

Registration Decision for Canterbury Kennel Association Incorporated (CAN24031)

The facts

1. Canterbury Kennel Association Incorporated ("the Applicant") was incorporated under the *Incorporated Societies Act 1908* on 9 October 1953.
2. The Applicant applied to the Charities Commission ("the Commission") for registration as a charitable entity on 10 June 2008.
3. The Applicant's purposes were stated in clause 3 of the rules document:

"3: OBJECTS:

The objects of the Association shall be the improvement of the breeding and classification of pure bred dogs, the cultivation of the public taste for exhibition of the same, the increasing of the numerical strength of the local fancies, the implementation and the control of the Canterbury Kennel Association's Kennel Centre at McLeans Island which shall be known as the Canterbury Kennel Centre, and the co-operation with kindred societies for the furtherance of these objects."

4. The Commission analysed the application and on 3 February 2009 sent the Applicant a notice that may lead to decline on the basis that a primary purpose of the Applicant was the "improvement of the breeding and classification of pure bred dogs" and that this did not fall under any of the four heads of charity. The notice also stated that the Applicant's constitution did not direct surplus assets to charitable purposes on winding up.
5. On the 5 March 2009, the Applicant responded by email submitting proposed amendments to their rules. The proposed amendments to the purpose clause were:

"3: *The objects of the Club are:*

- *To promote and nurture projects and initiatives directed at the general public to pass on learning about pure bred dogs, to share experiences and expertise, to hold lectures, training sessions and exhibitions so as to increase the public's competency, skills and understanding of dogs and their breeds. To protect and promote the overall good welfare of animals and to support (whether financially or by other methods) initiatives that are conducive to those aims.*
- *To encourage like-minded people of the community to participate in and to become involved in the activities of the club.*
- *To administer and control the use and upkeep of the clubs centre at McLeans Island, Christchurch, known as the Canterbury Kennel Centre.*

- *To provide assistance to other similar charitable organisations through co-operation, hands on service, the sharing of ideas, fundraising events and the provision of sponsorship or prizes.*
- *To undertake other general charitable activities within New Zealand of a similar nature as may be conducive to the obtaining of the above objects or which may benefit the community generally.*
- *The club's objects shall only be carried out in and to benefit people in New Zealand, however the club may carry out activities outside New Zealand to promote the club."*

6. The proposed amendment to the Applicant's winding up clause was:

"Clause 24

Add to the end of the words "as the Committee may think fit";

Provided however all surplus assets must only be applied or appropriated by the Committee to or for any charitable purpose or any charitable entity or entities registered with the Charities Commission"

7. The Commission analysed the proposed amendments and on 11 March 2009, the Commission sent an email advising the Applicant that the proposed amendments met requirements in relation to winding-up, but not charitable purpose because:

- *"it appears from the website of the entity that the primary purpose of the organisation is not education but showing and breeding dogs"; and*
- *"I am not satisfied this type of learning in itself would be of public utility in the charitable sense of advancing education".*

8. On 8 May 2009, the Companies Office approved amendments to the Applicant's rules. The amendments to the Applicant's purposes were largely as earlier proposed, and read in full:

"3: OBJECTS:

To promote and nurture projects and initiatives directed at the general public to pass on learning about pure bred dogs, to share experiences and expertise, to hold lectures, training sessions and exhibitions so as to increase the public's competency, skills and understanding of dogs and their breeds. To protect and promote the overall good welfare of animals and to support (whether financially or by other methods) initiatives that are conducive to those aims, such that the primary purpose of the Club shall be the advancement of education about dogs and their breeds, in a charitable sense.

To encourage like-minded people of the community to participate in and to become involved in the activities of the club.

To administer and control the use and upkeep of the clubs centre at McLeans Island, Christchurch, known as the Canterbury Kennel Centre.

To provide assistance to other similar charitable organisations through co-operation, hands on service, the sharing of ideas, fundraising events and the provision of sponsorship or prizes.

To undertake other general charitable activities within New Zealand of a similar nature as may be conducive to the obtaining of the above objects or which may benefit the community generally.

The club's objects shall only be carried out in and to benefit people in New Zealand, however the club may carry out activities outside New Zealand to promote the club."

9. The amendment to the Applicant's winding up clause, which is sufficient to meet the requirements for registration in relation to winding up clauses, was as follows:

"24 WINDING UP (VOLUNTARY TERMINATION OF CLUB'S ACTIVITIES

In the event of the winding up of the Association under the provisions of Section 24 or the Incorporated Societies Act 1908 all assets shall be realised and any surplus funds after payment of all debts and liabilities shall be disposed of in such a manner and in pursuance of the objects of the Association specified in Rule 3 as the Committee may think fit provided however, all surplus assets must only be applied or appropriated by the Committee to or for any charitable purpose or any charitable entity or entities registered with the Charities Commission."

10. On 14 August 2009, the Applicant advised the Commission that the amendments to their rules had been approved by the Companies Office.
11. On 20 August 2009, the Commission sent the Applicant a notice that may lead to a decline advising that based on the amended rules and the activities of the Applicant, the Commission considered that the Applicant was not established and maintained exclusively for charitable purposes.
12. The Applicant responded through its solicitors by way of letter and email dated 24 September 2009, submitting that:
- *"The Association's emphasis has always been on education and community involvement in the welfare of animals. It is not a club that is specifically set up for any breed of dog nor (as you allege) does it breed dogs, itself. The Association never has and never intends to 'breed dogs'";*
 - *"The training ranges from aspects of general welfare and treatment of dogs to specialised showing techniques and dog handling";*
 - *"The club is different from regular dog breeding or dog showing clubs. It has unique features ... It owns and operates its own premises and large grounds at McLeans Island, Christchurch. One of its main aims is to utilise that base to carry out its activities from, and to invite other clubs to take advantage of ";*

- *"The showing of dogs is not the Association's main purpose. The Association provides the venue, administrative support and the organisational skills to help ensure shows are run properly, but it does not run shows themselves other than ancillary to its stated purposes";*
- *"Part of the process of education involves the participants being giving (sic) the opportunity to show off what they have learnt ... To be able to share show results by publishing them on a website is also ancillary, in the same way as a school teacher has an exhibition to show to the children's parents the art work the class has done or a school putting on an end of term school production";*
- *"Since the Association's venue is also used by other clubs, publishing results from other clubs may be done from time to time. This does not mean the Canterbury Kennel Association itself has necessarily run those competitions";*
- *"Likewise, the showing of advertisements by third parties who may wish to buy, sell or exchanging (sic) breeds of dogs or share ideas should be regarded as merely incidental or ancillary to the clubs stated purpose";*
- *"The Association acts as a 'hub' or facilitator for other clubs. Hiring out the clubs facilities allows other clubs to carry out their activities";*
- *"The facts in the Peterborough Royal Foxhound case were quite different....the Canterbury Kennel Association's primary and dominant purpose is nothing remotely like fox hunting. It does not breed dogs or focus on any particular variety of dog. This club's dominant and main purpose is charitable";*
- *"There is precedent for the allowing of a dog club to become charitable in some specific circumstances";*
- *"the granting of charitable status for this club will not 'open the floodgates' for all dog breeding or showing clubs. As indicated, this club is quite different and unique to most other clubs in the country";*
- *"Section 18(3) of the Charities Act requires the Commission to look at the activities of the Association at the time of the application and to look at the club's future proposed activities. Looking at its past activities is not specifically necessary. Therefore, we submit, to make a decision based on generalised information and historical attitudes about dog breeding clubs and by selecting one aspect of the Association's website, we submit, should not be the grounds on which a decision should be based ... Simply basing your decision on a website or on generalised pre-conceived attitudes about dog clubs and pet shows is, we submit, an incorrect and flawed methodology".*

The issue

13. The issue that the Commission has to consider is whether the Applicant is a society or institution established and maintained exclusively for charitable purposes, as required by section 13(1)(b) of the *Charities Act 2005* ("the Act"). In particular, whether all of the Applicant's purposes fall

within the definition of charitable purpose in section 5(1) of the Act, and if there are any non-charitable purposes, whether these are ancillary to a charitable purpose.

The law on charitable purpose

14. Under section 13(1)(b) of the Act a society or institution must be established and maintained exclusively for charitable purposes and must not be carried on for the private pecuniary profit of any individual.
15. 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.¹ This means that the purpose must be directed at benefiting the public or a sufficient section of the public.
16. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
17. In considering an application for registration, 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

18. The Commission considers that the primary purpose of the Applicant is set out in the first paragraph of clause 3. The Commission considers that "to protect and promote the overall good welfare of animals" may be charitable under "any other matter beneficial to the community" through the promotion of animal welfare. Moreover, the Commission considers that the provision of the Applicant's club centre at McLeans Island may be charitable under "any other matters beneficial to the community" through the provision of public facilities.
19. The remaining substantive purpose, as set out in the first paragraph of clause 3, shows an intention to advance education.
20. However, pursuant to section 18, it is also necessary to consider the activities of the entity when considering charitable purpose. Information about the activities of the Applicant from its website and its financial statements show that the Applicant is involved in promoting and organising dog shows.

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

21. The Applicant's website (www.cka.co.nz) indicates that the Applicant runs weekly show training nights, and displays show results and schedules of upcoming shows.²
22. The Applicant's financial accounts as supplied to the Registrar of Incorporated Societies show that the Applicant operates a 'show account', which in the year ending 31 December 2008 accounted for expenditure of \$31,232.47, while kennel centre expenses were \$42,334.79 and general expenses were \$10,458.24. In the year ending 31 December 2007, the relevant figures were \$26,588.64 in show expenses, \$29,901.04 in kennel centre expenses, and \$10,429.35 in general expenses.
23. The Commission considers that this information shows that the Applicant has a primary purpose of promoting and organising dog shows. The Commission does not consider that promoting and organising dog shows will relieve poverty or advance religion. Accordingly, this purpose has been considered in relation to the advancement of education, and any other matter beneficial to the community.

Advancement of education

24. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. Education does not 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.³
25. In *Re Shaw (deceased)* the court held that "if the object be merely the increase of knowledge, that is not in itself a charitable object unless it be combined with teaching or education".⁴
26. In *Re Collier (deceased)* Hammond J set out the test for determining whether the dissemination of information qualified as charitable under the head of advancement of education:

*"It must first confer a public benefit, in that it somehow assists with the training of the mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the work must reach some minimal standard. For instance, in Re Elmore [1968] VR 390 the testator's manuscripts were held to be literally of no merit or educational value."*⁵
27. In *Re Collier* the judge held that the bequest in question (for publication of a book) did not qualify as charitable under the test:

² www.cka.co.nz, accessed 10 November 2009.

³ *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.

⁴ *In re Shaw (deceased)* [1957] 1 WLR 729.

⁵ [1998] 1 NZLR 81, 91-92.

"In my view, the minimal threshold test is not met. There is no educative value, or public utility in the 'book'. Further, it is no more than an attempt to perpetuate a private view held by Mrs Collier."

28. The Commission considers that the Applicant may advance education through providing training in subjects such as dog training and general animal welfare. However, as indicated above, the Commission considers the promotion and organisation of dog shows to be a primary purpose of the Applicant. The promotion and organisation of dog shows, in itself, does not advance education. Moreover, the Applicant has not satisfied the Commission that promoting and organising dog shows will have sufficient educational value to be considered charitable under this head.
29. The Commission has considered the argument advanced by the Applicant's solicitor that the Applicant *"does not run shows themselves other than ancillary to its stated purpose"*. According to section 5(4) of the Act an ancillary purpose must be:
- a) *ancillary, secondary, subordinate or incidental to a charitable purpose of the trust, society, or institution; and*
 - b) *not an independent purpose of the trust, society or institution"*
30. In light of the information from the financial statements and the Applicant's website, the Commission considers that the promotion and organisation of dog shows is not ancillary to the Applicant's educational activities. Rather, the promotion and organisation of dog shows is a primary and independent purpose of the Applicant.

Other matters beneficial to the community

31. 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).⁶
32. The purposes set out in the Statute of Elizabeth are:⁷
- relief of aged, impotent, and poor people
 - maintenance of sick and maimed soldiers and mariners
 - schools of learning

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 *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.

- 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.⁸
33. Grounds for holding that the objects are not beneficial to the public 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*⁹, 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.

34. In *Petersborough Royal Foxhound Show Society v Inland Revenue Commisioners*¹⁰, the court found that a society for the promotion of foxhound breeding and the holding of an annual show was not a charitable purpose. Lawrence J said: "*I can see no satisfactory analogy between a foxhound show and the matters referred to in the Statute of Elizabeth...*".
35. The Commission considers that the promotion and organisation of dog shows is analogous to the holding of an annual show for foxhounds and therefore does not come under "any other matter beneficial to the community".

Public or private benefit?

36. The public benefit criterion necessarily requires that any private benefits arising from the Society's activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it. It will not be a public benefit if the private benefits are an end in themselves.¹¹ In addition, proof that public benefit will necessarily flow from each of the stated purposes is required, not merely a belief that it will or may occur.¹²
37. In *Inland Revenue Commissioners v Yorkshire Agricultural Society*¹³, Lord Atkin said:

⁸ *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

⁹ CIV-2008-485-1689, High court, Wellington, 3 December 2008 (Joseph Williams J.) at para. 20.

¹⁰ [1936] KB 497, 501.

¹¹ *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218; *Travel Just v Canada (Revenue Agency)* 2006 FCA 343 [2007] 1 CTC 294.

¹² *Gilmour v Coats* (1949) AC 26; *Re Blyth* [1997] 2 Qd R 567, 582; *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

¹³ [1928] 1 KB 611 at 631

"There can be no doubt that a society formed for the purpose merely of benefiting its own members, though it may be to the public advantage that its members should be benefited by being educated or having their aesthetic tastes improved or whatever the object may be, would not be for a charitable purpose, and if it were a substantial part to the object that it should benefit its members I should think that it would not be established for a charitable purpose only."

38. The Commission considers that the purposes of the Applicant are aimed predominantly at the enjoyment and pleasure of members and there is no evidence of sufficient public benefit for these purposes to be considered charitable.

Section 61A of the Charitable Trusts Act 1957

39. The Commission has considered whether these purposes could be held to be charitable under section 61A of the *Charitable Trusts Act 1957*. Section 61A of the *Charitable Trusts Act 1957* 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.
- (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.*

40. In *Clarke v Hill and Granger*¹⁴ the High Court considered whether encouraging youth radio and providing club rooms for groups interested in radio was a charitable purpose. In this case Priestley J held:

“Although amateur radio is clearly a hobby, participation in radio operation, radio transmission, the examination and construction of radio sets, and the study of the history of radio transmission as a form of technology and human development have a high educative value. Human history and societies (particularly technologically advanced western societies of which New Zealand is one), were transformed by the development around the start of the last Century of radio transmissions and broadcasts.”

41. In applying section 61A of the *Charitable Trusts Act 1957*, Priestley J held that amateur radio could be regarded as a recreational or leisure time occupation and:

“the provision of club rooms for youth, scouts and school groups for amateur radio, particularly when coupled with radio’s educative function, constitutes the provision of a ‘facility’ which will improve the conditions of life for such people and will satisfy a need which might not otherwise be available for young people generally.”

42. In *Guild v Inland Revenue Commissioners*¹⁵ the House of Lords held that the United Kingdom equivalent of section 61A of the *Charitable Trusts Act 1957* (section 1 of the *Recreational Charities Act 1958*) could be used to consider that a gift of an estate to be used “in connection with the sports centre in North Berwick or some similar purpose in connection with sport” was charitable.

43. The Commission considers that the promotion of dog shows may be a recreational and leisure time occupation. However, the Commission has been unable to identify that the Applicant’s purposes are meeting any particular need of the community which as a matter of social ethics ought to be met nor are they provided with the purpose of improving the conditions of life for the persons for whom they are primarily intended.

Conclusion

44. The Commission concludes that the Applicant has a primary purpose of promoting and organising dog shows, which is not exclusively charitable and does not provide sufficient public benefit.

Applicant’s submissions

45. The Applicant has submitted through its solicitor that “*There is precedent for the allowing of a dog club to become charitable in some specific circumstances*”.

¹⁴ High Court, Auckland, 2 February 2001, Priestley J, CP 68-SD99.

¹⁵ [1992] 2 AC 310; [1992] All ER 10; [1992] 2 WLR 397; [1992] STC 162, 136 SJ LB 88.

46. The Commission agrees that a dog club will be charitable where in the particular circumstances, it furthers a charitable purpose (for example, advancing agriculture through the training of sheep dogs). However, the Commission takes a case-by-case approach to each application for registration as a charitable entity. The Commission considers the specific wording of each applicant's rules document and has regard to the current and future activities of each applicant as required by section 18(3)(a) of the Act. The fact that an entity carrying out similar activities may have been registered by the Commission does not affect any other applicant's eligibility for registration.

Commission's determination

47. The Commission therefore concludes that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that it is not established and maintained exclusively for charitable purposes, as required by section 13(1)(b) of the *Charities Act 2005*.

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

23/12/07

Date

