view that the use of an existing term of art points to adoption of a pre-existing interpretation of the phrase. That position is reinforced by the fact that the words contained in s 5(1) of the Act replicate those found in s OB 1 of the Income Tax Act 1994,[38] which the Commissioner of Inland Revenue previously used to determine charitable purposes.

[39] I have considered also whether the phrase "any other matter beneficial to the community" (rather than a reference to some public benefit) was intended to change the pre-existing law. The phrase reflects the formulation of the relevant criteria for a

[36] (12 April 2005) 625 NZPD 19941.
[37] Charities Bill 2005 (108-2) (select committee report at 3-4).
[38] Income Tax Act 1994, s OB 1, definition of "charitable purpose".

charity, identified by Lord Macnaghten in *Pemsel.* A similar conclusion was reached by Joseph Williams J in *Travis Trust v Charities Commission,*[39] in which the term "community" was treated as a synonym for "public".

[40] I hold that the Commission was correct to conclude that the Act did not change the meaning of "charitable purpose".

(b) The scope of a "charitable purpose"

[41] The categories of charitable purposes were originally found in the Statute of Elizabeth. In *Commissioners for Special Purposes of Income Tax v Pemsel,*[40] Lord Macnaghten restated the four principal divisions of "charity": trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community that did not fall under any of the preceding heads.

[42] The genesis of the exemption of political activities from charitable purposes is *Bowman v Secular Society Ltd*.[41] In his speech, Lord Parker of Waddington expressed the view that virtually all of the Secular Society's objects were not charitable, saying:[42]

> ... The abolition of religious tests, the disestablishment of the Church, the secularization of education, the alteration of the law touching religion or marriage, or the observation of the Sabbath, are purely political objects. Equity has always refused to recognise such objects as charitable. ... *a trust for the attainment of political objects has always been held invalid*, not because it is illegal, for every one is at liberty to advocate or promote by any lawful means a change in the law, but *because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift*.
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> (emphasis added; citations omitted)

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[39] *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 (HC) at paras [54]-[55].
[40] *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531 (HL) at 583.
[41] *Bowman v Secular Society Ltd* [1917] AC 406 (HL).
[42] Ibid, at 442. *Bowman* has subsequently been applied in the United Kingdom in *Anti-Vivisection v Inland Revenue Commissioners* [1948] AC 31 (HL) and *McGovern v Attorney-General* [1982] 1 Ch 321.

[43] In the context of Greenpeace's object of pacifism, a good example of the application of this principle can be found in Chadwick LJ's judgment in *Southwood v Attorney-General*:[43]

> The point, as it seems to me, is this. There is no objection - on public benefit grounds - to an educational programme which begins from the premise that peace is generally preferable to war. For my part, I would find it difficult to believe that any court would refuse to accept, as a general proposition, that it promotes public benefit for the public to be educated to an acceptance of that premise. That does not lead to the conclusion that the promotion of pacifism is necessarily charitable. *The premise that peace is generally preferable to war is not to be equated with the premise that peace at any price is always preferable to any war. The latter plainly is controversial. But that is not this case. I would have no difficulty in accepting the proposition that it promotes public benefit for the public to be educated in the differing means of securing a state of peace and avoiding a state of war. The difficulty comes at the next stage. There are differing views as to how best to secure peace and avoid war. To give two obvious examples: on the one hand it can be contended that war is best avoided by "bargaining through strength"; on the other hand it can be argued, with equal passion, that peace is best secured by disarmament - if necessary, by unilateral disarmament. The court is in no position to determine that promotion of the one view rather than the other is for the public benefit.* Not only does the court have no material on which to make that choice; to attempt to do so would be to usurp the role of government. So the court cannot recognise as charitable a trust to educate the public to an acceptance that peace is best secured by "demilitarisation" . . . Nor, conversely, could the court recognise as charitable a trust to educate the public to an acceptance that war is best avoided by collective security through the membership of a military alliance - say, NATO.
>
> (emphasis added)

[44] *Bowman* was also applied in New Zealand, in a case by which I am bound. In *Molloy v Commissioner of Inland Revenue*,[44] Mrs Molloy had donated $5 to the Society for the Protection of the Unborn Child (SPUC). She claimed that its funds were "applied wholly or principally to ... charitable ... or cultural purposes within New Zealand" pursuant to s 48B(2)(a) of the Land and Income Tax Act 1974, meaning that she was entitled to deduct that sum from her assessable income for the year ended 31 March 1974. The Commissioner of Inland Revenue disallowed the deduction. That decision was upheld by this Court.

[45] Mrs Molloy appealed. Delivering the judgment of the Court of Appeal, Somers J considered the meaning of the reference to "charitable ... purposes within

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[43] *Southwood v Attorney-General* [2000] EWCA Civ 204 at para 29.
[44] *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 (CA).

New Zealand. Section 2 of the relevant Act defined the term "charitable purpose" in almost identical terms to s 5(1). At the time *Molloy* was decided, there was vigorous public debate over the possibility of liberalisation of the law relating to abortion.[45]

[46] SPUC's objects, against which the issue fell to be determined, were:[46]

> (a) To uphold and promote the intrinsic value of human life.
>
> (b) To uphold and protect the rights of unborn children from the time of conception.
>
> (c) To maintain and improve legal and social and medical safeguards for protecting and preserving the rights of unborn children.
>
> (d) To encourage and promote study and research and the collection and dissemination of information on the moral, medical, legal, political and social implications of pregnancy and the questions associated therewith.
>
> (e) To inform and educate the public on the need for legal and other safeguards for protecting and preserving the rights of unborn children.
>
> (f) To assist and promote the well being of mothers and children, both before and after childbirth, and in particular those who face adverse circumstances.
>
> (g) To encourage the formation of local constituent societies and to co-ordinate their activities on a national basis.
>
> (h) To co-operate with government departments other organisations and individuals engaged in fostering respect for human life and in promoting social conditions which will provide the best opportunities for mothers and children.

[47] Somers J discussed the political activity exception in the context of SPUC's argument that its main objectives were either educational or for the benefit of the community. In considering whether the political activity exception should apply, his starting point was Lord Parker's observations in *Bowman.*[47] Somers J acknowledged that, unlike most of the earlier authorities, SUPUC's object was not to change the law but to preserve it against the claims of those who desired alteration. Nevertheless, His Honour suggested that "on an issue of a public and very controversial character, as is the case of abortion, both those who advocate a change

[45] Ibid, at 694.
[46] Ibid, at 692-693.
[47] Ibid, at 695.

in the law and those who vigorously oppose it are engaged in carrying out political objects in the relevant sense".[48] He went on to say that "the inability of the Court to judge whether a change in the law will or will not be for the public benefit ... must be as applicable to the maintenance of an existing provision as to its change".[49]

[48] The Court of Appeal then explicitly adopted the *Bowman* approach. Somers J said:[50]

> No one would gainsay the importance and few the desirability of the general principles exhibited by the cases mentioned. They demonstrate a respect for and protection of proprietary and other rights to which, upon its birth, an unborn child may be entitled and in the case of the criminal law the protection of the life itself now affected by statute in New Zealand. ...
>
> *But we are unable to accept that either their expressed reasoning or any implications to be drawn from them convey the present case to the terminus which the taxpayer must reach — that is 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*.
>
> The main, or a main, object of the Society in the present case was opposition to a change in the statutory provisions about abortion. It was political. In those circumstances the application of its funds cannot be said to be principally for charitable purposes.
>
> (emphasis added; citations omitted)

[49] The utility of the exception was questioned by Hammond J, in *Re Collier (Deceased)*.[51] In that case, a testatrix had died leaving a will and codicil which provided for the residue of her estate to be devolved upon trusts designed to promote, *inter alia*, the ideas of world peace and the ability of those suffering from terminal illness to die in dignity at a time and place of their choice. The testatrix expressly declared that gifts to the Voluntary Euthanasia Society were deemed to be in satisfaction of the latter objective. Notwithstanding his concerns, the Judge regarded himself as bound to apply the *Bowman* principle.

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[48] Ibid.
[49] Ibid, at 696.
[50] Ibid, at 697-698.
[51] *Re Collier (Deceased)* [1998] 1 NZLR 81 (HC).

[50] While *Molloy* was not discussed, Hammond J explored the question why political trusts were said to be unlawful. His Honour referred to three rationales. He described two of those as "distinctly debateable".[52]

(a) The first was the proposition by Dixon J in *Royal North Shore Hospital of Sydney v Attorney-General*[53] that a coherent system of law could "scarcely admit that objects which are inconsistent with its own provisions are for the public welfare".[54] In that regard, Hammond J both referred to an alternative viewpoint in American case law[55] and questioned the thesis expounded by Dixon J, saying it was commonplace for Judges to make suggestions themselves for changes in the law, whether in judgments or writing extra-curially.[56]

(b) Another category of prohibited "political" charitable trusts questions were those that perpetuate advocacy of a particular point of view - otherwise termed as "propaganda" trusts. In *Royal North Shore Hospital of Sydney,* Latham CJ held that a trust for the purpose of political agitation would be invalid as a charitable trust because it might become "a public danger".[57] Hammond J described this as a "contentious category", saying:[58]

> . . . All would surely agree that a bequest for bringing about revolution, or outright disobedience of the law, must be illegal; and hence it could not be charitable. But once Courts are beyond those concerns, the debate becomes much more difficult. The thrust of academic concern, it has to be said, is that in making decisions in an area like this, Judges are, in reality, making decisions about the "worth" of a particular bequest. The argument is that Judges views on (say)

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[52] Ibid, at 89.
[53] *Royal North Shore Hospital of Sydney v Attorney-General for New South Wales* (1938) 60 CLR 396 (HCA) at 426, per Dixon J.
[54] *Royal North Shore Hospital of Sydney v Attorney-General for New South Wales* (1938) 60 CLR 396 (HCA) at 426 per Dixon J; *Molloy* was cited as being "to similar effect".
[55] George Bogert *Law of Trusts* (5th ed, West Publishing Co, St Paul (MN) 1973) at 236; *Garrison v Little* 75 III App 402 (1898). Bogert suggested that modern American cases had "distinguished between attempts to improve the law and subversional violation of it, and have held that trusts to secure peaceful and orderly change are in the public interest".
[56] *Re Collier (Deceased)* [1998] 1 NZLR 81 (HC) at 89, citing, as an example from the field of charities law itself, T A Gresson J's judgment in *Re Goldwater (Deceased)* [1967] NZLR 754.
[57] *Royal North Shore Hospital of Sydney,* at 412.
[58] *Re Collier (Deceased),* at 90.

> temperance, or birth control, or euthanasia, do reflect an assumption as to "worth", and that that affects outcomes.

[51] The third rationale related to the rejection of trusts to support a political party. This is based on the undesirability for the advantages of charity to be conferred on trusts which overtly "secure ... a certain line ... of political administration and policy".[59] Hammond J said he was unaware of any call for change of this principle.

[52] It is clear that Hammond J considered that the general political activity exception was based on questionable foundations. Yet, he found himself required by authority to apply it, in the circumstances of the particular case. The Judge said:[60]

> I have to say that I have considerable sympathy for that viewpoint which holds that a Court does not have to enter into the debate at all; hence the inability of the Court to resolve the merits is irrelevant. Rather, the function of the Court ought to be to sieve out debates which are for improper purposes; and to then leave the public debate to lie where it falls, in the public arena. . . .
>
> That said, in this Court at least, there is no warrant to change these well-established principles – which rest on decisions of the highest authority – even though admirable objectives too often fall foul of them. As only one instance, in *McGovern v Attorney General* ... two of the objects of a trust established by Amnesty International were held to be not charitable. The non-charitable objects were to attempt to secure the release of prisoners of conscience, and to procure the abolition of torture, and inhuman or degrading treatment or punishment. Such were held to be political objects; and, in the circumstances of that case, it was said they were likely to prejudice United Kingdom relations with other countries.
>
> (citation omitted)

[53] To be balanced against that body of case law is the recent judgment of the High Court of Australia in *Aid/Watch.*[61] After referring to *Pemsel*, *Bowman* and *Royal North Shore Hospital of Sydney*, French CJ, Gummow, Hayne, Crennan and Bell JJ adopted a submission by counsel for Aid/Watch that the generation of public debate as to the best methods for the relief of poverty by the provision of foreign aid had two characteristics indicative of charitable status:

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[59] Ibid at 90; citing *Re Hopkinson (Deceased)* [1949] 1 All ER 346 (Ch) at 352.
[60] *Re Collier (Deceased)*, at 90.
[61] *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA *Aid/Watch*, at para 42

(a) Aid/Watch's activities were apt to contribute to the public welfare, being for a purpose beneficial to the community within the fourth head identified in *Pemsel*.[62]

(b) The purposes and activities of Aid/Watch did not fall within any area of disqualification "for reasons of contrariety between the established system of Government and the general public welfare".[63]

[54] The latter conclusion was reached through an analysis of the contemporary structure of the Australian system of government, by which the Constitution mandates a system of representative and responsible government with a universal adult franchise. That system envisages communication between electors and legislators and officers of the executive, and between electors themselves, on matters of government and politics.[64]

[55] In setting out its conclusions, the majority of the High Court of Australia said:[65]

> 47. These submissions by Aid/Watch should be accepted. By notice of contention the Commissioner submitted that the Full Court should have decided the appeal in his favour on the ground that the main or predominant or dominant objects of Aid/Watch itself were too remote from the relief of poverty or advancement of education to attract the first or second heads in *Pemsel*. It is unnecessary to rule upon these submissions by the Commissioner. This is because the generation by lawful means of public debate, in the sense described earlier in these reasons, concerning the efficiency of foreign aid directed to the relief of poverty, itself is a purpose beneficial to the community within the fourth head in *Pemsel*.
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> 48. It also is unnecessary for this appeal to determine whether the fourth head encompasses the encouragement of public debate respecting activities of government which lie beyond the first three heads (or the balance of the fourth head) identified in *Pemsel* and, if so, the range of those activities. *What, however, this appeal should decide is that in Australia there is no general doctrine which excludes from charitable purposes "political objects" and has the scope indicated in England by* McGovern v Attorney-General.

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[62] For New Zealand purposes, those now appearing in s 5(1) of the Act.
[63] *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42 at para 46.
[64] *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42 at para 44. See also *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 (HCA) at 559-560.
[65] *Aid/Watch Incorporated v Commissioner of Taxation* [2010] HCA 42 at para 47, 48 and 49.

> 49. It may be that some purposes which otherwise appear to fall within one or more of the four heads in *Pemsel* nonetheless do not contribute to the public welfare in the sense to which Dixon J referred in *Royal North Shore Hospital*. But that will be by reason of the particular ends and means involved, not disqualification of the purpose by application of a broadly expressed "political objects" doctrine.
>
> (emphasis added, footnote omitted)

[56] Heydon and Kiefel JJ dissented. On the facts of the case, Heydon J was critical of the majority's view that those who encourage energetic action to achieve a particular political goal could be seen as educating the public on the pros and cons of a particular political issue. Adopting Hammond J's views in *Re Collier*, the Judge took the view that Aid/Watch intended to persuade people to a particular point of view; there was no attempt to provide a balanced assessment of opposing views from which knowledge could be accumulated and independent decisions made.[66]

[57] While Kiefel J took the view that there was no reason, in principle, that the political nature of an organisation's main purpose should disqualify it from charitable status,[67] she was influenced by the way in which Aid/Watch had targeted the policies and practices of inter-governmental institutions, the Australian Government and its allies, as opposed to encouraging rational debate. She said:

> 86. The submission by the appellant, that its purposes are for the public benefit because it generates public debate, cannot be accepted at a number of levels. Its assertion of its view cannot, without more, be assumed to have that effect. Its activities are not directed to that end. If they were directed to the generation of a public debate about the provision of aid, rather than to the acceptance by the Government and its agencies of its views on the matter, the appellant might be said to be promoting education in that area. But it is not. Its pursuit of a freedom to communicate its views does not qualify as being for the public benefit.

[58] In *Re Draco Foundation (NZ) Ltd Charitable Trust*,[68] Ronald Young J took the view that *Bowman* remained good law in New Zealand. His Honour observed that, unlike Australia, New Zealand has as part of its law a doctrine excluding political objects from charitable purposes, citing Molloy as authority.[69] To the extent that *Aid/Watch* undermined those principles, he held it could not be followed in this

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[66] *Aid/Watch* at paras 60-61 (relief of poverty) and 62 (educational purposes).
[67] Ibid, at 69.
[68] *Re Draco Foundation (NZ) Ltd Charitable Trust* HC Wellington CIV 2010-485-1275, 15 February 2011.
[69] Ibid, at para [58].

Court.[70] The Judge also thought there may be other reasons why the majority approach in *Aid/Watch* ought not to be applied in New Zealand. The first was the proposition that *Aid/Watch* applied only to cases where the charitable purpose involved relief of poverty; the second being that *Aid/Watch* was reliant upon Australian constitutional principles not applicable in New Zealand. However, Ronald Young J considered it unnecessary to assess the strength of that reasoning.[71]

[59] Albeit with a degree of reluctance, I feel constrained to apply the full extent of the *Bowman* line of authority on the basis that I am bound to do so by the Court of Appeal decision in *Molloy.* In modern times, there is much to be said for the majority judgment in *Aid/Watch.* Unlike Ronald Young J, I have no real concerns that the political system in Australia ought to bring about a different conclusion, having regard to our mixed member proportional system of parliamentary election, our reliance on select committees to enable policy to be properly debated and the existence of ss 13 and 14 of the New Zealand Bill of Rights Act 1990, dealing respectively with freedom of thought, conscience and religion, and freedom of expression. I leave that question open for consideration, in an appropriate case, by the Court of Appeal or the Supreme Court. Having said that, I should not be taken as necessarily suggesting that the result of the present appeal would be different if the majority judgment in *Aid/Watch* were applied.

(c) Was the Commission wrong?

(i) The appellate approach

[60] My approach to the appellate jurisdiction is governed by *Austin Nichols & Co v Stichting Lodestar*[72] and *Kacem v Bashir.*[73] This approach necessitates a fresh appraisal of the evidence put before the tribunal from which an appeal is brought. This approach has been followed in other appeals from the Commission.[74] The question is whether the Commission erred in its decision.

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[70] Ibid, at para [59].
[71] Ibid, at para [60].
[72] *Austin Nichols & Co v Stichting Lodestar* [2008] 2 NZLR 141 (SC) at [16].
[73] *Kacem v Bashir* [2010] NZFLR 884 (SC) at [31]-[33].
[74] See, for example, *Re Draco Foundation (NZ)*, at para [8].

(ii) Political objectives

[61] I have already identified the Commission's reasons for holding that the promotion of disarmament and peace was not a charitable purpose.[75] Substantial support for the Commission's decision on this issue comes from both *Molloy*[76] and *Southwood.*[77] In reaching its factual conclusions on this issue, the Commission had regard both to information solicited from Greenpeace as part of the application process and the content of relevant websites.

[62] The first question is whether the purpose of promoting disarmament and peace is charitable or non-charitable. Applying *Molloy*, I hold that the Commission was correct to characterise the purpose as non-charitable.

[63] So far as "peace" is concerned, worthy objects are not necessarily charitable. For present purposes, three examples can be given:

(a) In *Molloy*, the Court of Appeal did not gainsay the respect for and protection of proprietary and other rights to which, upon his or her birth, a child may be entitled, in reaching its conclusion that the public good in restricting abortion was not so self-evident that a charitable prerequisite was met.[78]

(b) In *Southwood*, while the premise that peace was generally preferable to war was accepted by the Court of Appeal, it was not prepared to say that peace *at any price* was *always* preferable to war because the latter was a contestable proposition. As Chadwick LJ observed, there were differing views as to how to secure peace and to avoid war. That was a political debate, into which courts ought not to enter.[79]

(c) In *Re Collier*, while expressing misgivings about the test to be applied, Hammond J considered that the object of "world peace"

[75] See para [17] above.
[76] *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 (CA) at 697-698.
[77] *Southwood v Attorney-General* [2000] EWCA Civ 204 at para [29].
[78] *Molloy* at 695.
[79] *Southwood*, at para [29].

could not be distinguished from other cases in which worthy objects had been held to be non-charitable. The Judge referred, in particular, to *McGovern v Attorney-General*[80] in which attempts to secure the release of prisoners of conscience and to procure the abolition of torture and inhuman or degrading treatment or punishment were characterised as non-charitable.[81]

[64] Irrespective of whether "peace", in itself, can constitute a charitable purpose, it is more difficult to argue for that position with respect of disarmament. So far as disarmament is concerned, Mr Salmon makes a good point in referring to the non-contentious nature of nuclear disarmament in New Zealand, as a result of the nuclear free policy first given effect by statute over 20 years ago. But Greenpeace's objects refer only to "disarmament", not to "nuclear disarmament". In doing so they fall foul of the admonition against political lobbying about the way in which disarmament should occur, as expressed (for example) in *Southwood.*

[65] The next question is whether the non-charitable political purposes can be regarded as merely ancillary to the charitable purposes, so as to prevent Greenpeace being disqualified from applying for registration as a charitable entity. Two questions arise:

(a) Is the political activity "secondary, subordinate, or incidental to a charitable purpose of the ... society"?[82]

(b) Is that purpose independent?[83]

Those questions must be asked in the context of the primary question framed in s 5(3): namely, whether the non-charitable purpose "is merely ancillary to a charitable purpose of" the society.

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[80] *McGovern v Attorney-General* [1982] 1 Ch 321.
[81] *Re Collier (Deceased)*, at 90.
[82] Charities Act 2005, s 5(4)(a).
[83] Ibid, s 5(4)(b).

[66] I agree with Simon France J in *Re the Grand Lodge of Antient Free and Accepted Masons in New Zealand*,[84] that both a qualitative and quantitative assessment is required to determine whether the non-charitable purpose is "ancillary". In conducting that analysis, it is necessary to evaluate whether the non-charitable purposes are truly incidental or independent.

[67] The use of the phrase "merely ancillary" in s 5(3) suggests the need to distinguish between a purpose that is a necessary incident of the charitable purpose from one which can be seen as an object in its own right – an independent purpose. The words used in s 5(4) of the Act, as examples of a purpose that will be regarded as ancillary, evidence the subservient or incidental nature of the object. That approach accords with the obvious Parliamentary intention that exclusive charitable purposes are required generally for registration to be effected.

[68] A quantitative assessment is one designed to measure the extent to which one purpose might have a greater or lesser significance than another. That assessment is a question of degree. On the other hand, a qualitative assessment has regard to the particular function in issue. A qualitative assessment helps to determine whether the function is capable of standing alone or is one that is merely incidental to a primary purpose.

[69] For the reasons given by Hammond J in *Re Collier*[85] and Heydon and Kiefel JJ in *Aid/Watch*,[86] the promotion of a particular point of view is different from the purpose of generating public debate. In the former, the idea is to change or (as in *Molloy*) to retain the *status quo*. Encouragement of rational debate presupposes that both sides of an argument will be equally considered. On that basis, political advocacy can be seen as independent from Greenpeace's charitable purposes.

[70] Advocacy of the type identified in the Commission's decision is not necessary to support the philosophy that Greenpeace has embraced. As the Commission said:

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[84] *Re the Grand Lodge of Antient Free and Accepted Masons in New Zealand* [2011] 1 NZLR 277 (HC) at paras [49]-[51].
[85] *Re Collier (Deceased)* at [93].
[86] See paras [56]-[57] above.

61. The information above sourced from [Greenpeace's] website refers to non-violent direction action being at the core of Greenpeace's values and work and defines non-violent direct action as "taking action physically, in person, to stop environmental destruction at its source".

62. [Greenpeace's] website states:

> *This leads Greenpeace to go to the place of environmental destruction and has led to the tradition of non-violent actions that confront both problems and the problem-makers. Non-violent direct action rather than any political idealogy, is core to our identity and campaigning style.*

63. Examples of non-violent direct action taken by [Greenpeace's] members include:

- Protesting at a coal mine near Gore against Fonterra's increased use of coal. During this protest 4 Greenpeace activists were arrested.
- Protesting the importation of palm kernel for use as stock feed because of its role in the destruction of rainforests. During one protest 14 Greenpeace activists were arrested and charged with illegally boarding a vessel. In another protest, activists were arrested for spray painting "Fonterra climate crime" on the side of a berthed ship.
- Using an ocean mascot "Sad Fish" to raise awareness about the lack of sustainable seafood in our supermarkets.
- Planting trees on an area of land that had been cleared for dairy farming in order to draw attention to the large amounts of forestry land in the Tahorakuri Forest being converted to dairy farming.

64. The Commission acknowledges that illegal activities are not a stated purpose of [Greenpeace] and that not all of [Greenpeace's] non-violent direct action activities are illegal. However, it is clear from the information above that non-violent direct action is central to [Greenpeace's] work and that non-violent direct action may involve illegal activities such as trespassing. According to the case law cited above, the Commission cannot consider that illegal activities will provide a public benefit. (footnotes omitted)

[71] A quantitative analysis brings about the same result. Through information on the Greenpeace website, it is clear that Greenpeace sees itself as an advocate rather than an educator. In particular, I refer to the following extract from the website,[87] on which the Commission relied:

[87] http://www.greenpeace.org/new-zealand/campaigns/peace Greenpeace "Peace & Disarmanet" (2010) <http://www.greenpeace.org/New-Zealand/campaigns/peace.html> (as at 7 July 2010) The

> **Greenpeace was born out of the desire to create a green and peaceful world. As an organisation based on principles of peace and non-violence, we strongly believe that violence cannot resolve conflict. *Greenpeace is fundamentally opposed to war*.**
>
> Since our founding in 1971 *we have campaigned against nuclear weapons and we are committed to the elimination of all weapons of mass destruction (including nuclear and biological).*
>
> *We believe that war will not eliminate these threats. We are actively campaigning for international disarmament.*
>
> We believe greater peace, greater security, greater safety is possible. Reaching out across national boundaries Greenpeace is working with citizens and political leaders around the world to make this happen.
>
> *We champion non-violence as a force for positive change in the world and promote environmentally responsible and socially just development.*
>
> We advocate policies that ensure all the world's people have access to the basic securities of life so that the injustices that lead to conflict cannot take hold.
>
> We believe we can create a green and peaceful world.
>
> (emphasis in italics added)

[72] Whatever criticism may be made of the selective nature of the quotations taken from Greenpeace's website, it is clear the organisation promotes itself as one that campaigns for (or champions) the cause of international disarmament, particularly nuclear and biological weapons of mass destruction. The version of the website contained on the compact disk includes an introductory page, titled "About Greenpeace" now states that Greenpeace uses "high profile, non-violent direct action, research, lobbying, and quiet diplomacy" to pursue its goals and mentions the pursuit of world peace and disarmament.

[73] On a quantitative assessment, the question of degree involved cannot be measured by the number of pages in a book or website. Rather, it is the way in which the philosophy is championed that must be measured against the relevant charitable purpose to determine whether, as a matter of degree, it is merely ancillary. Ultimately, that is an exercise of judgment, on the facts of any particular case. In my view, the extent to which Greenpeace relies on its political activities to advance its

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extract is no longer on the current website as at 6 May 2011.

causes means that the political element cannot be regarded as "merely ancillary" to Greenpeace's charitable purposes.

[74] Similarly, adopting a qualitative approach, the political activities designed to put Greenpeace's plea for disarmament and peace can be seen as an independent purpose. The political activities are not necessary to educate members of the public on the issues of concern to Greenpeace. In that sense, they must be regarded as independent.

[75] I conclude that the Commission was correct in holding that non-violent, but potentially illegal activities (such as trespass), designed to put (in the eyes of Greenpeace) objectionable activities into the public spotlight were an independent object disqualifying it from registration as a charitable entity. In qualitative terms, the charitable purposes of Greenpeace could be met without resort to the type of political activities that deny its right to registration.

[76] I do not need to determine the issue of illegal activity. I express some reservations about whether there was sufficient evidence for the Commission to draw an inference that Greenpeace was deliberately involved in taking illegal action, as opposed to some of its members being involved in activities that crossed a legal boundary.

Result

[77] The appeal is dismissed.

[78] As the issues raised were of some public importance, I make no order as to costs.

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P R Heath J

Delivered at 4.15pm on 6 May 2011.