

Registration Decision for New Zealand Miniature Horse Association Incorporated (NEW17402)

The facts

1. New Zealand Miniature Horse Association Incorporated ("the Applicant") was incorporated under the Incorporated Societies Act 1908 on 18 February 1991 under the name "Northern Miniature Horse Association of New Zealand Incorporated". The Applicant amended its name on 19 August 1994 to "Miniature Horse Association of New Zealand Incorporated". On the 26 June 1997, the Applicant amended its name to "New Zealand Miniature Horse Association Incorporated".
2. The Applicant applied to the Charities Commission for registration on 7 April 2008.
3. The Applicant's purposes were set out in article 2 of its original constitution as follows:

OBJECTIVES OF SOCIETY – Article 2

1. *The objects of this society are:*
 - a. *To promote the identity, popularity and perpetuation of the Miniature Horse breed.*
 - b. *To aid and encourage the breeding, exhibiting, use and purpose of Miniature Horses; promote and co-ordinate Miniature Horse show activities; promote and encourage exhibiting of Miniature Horses in open classes; co-ordinate with other associations and societies providing qualified horse judges for Miniature Horse shows; and in devising and adopting Miniature Horse show rules, regulations and standards.*
 - c. *To formulate publicity and education programmes and other activities in the interest of the Miniature Horse owners, Miniature Horse associations or societies, clubs and enthusiasts, for the purposes of stimulating popular interest in the Miniature Horse; and to promote continuing education of members and the general public in the care, management and use of the Miniature Horse.*
 - d. *To co-operate with other organisations with similar interests in Miniature Horses.*
 - e. *To own, operate and maintain a register and a stud book for Miniature Horses.*
 - f. *To engage in any manner of business to raise money for the purposes above recited.*

- g. To engage in any and all form of business transactions or enterprises a natural person might do, except as limited by law.*
 - h. To publish and distribute an official publication to forward the aims, ideals and news of the Society, its members and other interested parties.*
 - i. To receive donations, bequests and devices of property both real and personal.*
 - j. To own, hold, purchase, sell, exchange and deal in, and otherwise dispose of, all kinds of real and personal property.*
 - k. To do any and all things necessary or appropriate to accomplish objects and purposes as stated herein.*
 - l. To borrow money up-on such terms and conditions as the Council of management shall from time to time arrange and to grant mortgages, charges and encumbrances on any property of the society in order to secure any loan made to the Society.*
4. The Commission analysed the application and on 12 December 2008 sent the Applicant a notice that may lead to decline on the basis that the purposes set out in article 2 were not charitable because breeding and showing of animals has been held not to be charitable by the Courts. Moreover, the notice stated that article 24 did not meet registration requirements, as it would allow surplus assets to go to non-charitable purposes on winding up.
 5. The Applicant responded on 17 January 2009 stating that it would amend its winding up clause and would consider amending its purposes at its Annual General Meeting in August 2009. The Commission responded by email on 27 January 2009 identifying a further issue with article 24 which needed to be amended in order to meet registration requirements.
 6. The Commission did not hear from the Applicant and on 8 December 2009, the Registration Manager wrote an email to the Applicant giving notice that the application would be declined if the Applicant did not communicate with the Commission before 21 December 2009. The Applicant responded by email on the 9 December 2009 asking for an extension of time to send the amendments to the constitution to the Companies Office and to the Commission. An extension of time was granted until 9 January 2010.
 7. The Applicant responded by letter received on 15 January 2010, stating that it had amended article 24 of its constitution. The amendment is sufficient to meet the requirement of section 13(1)(b) of the *Charities Act 2005* in relation to winding up.
 8. The amendment document sent to the Commission included some minor amendments to articles 8, 10.4, 23.2, 25(3) and 35 of the Applicant's

constitution over and above the amendments made to article 24 of the constitution. However, the Applicant's purposes were not amended and therefore the concerns of the Commission about the purposes were not addressed in the amendments made to the Applicant's constitution.

The issues

9. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the *Charities Act 2005* ("the Act").
10. In this case, the key issue for consideration is whether the Applicant is a society established and maintained exclusively for charitable purposes, as required by section 13(1)(b) of the Act. The question is whether the Applicant's purposes fall within the definition of charitable purposes in section 5(1) of the Act.

The law on charitable purposes

11. Under section 13(1)(b) of the Act, a society or institution must be established and maintained exclusively for charitable purposes.
12. 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". In addition, to be charitable at law, a purpose must be for the public benefit.¹ This means that the purpose must be directed at benefiting the public or a sufficient section of the public.
13. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
14. In considering an application, section 18(3)(a) of the Act requires the Commission to have regard to:
 - i) *the activities of the entity at the time at which the application was made; and*
 - ii) *the proposed activities of the entity; and*
 - iii) *any other information that it considers is relevant.*

Commission's analysis

15. The Commission considers that the Applicant's purposes set out in article 2(1)(e), (f), (g), (i), (j) and (l) are powers. Moreover, the Commission considers that the purposes set out in article 2(1)(d), (h) and (k) are ancillary to the main purposes.
16. The remaining purposes, set out in article 2(1)(a), (b) and (c), do not indicate an intention to relieve poverty or advance religion. Accordingly,

¹ See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.

these purposes have been considered under the “advancement of education” and “any other matter beneficial to the community”.

Advancement of Education

17. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. Education does not however include advertisements for particular goods or services, the study of subjects that have no educational value, or the promotion of a particular point of view.²
18. Moreover, the education must provide public benefit. In *Re Mason*,³ the High Court phrased the general test to be applied in the following terms:

*“The test of whether a library is a charity is whether it tends to the promotion of education and learning for the public or a sufficient wide section of the public or whether it benefits only a more limited number of persons. If it is the first class, it will be charitable, if in the second class it will not be charitable.”*⁴
19. The Commission considers that the purposes outlined in article 2(1)(a) and (b) of the Applicant’s constitution do not indicate an intention to advance education. Article 2(1)(c) of the Applicant’s constitution states:

c. To formulate publicity and education programmes and other activities in the interest of the Miniature Horse owners, Miniature Horse associations or societies, clubs and enthusiasts, for the purposes of stimulating popular interest in the Miniature Horse; and to promote continuing education of members and the general public in the care, management and use of the Miniature Horse.
20. The Commission considers that most of the programmes envisaged in article 2(1)(c) of the Applicant’s constitution will be aimed at educating miniature horse owners. The Commission therefore considers that this part of article 2(1)(c) does not meet the public benefit requirement because it will only benefit a limited number of persons.
21. The only mention of the public in article 2(1)(c) of the Applicant’s constitution is in stimulating popular interest in the miniature horse and promote continuing education in the care, management and use of the miniature horse.
22. The Commission considers that promoting “continuing education in the care, management and use of the miniature horse” may be educational. However, the Commission considers that “stimulating popular interest in the miniature horse” does not necessarily advance education. The Commission considers that the activities connected to such stimulation of

² *In re Shaw (deceased)* [1957] 1 WLR 729; as interpreted in *Re Hopkins’ Will Trusts* [1964] 3 All ER 46. See also *Re Collier* [1998] 1 NZLR 81.

³ [1971] NZLR 713.

⁴ [1971] NZLR 714 at 722.

popular interest are akin to advertisement for particular goods, which the courts have considered not to be charitable.

23. In light of the above, the Commission considers that while part of the purposes set out in article 2(1)(c) of the Applicant's constitution may be charitable under the advancement of education, this purpose is not exclusively charitable. This is because most of the educational programmes are aimed at miniature horse owners and because the stimulation of popular interest in the miniature horse is more akin to advertisement for particular goods, which has been held not to be charitable by the Courts.

Any other matter beneficial to the Community

24. In order for a purpose to qualify as "any other matter beneficial to the community", the purposes must be beneficial to the community and be within the spirit and intendment of the purposes set out in the *Preamble to the Statute of Charitable Uses 1601* (Statute of Elizabeth)⁵ namely:
- relief of aged, impotent, and poor people
 - maintenance of sick and maimed soldiers and mariners
 - schools of learning
 - free schools and scholars in universities
 - repair of bridges, ports, havens, causeways, churches, sea banks, and highways
 - education and preferment of orphans
 - relief, stock or maintenance of houses of correction
 - marriage of poor maids
 - supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed
 - relief or redemption of prisoners or captives and
 - aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.⁶

Beneficial to the Community

25. Concerning the first leg of the test (beneficial to the community), the Supreme Court of Canada in *Vancouver Society of Immigrant and Visible Minority Women v MNR*⁷ summarized what is meant by the public benefit requirement. Gonthier J wrote that "There must be an objectively measurable and socially useful benefit conferred; and it must be a benefit

⁵ *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 at 157 and *Re Tennant* [1996] 2 NZLR 633 at 638.

⁶ *Re Jones* [1907] SALR 190, 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447, 455; *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138, 146-48; *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659, 667, 669; *Royal National Agricultural and Industrial Association v Chester* (1974) 48 ALJR 304, 305; *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147, 157; *Re Tennant* [1996] 2 NZLR 633, 638.

⁷ *Vancouver Society of Immigrant and Visible Minority Women v MNR* [1999] 1 SCR 10

available to a sufficiently large section of the population to be considered a public benefit.⁸

26. In terms of purposes falling under the fourth head, the court does not assume or presume a public benefit as in the case of the other heads of charity – the benefit in issue must be affirmatively proved or clear to the court.⁹ Thus, in *Vancouver Society of Immigrant and Visible Minority Women v MNR*, Gonthier J wrote that although the public benefit requirement applies to all charitable purposes, it is of particular concern under the fourth head of Lord Macnaughten’s scheme in *Pemsel*. “This is so because under the first three heads, public benefit is essentially a rebuttable presumption, whereas under the fourth head it must be demonstrated”.¹⁰
27. The Applicant has not made any submissions concerning how the Association is beneficial to the community. The Commission however has analysed the Applicant’s constitution and other documents such as the Applicant’s websites, in order to decide if the purposes are beneficial to the public.
28. Article 4(2)(a) of the Applicant’s constitution states that regular membership is open to those who have “registered with the Society one or more Miniature Horses”. However, the Commission acknowledges that associate members do not have to own or lease a miniature horse so long as they are interested in the objectives and purposes of the Association.
29. In *Institution of Professional Engineers New Zealand Incorporated v Commissioner of Inland Revenue*,¹¹ Tipping J stated:

“I consider that the following words of Lord Normand at page 396 in the Glasgow Police Association case are highly material:-

‘... what the respondents must show in the circumstances of this case is that so viewed objectively, the association is established for a public purpose and that the private benefits to members are unsought consequences of the pursuit of the public purpose and can therefore be disregarded as incidental. That is a view which I cannot take. The private benefits to members are essential.’

While there can be no doubt that there are distinct public benefits from the objects and functions of IPENZ it is my view, after careful consideration of both the oral and documentary evidence, that the private benefits cannot be disregarded as incidental.”¹²

⁸ *Vancouver Society of Immigrant and Visible Minority Women v MNR* [1999] 1 SCR 10 at para 41 per Gonthier J dissent. Gino Dal Pont, *Charity Law in Australia and New Zealand*, Oxford, Oxford University Press, 2000 at 174-175.

⁹ *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

¹⁰ [1999] 1 SCR 10 at para 41.

¹¹ [1992] 1 NZLR 570.

¹² [1992] 1 NZLR 570 at 582.

30. In *Travis Trust v Charities Commission*,¹³ the first case to interpret the Charities Act 2005, Williams J. wrote:

"The distinction here is to be drawn between trusts or gifts whose primary beneficiaries are private individuals or a private class and those for which the beneficiaries might properly be considered to be the wider community or a section of it. [...]"

Having concluded that it is inappropriate in the present case to expand the beneficial class to those who might derive some benefit as a by-product of the Trust's purposes, I consider that the widest valid category of beneficiaries of this Trust would be the members of the Cambridge Jockey Club. It is the club that draws the widest relatively direct benefit in terms of being able to sustain a successful racing calendar on an annual basis in part through the funding of a high profile race offering a relatively valuable purse."¹⁴

31. The Commission considers that the Applicant is not established primarily for public benefit, but mainly for the benefit of the members, who are mostly horse owners. Therefore, in applying Tipping's statement of the law in *Institution of Professional Engineers New Zealand Incorporated v Commissioner of Inland Revenue*, the Commission considers that the Applicant is established for the benefit of miniature horse owners and that "the private benefits to members cannot be disregarded as incidental".
32. Moreover, applying the test established in *Travis Trust* case, the Commission considers that in this case, the public would only be deriving benefit as a by-product of the Applicant's purposes because the main category of beneficiaries are miniature horse owners.
33. The Commission therefore considers that the Applicant has not met the test imposed by the courts of proving that the activities of the Association provide an objectively measurable useful benefit to a sufficient portion of the public.

Analogy with the Statute of Elizabeth

34. Concerning the second leg of the test, the courts have established that the purposes must also be within the spirit and intendment of the Statute of Elizabeth.¹⁵ This requirement is cumulative in the sense that both requirements must be met before a purpose can be said to be charitable under the fourth head of charity.¹⁶

¹³ CIV-2008-485-1689, High court, Wellington, 3 December 2008.

¹⁴ CIV-2008-485-1689, High court, Wellington, 3 December 2008 at para 55-57.

¹⁵ *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 at 157 and *Re Tennant* [1996] 2 NZLR 633 at 638.

¹⁶ *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31 at 41.

35. Grounds for holding that the objects are not within the spirit and intendment of the Statute of Elizabeth may be found in the facts of the application but also in cases decided by the Court on similar facts. In *Travis Trust v Charities Commission*¹⁷, Williams J. noted that

*“... regard must be had to the particular words of the preamble and, it has now long been held, any cases in which purposes have been found to be within the spirit and intendment of the preamble by analogy.”*¹⁸

36. In *Re Peterborough Royal Foxhound Society v CIR*,¹⁹ the Court found that foxhound breeding and showing were not charitable purposes. In that case, the society was founded to promote the interests of foxhound breeding, and for that purpose annually held a foxhound show. Lawrence J held that the society was not established for a purpose beneficial to the community under the fourth category of charities stated by Lord Macnaughten in *Pemsel*.²⁰

37. Moreover, in *Royal National Agricultural Association v Chester*,²¹ the Court decided that improving the breeding and racing of homer pigeon were not charitable purposes.

38. Finally, in *Travis Trust v Charities Commission*²², Williams J. wrote that:

*“For the same reason gifts made or trusts established to promote [...] foxhound breeding and showing, breeding and racing homing pigeons [...] were all found to be non-charitable.”*²³

39. The Commission does not consider that the Applicant’s purposes outlined in article 2(1)(a), (b) and (c) are charitable purposes. These purposes relate to promoting miniature horse breeding and miniature horse shows and competitions. These purposes appear to be aimed mainly at providing benefits to miniature horse owners. Moreover, the Applicant’s purposes are similar to those of foxhound breeding and showing which were held not to be charitable by the Court. In light of the decisions in *Peterborough Royal Foxhound Society*²⁴ and *Royal National Agricultural Association*,²⁵ the Commission does not consider that the Applicant’s purposes outlined in article 2.1(a), 2.1(b) and 2.1(c) come within the spirit and intendment of the Statute of Elizabeth.

17 CIV-2008-485-1689, High court, Wellington, 3 December 2008 (Joseph Williams J).
18 CIV-2008-485-1689, High court, Wellington, 3 December 2008 (Joseph Williams J.) at para. 20.
19 [1936] 2 KB 497.
20 [1936] 2 KB 497 at 501..
21 (1974) 48 ALJR 304.
22 CIV-2008-485-1689, High court, Wellington, 3 December 2008 (Joseph Williams J).
23 -2008-485-1689, High court, Wellington, 3 December 2008 para 40.
24 [1936] 2 KB 497.
25 (1974) 48 ALJR 304.

Conclusion

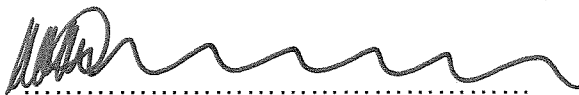
40. Section 13(1)(b) of the Act clearly establishes that a society or institution only qualifies for registration as a charitable entity if it "is established and maintained exclusively for charitable purposes". As indicated in *Re Peterborough Royal Foxhound Show Society v Inland Revenue Commissioner*²⁶ and in *Molloy v Commissioner of Inland Revenue*,²⁷ the presence of but one main purpose that is not charitable prevents the entity from being registered as a charity.
41. The Commission concludes that even if article 2(1)(c) was considered charitable, the Applicant has not shown that the purposes outlined in article 2(1)(a) and (b) are exclusively charitable. These purposes do not indicate an intention to relief poverty, advance education or advance religion. Moreover, the Applicant has not convinced the Commission that these purposes provide an objectively measurable and useful social benefit. Finally, even if such benefit had been shown, the Applicant has not satisfied the Commission that these purposes are within the spirit and intendment of the Statute of Elizabeth.

Charity Commission's determination

42. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that the Applicant is not a society that is established and maintained exclusively for charitable purposes, as required by section 13(1)(b) of the Act.

For the above reasons, the Commission declines the Applicant's application for registration as a charitable entity.

Signed for and on behalf of the Charities Commission



Trevor Garrett
Chief Executive

8/3/10

Date

²⁶ [1936] 2 KB 497 at 501.
²⁷ [1981] 1 NZLR 688 at 691.

