

Registration decision: Community Bereavement Trust

The facts

1. The Community Bereavement Trust (the Applicant) is a society which was incorporated under the Charitable Trusts Act 1957 on 18 March 1998.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 3 April 2008.
3. The Applicant's purposes are set out in Rules 3 to 9 of the Applicant's Constitution and Rules:

"The objects of the Community Bereavement Trust Inc are:

Rule 3. *To set up funeral industry training courses to give Maori and ethnic graduates of the training courses, opportunities to use their new found skills within the New Zealand or global funeral industry, thereby providing social and economic upliftment to graduates who were previously unemployed and disadvantaged and to the wider community.*

Rule 4. *To monitor costs and services throughout the New Zealand funeral industry, by holding Tangihanga seminars at Marae and any Maori, ethnic or other community group meetings, to teach the public how to reduce funeral costs by identifying and choosing the type of services that are appropriate for their particular needs, and where possible place representatives and executors of bereaved families in touch with those funeral companies and independent funeral directors known to the Trust that will spare bereaved families the burden of high funeral director service costs.*

Rule 5. *To promote programs through seminar and displays at individual, whanau, Marae and community group levels, that inform how bereaved families can reduce the mental, physical, spiritual and temporal stress of bereavement, and promote the wellbeing of the surviving members of bereaved families. These programs would be presented by private and community groups specializing in grief counselling, religious studies, budgeting, physical exercise for stress relief and similar activities.*

Rule 6. *To develop appropriate strategies to ensure that funeral companies receive support through training seminars to identify the cultural tangihanga needs of Maori and ethnic groups, to support the grief process through funeral director cultural practices. This would include Maori and ethnic group protocols for Tangihanga, special embalming protocols, body parts retention protocols, appropriate casket fittings, disinterment protocols, taonga protocols, and advice on other ethnic cultural protocols.*

Rule 7. *To encourage, develop and provide educational programmes to increase knowledge and understanding of the methods required to care for a deceased person, to safeguard public health with Tupapaku lying in state, and more particularly the processes used to sanitize and prolong the deceased for extended periods before disposal of the body, according to Maori and ethnic group needs, and more particularly to make this knowledge available to the public at large and more especially to all bereaved families through seminars with Hospital, hospice and home care workers.*

Rule 8. *To advise the general public through handouts and other advertising of those funeral directing companies which offer the services that provide services and costs in favour of the low income and disadvantaged.*

Rule 9. *To promote encourage and actively implement and administrate tangihanga related programmes and activities that will maintain and re establish Maori and other New Zealand resident ethnic minority groups tangihanga customs and cultural lores, that promote the mental, physical, spiritual and temporal wellbeing of bereaved families. The various programs that will accomplish these outcomes will use training courses, work experience, community seminars, media exposure through television, radio broadcasts, educational books and other related publications, and any other means, to develop a pathway to achieve the objects of the trust."*

4. The Commission analysed the application for registration and on 5 December 2008 sent the Applicant a notice advising that its application may be declined on the basis that its purposes set out in Rules 4, 6 and 8 did not meet registration requirements in section 5(1) of the Act.
5. On 30 December 2008, the Applicant responded to the notice submitting that it provides public benefit rather than private benefit to the funeral industry, because its purposes are to:
 - (a) identify funeral companies that provide low cost funerals, and advise marae and community groups of companies that benefit low income bereaved families;
 - (b) educate the public on ways to lower funeral costs, by providing information not generally available to the public; and
 - (c) provide educational seminars to funeral homes regarding Maori cultural needs of bereaved families.

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

The law on charitable purpose

7. Under section 13(1)(b)(i) of the Act, a society or institution must be 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.¹ This means that the purpose must be directed at benefitting the public or a sufficient section of the public.
9. 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 Statute of Charitable Uses 1601 (Statute of Elizabeth).² In determining what is within the "spirit and intendment" of the Preamble to the Statute of Elizabeth, it is important to be guided by principle rather than by a detailed analysis of decisions in particular cases. What is beneficial to the community is a dynamic concept that will be determined by reference to relevant matters existing at the time.
10. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
11. 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; ..."*

Charities Commission's analysis

12. The Commission considers that the Applicant's object set out in Rule 7 indicates a charitable purpose by way of advancing education, and that the objects set out in Rules 3, 5 and 9 indicate charitable purposes by way of both advancing education and relieving poverty.
13. The Commission is of the view that the remaining purposes, set out in Rules 4, 6 and 8, do not amount to advancement of religion. These purposes have therefore been considered in relation to relief of poverty,

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

² *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.

advancement of education and "any other matter beneficial to the community".

Relief of poverty

14. In order for a purpose to relieve poverty, it must be directed at people who are poor, in need, aged or suffering genuine hardship, and the purpose must provide relief.
15. The Commission considers that monitoring costs and services throughout the New Zealand funeral industry, and teaching the public how to reduce funeral costs, as set out in Rule 4, is not specifically directed at people in need, but it is possible that people in need could benefit from this purpose.
16. People in need could also benefit from advice to the public on funeral services that are available for the low income and disadvantaged, as set out in Rule 8.

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.
18. In *In Re Shaw (deceased)*³ the court held that trusts for advertisements and propaganda do not advance education and therefore are not charitable. The Commission considers that placing bereaved families in touch with particular funeral directors and advertising the services offered by particular funeral directors, as set out in Rules 4 and 8, amounts to advertising. As such, these purposes do not amount to advancing education.
19. The purpose set out in Rule 6 relates to ensuring that funeral companies receive support through training seminars to identify cultural tangihanga needs of Maori and ethnic groups. This is likely to have some educational value and may provide a benefit to those members of the public who wish to use such services. The training is, however, only available to funeral companies, and in *Re Mason*⁴ the court held that a main purpose of providing advantages for those practising in a particular profession was not charitable.
20. The Commission considers that the purposes set out in Rules 4, 6 and 8 are likely to provide increased private financial benefits to funeral service providers, particularly those who are identified in the Applicant's seminars and other advertising material, which may outweigh any public benefit.
21. In addition, the Commission notes that the Applicant's website and the letterhead on its letter of 18 December 2009 both indicate that the Applicant is operating in partnership with two funeral service companies, Simplicity Funeral Directors Limited and Tainui Funeral Services Limited. Three of the Applicant's trustees are also shareholders of Simplicity Funeral

³ [1957] 1 WLR 729.

⁴ [1971] NZLR 714.

Directors Limited, and one trustee is a 50 per cent shareholder of Tainui Funeral Services Limited.

22. As set out in *IRC v Oldham Training and Enterprise Council*⁵ where the private benefits conferred on individuals engaged in trade, commerce or enterprise outweigh any public benefit, this will disqualify the entity from having charitable status.

Other matters beneficial to the community

23. As noted above, 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 Statute of Elizabeth.
24. In *Scottish Burial Reform and Cremation Society Ltd v Glasgow Corporation*⁶ the House of Lords found that a non-profit making company established to provide cheap and sanitary methods of disposing of the dead, in particular cremation, was established for 'a matter beneficial to the community'. In that case, Lord Wilberforce stated:

"In 1890 the appellants were in no doubt a pioneering venture; they must have been one of the earliest undertakings offering to provide a service of cremation for the inhabitants of Glasgow and of Scotland. Though their first object is stated as the promotion of reform in burial methods, their activity in this direction has not been by way of propaganda, but rather by way of providing services of a kind and in a manner which would progressively persuade the public of their advantages." [Emphasis added]

25. As the Applicant does not provide funeral services to the public, the Commission considers that the purposes set out in Rules 4, 6 and 8 are not analogous with those in the *Scottish Burial Reform and Cremation Society* case.
26. The Commission concludes that the purposes set out in Rules 4, 6 and 8 are not within the spirit and intendment of the purposes set out in the Preamble to the Statute of Elizabeth.

Charities Commission's determination

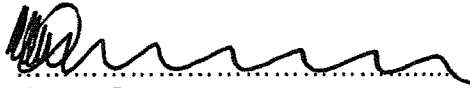
27. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that the Applicant is not a society or institution established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act.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

⁵ [1996] STC 1218.

⁶ [1968] AC 138; [1967] 3 All ER 215.

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

22/4/09

Date