

## Registration decision: Alexandra Blossom Festival Committee Incorporated

### The facts

1. Alexandra Blossom Festival Committee (the Applicant) was constituted on 12 June 1996. The Applicant was incorporated under the Incorporated Societies Act 1908 on 24 July 1996.
2. The Applicant initially provided an incomplete application for registration as a charitable entity under the Charities Act 2005 (the Act) on 1 July 2008. The Charities Commission (the Commission) received a complete application on 5 May 2009.
3. The Applicant's purposes are set out in clause 3 of the Constitution:

*"The aims and objectives of the Association will be:*

- (a) *To organize, promote and run the Alexandra Blossom Festival for the benefit of the Alexandra Community.*
  - (b) *To develop and pursue suitable marketing for the growth of the festival.*
  - (c) *To co-ordinate the efforts of individuals and groups for the effective running of the festival.*
  - (d) *To distribute the funds raised from the festivals for the benefit of the Alexandra Community.*
4. The Commission analysed the application for registration and on 21 May 2009, sent the Applicant a notice that may lead to a decline on the basis that its main purpose, of operating the Alexandra Blossom Festival, did not fall under any head of charity.
5. On 17 June 2009, the Applicant responded to the notice, making the following submissions:
  - The Alexandra Blossom Festival is more than mere entertainment, "it is an event which encourages the participation of groups within the community and draws the community together in celebrating its heritage as a significant fruit producing region."
  - The Festival provides an opportunity for community volunteer groups to raise funds from those attending.
  - The Festival includes a creative fashion event, which showcases wearable woollen art.
  - "[T]he purpose of the Alexandra Blossom Festival is to develop a greater sense of community in Alexandra and Districts by supporting and encouraging participation in the event", and it "encourages visitors into the town thereby contributing to the economic as well as the social wellbeing of Alexandra".

## **The issues**

6. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the Act. In this case, the key issue for consideration is whether the Applicant is a society or institution established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. In particular, whether the Applicant's purposes fall within the definition of charitable purpose in section 5(1) of the Act.

## **The law on charitable purpose**

7. Under section 13(1)(b)(i) of the Act, a society or institution qualifies for registration if it is established and maintained for exclusively charitable purposes.
8. 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, the advancement of religion, or any other matter beneficial to the community. In addition, to be charitable at law, a purpose must be for the public benefit.<sup>1</sup> This means that the purpose must be directed at benefitting the public or a sufficient section of the public.
9. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
10. In considering an application for registration, section 18(3)(a) of the Act requires the Commission to have regard to the entity's activities at the time the application was made, the entity's proposed activities, and any other information that the Commission considers relevant.

## **Charities Commission's analysis**

11. The Commission considers that while it is possible that activities such as promoting a young designers' award could advance education, the purposes set out in clauses 3(a) to (d) do not indicate an intention to advance education. Similarly, the purposes do not indicate an intention to relieve poverty or advance religion. These purposes have therefore been considered in relation to "any other matter beneficial to the community".

### Other purposes beneficial to the community

12. In order for a purpose to qualify as "any other matter beneficial to the community", the purpose must be beneficial to the community and be within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth).<sup>2</sup> The purposes set out in the Preamble are as follows:

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

<sup>2</sup> *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*

- 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.<sup>3</sup>
13. The Applicant has stated that the Alexandra Blossom Festival encourages the participation of groups within the community and draws the community together in celebrating its heritage as a significant fruit-producing region.
14. The Applicant's purposes do not appear to be within the spirit and intendment of any of the purposes set out in the Preamble to the Statute of Elizabeth.

Section 61A of the Charitable Trusts Act 1957

15. The Commission has considered whether the Applicant's purposes could be held to be charitable under section 61A of the Charitable Trusts Act 1957. Section 61A states:

61A *Trusts for recreational and similar purposes*

(1) *Subject to the provisions of this section, it shall for all purposes be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare:  
Provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.*

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*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.*

<sup>3</sup> *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.*

- (2) *The requirement of subsection (1) of this section that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless—*
- (a) *The facilities are provided with the purpose of improving the conditions of life for the persons for whom the facilities are primarily intended; and*
  - (b) *Either—*
    - (i) *Those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity, disablement, poverty, race, occupation, or social or economic circumstances; or*
    - (ii) *The facilities are to be available to the members of the public at large or to the male or female members of the public at large.*
- (3) *Without restricting the generality of the foregoing provisions of this section it is hereby declared that, subject to the said requirement, subsection (1) of this section applies to the provision of facilities at public halls, community centres, and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.*

16. The Commission does not consider that organising, promoting and running an annual blossom festival could be considered a recreational and leisure time occupation. In addition, the Commission does not consider that the festival will meet a need of the community which as a matter of social ethics ought to be met, nor is it provided with the purpose of improving the conditions of life for the persons for whom it is primarily intended.

#### Benefit to a locality

17. Clause 3(d) of the Applicant's Constitution states that funds raised from the festivals are distributed for the benefit of the Alexandra community. The Applicant's financial statements for 2008 and 2007, however, indicate that no donations were made to community organisations in those years. The financial statements for 2006 and 2005 indicate that donations were made to community organisations totalling \$398 and \$22,056 respectively.
18. While it is clear that gifts in general terms for the inhabitants of a defined area **may be charitable**<sup>4</sup>, it is incorrect to conclude that a trust for the benefit of the people of a defined area will always be charitable. As set out in *The Law and Practice Relating to Charities*, "[a] non-charitable purpose will not be rendered charitable by localising the benefits".<sup>5</sup>

<sup>4</sup> *Re Carter (deceased)* (1897) 16 NZLR 431 (CA).

<sup>5</sup> Hubert Picarda, 1999, 3<sup>rd</sup> edition, Butterworths, London, Dublin & Edinburgh, p 146.

19. Courts have held that, where no purpose is defined, the fact that the gift is directed to a locality imports the necessary element of public benefit, and therefore a charitable purpose is implicit in the context. Conversely, where a donor actually specifies a purpose, as in the present case, the court must determine whether or not that purpose is charitable.<sup>6</sup>

#### Purposes set out in Applicant's letter

20. The Applicant's letter of 17 June 2009 indicated that, in reality, the Festival had two purposes – first, to develop a greater sense of community in Alexandra and Districts, and secondly, to encourage visitors to the town “thereby contributing to the economic as well as the social wellbeing of Alexandra.”
21. In relation to the first stated purpose, the *Taxation Review Authority Case 46*<sup>7</sup>, the Taxation Review Authority held that promotion of good community relations is not a charitable purpose. The Commission therefore considers that “developing a greater sense of community” is not a charitable purpose.
22. In relation to the second stated purpose, courts have held the economic development of a region to be charitable, but only where that region has a particular need.<sup>8</sup> The Applicant has not provided any evidence that this area has a particular need and the Commission considers that it is difficult to conclude that Alexandra is an area which is in need of assistance because:
- The unemployment rate in this area is substantially lower than the rest of the country (3.5%, compared with 7.5% for all of New Zealand); and
  - More dwellings are owned with or without a mortgage compared with the rest of the country (73.5%, compared with 67.8% for all of New Zealand).<sup>9</sup>
23. The Commission therefore concludes that the two purposes stated in the Applicant's letter of 17 June 2009 are not charitable purposes.

#### **Charities Commission's determination**

24. 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 or institution established and maintained for exclusively charitable purposes, as required by section 13(1)(b)(i) of the Act.

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<sup>6</sup> Gino Dal Pont, *Charity Law in Australia and New Zealand*, 2000, Oxford University Press, p 183.

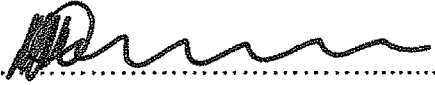
<sup>7</sup> (1980) 2 TRNZ 665.

<sup>8</sup> *Re Tennant* [1996] 2 NZLR 633.

<sup>9</sup> Statistics New Zealand, Alexandra Urban Area Community Profile (<http://www2.stats.govt.nz/domino/external/web/CommProfiles.nsf/f5707c256626ece5cc256d120011b32b/b38bd59b2c1b0698cc256d310074e205?OpenDocument>) last accessed 14 July 2009.

**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

26 / 11 / 09

Date