

## Registration decision: New Zealand Council For Civil Liberties Incorporated (THE41950)

### The facts

1. The New Zealand Council For Civil Liberties Incorporated ("the Applicant") was incorporated under the *Incorporated Societies Act 1908* on 3 July 1957.
2. The Applicant applied to the Charities Commission ("the Commission") for registration as a charitable entity on 18 July 2011.
3. Clause 3 of the Applicant's rules document sets out the purposes of the society as:
  - 3.1 *The objects of the Council shall be to*
    - (a) *assist in the maintenance of civil liberties including freedom of speech and assembly,*
    - (b) *advance measures for the recovery and enlargement of civil liberties,*
    - (c) *encourage and support debate and dialogue within New Zealand on civil liberties, and*
    - (d) *educate and inform the people of New Zealand on issues and events arising from the application and operation of international and national treaties and legislation on human rights.*
4. The application was analysed and on 16 November 2011, the Commission sent the Applicant a notice that may lead to a decline regarding non-charitable purposes and winding up.
5. On 10 February 2012, the Applicant responded to the notice that may lead to a decline, stating:

#### *PURPOSES AND ACTIVITIES*

*The current position is that the Commission considers that a main purpose of NZCCL is political advocacy. In the course of that consideration the Commission has referred to several decisions, all of which confirm that advocacy and political activities are not regarded as charitable. The primary driver in the Court's conclusions is that the Court has no adequate means of judging whether a proposed change in the law would or would not be for the public benefit.*

*In the cases referred to there is in each instance a clear indication that the respective organisations are advocating a particular point of view held by supporters of the organisations (and possibly others as well).*

*It is correct that NZCCL has made numerous submissions to Select Committees over the years. However, we believe that those submissions differ from those referred to above because they are based on a general*

*point of view as set out in the Bill of Rights Act 1990, and which has application to all New Zealanders. Granted a number of our submissions relate to a small segment of New Zealand society, but this is because the existing rights of that segment are often in the process of being extinguished by the amendments introduced into the Parliament.*

*Other categories of political purposes are 'those that seek to secure or oppose a change in the law or the policy or decisions of central or local government' and 'those that support a political party'. The latter clearly has no relevance to NZCCL. As well, the Council makes no endeavour to secure a change in the law, policy or decisions of central or local government, but rather looks at the potential outcome of any proposed change from a 'rights based' perspective. On those occasions where it appears that the Council opposes a change it is within the context of proposing an alternative option which is more consistent with the principles of the NZ Bill of Rights Act 1990.*

*New Zealand is one of a limited number of countries where the rights and freedoms of its citizens are enshrined within its legislation. The Bill of Rights Act 1990 sets out to affirm, protect, and promote human rights and fundamental freedoms in New Zealand, and to affirm this country's commitment to the International Covenant on Civil and Political Rights. It also includes in S.7 a requirement for the Attorney-General to report to Parliament where a Bill introduced into the House appears to be inconsistent with the Bill of Rights.*

*While NZCCL was incorporated many years before the enactment of the Bill of Rights Act the nature of its purposes as set out in Clause 3 are broadly consistent with the scope of that Act. We consider that the substance of the Bill of Rights Act can clearly be identified as a "matter beneficial to the community", and that the activities of NZCCL (with particular reference to its submissions) are also "matters beneficial to the community".*

*In addition, the nature of the Council's submissions are directed towards retaining (or enhancing) existing rights and freedoms - an approach which we believe a vast majority of New Zealanders are likely to endorse.*

*Further, submissions on legislation are able to be undertaken by individuals as well as groups, and are in fact encouraged as an important part of the process of governance in our country, and in undertaking this activity individuals and groups give integrity to the legislative process in this country.*

*NZCCL considers that its submissions have primarily a legal rather than a political purpose and we are focussed on promoting principles already established in New Zealand law. The fact that the Council may challenge those legal processes falls outside the legal assessment that the Commission is entitled to make.*

#### **WINDING UP PROVISIONS**

*The text of the Council's winding up provision as set out in Rule 13 is in accord with the text generally used to ensure that no individual is able to obtain any pecuniary gain if/when the society is wound up. However, it*

*appears that the Commission regards this text as no longer being appropriate unless the recipient organisation has already been assessed as charitable in terms of S.5(1) of the Charities Act 2005. The Commission acknowledges that while two organisations may have similar purposes, the specific nature of each may render one charitable and the other not, it seems that the Commission has indeed gone one step further and is requiring any recipient organisation in the event of winding up to be "already registered as a charity in terms of the Charities Act".*

*While this does appear to be one step too far, NZCCL is prepared to amend its rules in the manner suggested by the Commission to make that situation clear beyond doubt. This step will be undertaken as a prerequisite to ensure registration under the Charities Act 2005 can be successfully completed as soon as confirmation is received from the Commission that the objects and activities do indeed fall within the ambit of S.13.*

#### COMPARISON WITH ANOTHER SOCIETY

*NZCCL notes that a companion organisation, Amnesty International Aotearoa New Zealand Incorporated, is registered under the Charities Act 2005 (CC35331). Its objects include "the vision of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards", and in pursuit of this vision "the mission is to facilitate the best contribution New Zealanders can make to preventing and ending grave abuses of human rights and to promoting all human rights in New Zealand ...".*

*The Council considers that the general tenors of its objects (and its activities) are comparable to those of AI, although on a significantly lesser scale.*

#### OTHER ACTIVITIES

*While NZCCL is currently a smaller organisation that it was in its heyday following its establishment after the impact of the Waterfront Strike in 1951 and subsequent decades, it nonetheless has and is undertaking further activities than those referred to on the website. The following examples give an indication of their scope.*

*In recent years NZCCL has been involved as amicus curiae in legal proceedings in (respectively) the Court of Appeal and the High Court as follows -*

- a Living Word Distributors Ltd v Human Rights Action Group (Wellington) Inc 2000 3 NZLR 570; and*
- b. Baise Moi (High Court 2002).*

*In both instances the Council sought involvement as there were important matters of principle that needed to be presented to the Court and none of the other parties were likely to address argument to the Court on those aspects.*

*Subsequently one of our members undertook considerable preparation for a major High Court challenge to advance the human rights of the intellectually disadvantaged. The applicants were three patients who have had lifelong intellectual and other disabilities, and a history of noticeable behavioural disturbances. This was likely to have far-reaching consequences for all patients in a similar situation, i.e. subject to the Mental Health (compulsory Assessment and Treatment) Act 1992 and receiving or, more importantly, not receiving "treatment".*

*Another area on which the Council is currently focussed is the provision of civics education and information within schools and colleges. This is an important undertaking as there is significant community and social benefits in young person's being educated as to their rights and responsibilities in a modern society. While much remains to be done the project is underway.*

*In our assessment both the specific legal proceedings and the educational focus are activities that fall within the ambit of activities beneficial to the community.*

*In addition, we are regularly approached by private citizens to provide information, advice or assistance across a wide range of different personal issues involving civil liberties. This activity is closely analogous to the service provided by Citizens Advice Bureaux, and we note that there are 63 such organisations already registered with the Commission.*

#### CONCLUSION

*Your letter states " 'charitable purpose' has a special meaning in law, and while two organisations may have similar purposes, the specific nature of each may render one charitable and the other non-charitable."*

*We regard it as appropriate to take a two-dimensional perspective and view 'similar purposes' as having a combined charitable and non-charitable dimension. We consider this to be a more inclusive approach that leads to a different test - which purpose has primacy and on what basis can that be demonstrated.*

*Our view is that the specific nature of the purposes of NZCCL renders it as a charitable organisation and that registration under the Charities Act 2005 is appropriate.*

#### 6. The Applicant's website states:

##### *About NZCCL*

*The New Zealand Council for Civil Liberties is a watchdog for rights and freedoms in New Zealand. The Council works through education and advocacy to promote a rights-based society and prevent the erosion of civil liberties by government or any other parties. It is a voluntary not-for-profit organisation. Council activities include:*

- Reviewing draft legislation to ensure there is no interference with individual rights.*
- Reviewing policies and practices of government agencies and public services to ensure there is no restriction on individual rights and freedoms.*

- *Examining the record of New Zealand in meeting international human rights obligations*
- *Advocating on behalf of individuals and organisations whose civil liberties have been denied.*
- *Working with other groups to develop and promote policies that support civil liberties.*
- *Making submissions and public statements on civil liberties issues.*

*NZCCL was formed in 1952 as a direct result of the Police Offences Amendment Bill which was introduced into parliament after the 1951 waterfront strike. Since that time it has been led by many prominent political and public figures, and has been at the forefront of debates ranging from censorship to overstayers, from police pursuits to tasers, and from the SIS to surveillance cameras.<sup>1</sup>*

...

*NZCCL has no paid staff, so your contribution will be entirely spent on the website, administration expenses and overheads, and, if necessary, the use of experts as advisers. Any surplus will be placed in a legal fighting fund to support worthy causes.<sup>2</sup>*

7. The Applicant's website lists submissions by the Applicant on the Video Camera Surveillance Bill, the Credit Reporting Privacy Code Amendment No 5, the Sentencing (Aggravating Factors) Bill, Criminal Procedure Reform Bill, the Electoral (Disqualification of Convicted Prisoners) Amendment Bill, the Copyright (Infringing File Sharing) Amendment Bill, Wellington City Council Liquor Control Bylaw, the Sentencing and Parole Reform Bill, Ministry of Justice's Legal Aid Review, the Search and Surveillance Bill, the Policing Bill, Reforming the Law of Sedition, the Judicature Amendment Act (No 3), the Prisoners' and Victims' Claims Bill, Customs Act Forfeiture and Seizure of Powers, the Judicial Matters Bill, and the Terrorism (Bombing and Financing) Bill.<sup>3</sup>

## **The issues**

8. The issue the Commission must consider is whether the Applicant meets all of the essential requirements for registration under the *Charities Act 2005* ("the Act"). In this case, the key issues for consideration are whether the Applicant is a society or institution established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual, as required by section 13(1)(b) of the Act. In particular, the issues are:
- (a) whether the Applicant's purposes fall within the definition of charitable purposes in section 5(1) of the Act; and
  - (b) whether the Applicant provides a public benefit.

<sup>1</sup> <http://www.nzcccl.org.nz/content/about-nzcccl>

<sup>2</sup> <http://www.nzcccl.org.nz/content/membership-details>

<sup>3</sup> <http://www.nzcccl.org.nz/submission-summary>

## The law on charitable purposes

9. Under section 13(1)(b) of the Act a society or institution must be established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual.
10. Section 5(1) of the Act states:

*...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.*
11. In addition to being within one of the categories of charitable purpose, to be charitable at law, a purpose must also be for the public benefit.<sup>4</sup> This means that the purpose must be directed to benefit the public or a sufficient section of the public.
12. Section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not prevent qualification for registration if it is merely ancillary to a charitable purpose.
13. Section 5(4) of the Act states that a non-charitable purpose is ancillary to a charitable purpose of the trust, society or institution if the non-charitable purpose is:
  - (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.*
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.*
15. Courts have also held that the activities of an entity must be considered in relation to its purposes in order to conclude whether it is, in fact, established and maintained for exclusively charitable purposes.<sup>5</sup>

## Charities Commission's analysis

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<sup>4</sup> Accepted as common ground in *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195, para [32].

<sup>5</sup> See *Attorney-General v Ross* [1986] 1 WLR 252 at 263; *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at para 194; *Commissioner of Taxation v Word Investments Ltd* [2008] HCA 55 at para 70; *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010] at para 29.

16. The Commission has analysed the purposes set out in clause 3 of the Applicant's rules document, information on the Applicant's website and the information supplied by the Applicant.
17. The Commission does not consider that the Applicant's purposes and the activities it undertakes indicate an intention to relieve poverty or advance religion. Accordingly, they have been assessed under advancement of education and "any other matter beneficial to the community".
18. The Applicant has indicated that it is willing to amend the winding up clause to meet requirements.

#### Advancement of education

19. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. The modern concept of "education" covers formal education, training and research in specific areas of study and expertise. It can also include less formal education in the development of individual capabilities, competencies, skills, and understanding, as long as there is a balanced, and systematic process of instruction, training, and practice.<sup>6</sup> In order to advance education, learning must be passed on to a broad section of the public.<sup>7</sup>
20. Education does not include advertisements for particular goods or services or promotion of a particular point of view.<sup>8</sup> If research is being conducted, it must be carried out in an objective and impartial way and the useful results made available, or accessible to the public.
21. The Applicant's response letter of 10 February 2012 states:

*Another area on which the Council is currently focussed is the provision of civics education and information within schools and colleges. This is an important undertaking as there is significant community and social benefits in young person's being educated as to their rights and responsibilities in a modern society. While much remains to be done the project is underway.*

...  
*In addition, we are regularly approached by private citizens to provide information, advice or assistance across a wide range of different personal issues involving civil liberties. This activity is closely analogous to the service provided by Citizens Advice Bureaux, and we note that there are 63 such organisations already registered with the Commission.*

<sup>6</sup> *Re Mariette* [1915] 2 Ch 284. See also *Chesterman v Federal Commissioner of Taxation* (1923) 32 CLR 362; *Lloyd v Federal Commissioner of Taxation* (1955) 93 CLR 645; *Chartered Insurance Institute v London Corporation* [1957] 1 WLR 867; *Flynn v Mamarika* (1996) 130 FLR 218.

<sup>7</sup> See *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010]; *Re New Zealand Computer Society Incorporated* HC WN CIV-2010-485-924 [28 February 2011].

<sup>8</sup> *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.

22. The Commission considers that these activities may be charitable under advancement of education if they are carried out in an objective and impartial way and there is a balanced and systematic process of instruction, training, and practice. However, the purposes and activities of the Applicant extend much further than those that have been held to be charitable under advancement of education, as explained below regarding political purposes.

#### Other matters beneficial to the community

23. In order for a purpose to qualify as “any other matter beneficial to the community”, the purpose must be beneficial to the community and must 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>9</sup>
- 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>10</sup>
24. Not all organisations that have purposes that benefit the community will be charitable. The purposes must benefit the community in a way that the law regards as charitable. According to *Charity Law in Australia and New Zealand*:

*[I]t is not all objects of public utility that are charitable, 'for many things of public utility may be strictly matters of private right, although the public may indirectly receive a benefit from them.' Nor are essentially economic or commercial objects within the spirit of the Preamble.*<sup>11</sup>

25. Over the years, the courts have recognised many new charitable purposes that are substantially similar to those listed in the Statute of

<sup>9</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.

<sup>10</sup> *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

<sup>11</sup> Gino Dal Pont, 2000, Oxford University Press, p 178; citing *Nightingale v Goulburn* (1847) 5 Hare 484, 490 and *Re Davis (deceased)* [1965] WAR 25, 28.



Elizabeth, acknowledging that what is accepted as a charitable purpose must change to reflect current social and economic circumstances.

26. In its letter of 10 February 2012 the Applicant states:

*While NZCCL was incorporated many years before the enactment of the Bill of Rights Act the nature of its purposes as set out in Clause 3 are broadly consistent with the scope of that Act. We consider that the substance of the Bill of Rights Act can clearly be identified as a "matter beneficial to the community", and that the activities of NZCCL (with particular reference to its submissions) are also "matters beneficial to the community".*

27. The Commission considers that it is possible to find promotion of human rights charitable under the fourth head by analogy with the purpose of promoting the moral or spiritual welfare and improvement of the community.<sup>12</sup> However, the Commission does not consider that the Applicant is charitable under the fourth head for the reasons outlined below.

#### Political purposes

28. In its letter of 10 February 2012 the Applicant states:

*It is correct that NZCCL has made numerous submissions to Select Committees over the years. However, we believe that those submissions differ from those referred to above because they are based on a general point of view as set out in the Bill of Rights Act 1990, and which has application to all New Zealanders. Granted a number of our submissions relate to a small segment of New Zealand society, but this is because the existing rights of that segment are often in the process of being extinguished by the amendments introduced into the Parliament.*

...  
*the Council makes no endeavour to secure a change in the law, policy or decisions of central or local government, but rather looks at the potential outcome of any proposed change from a 'rights based' perspective. On those occasions where it appears that the Council opposes a change it is within the context of proposing an alternative option which is more consistent with the principles of the NZ Bill of Rights Act 1990.*

...  
*In addition, the nature of the Council's submissions are directed towards retaining (or enhancing) existing rights and freedoms - an approach which we believe a vast majority of New Zealanders are likely to endorse.*

*Further, submissions on legislation are able to be undertaken by individuals as well as groups, and are in fact encouraged as an important part of the process of governance in our country, and in undertaking this activity individuals and groups give integrity to the legislative process in this country.*

<sup>12</sup> (See *South Place Ethical Society* [1980] 1 WLR 1565, *Re Scowcroft* [1898] 2 Ch 638, *Re Hood* [1931] 1 Ch 240, *Re Price* [1943] Ch 422.)

*NZCCL considers that its submissions have primarily a legal rather than a political purpose and we are focussed on promoting principles already established in New Zealand law. The fact that the Council may challenge those legal processes falls outside the legal assessment that the Commission is entitled to make.*

29. In *Bowman v Secular Society Ltd*,<sup>13</sup> the court held that:

*[A] trust for the attainment of political objects has always been held invalid, not because it is illegal, for everyone 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...*

30. This was followed by the New Zealand Court of Appeal in *Molloy v Commissioner of Inland Revenue*,<sup>14</sup> where it was held that the Society for the Protection of the Unborn Child, the main object of which was to preserve the integrity of the current law on abortion against the claims of those who desired its alteration, was not a charitable society.

31. In *McGovern v Attorney General*,<sup>15</sup> Slade J held that a trust whose main object is to secure the alteration of the law would not be regarded as charitable because the court had no adequate means of judging whether a proposed change in the law would or would not be for the public benefit. He further held that if a principal purpose of the trust was to reverse government policy or particular administrative decisions of governmental authorities, it would not be charitable, and that the elimination of injustice has never been held to constitute a charitable purpose.

32. In *Public Trustee v. Attorney-General*,<sup>16</sup> Santow J summarised the state of the law concerning "political" purposes. He wrote that an organisation whose main purpose is directed to altering or influencing the law or government policy cannot be saved from being political by appeal to the public interest, and that "activities directed at political change may demonstrate an effective abandonment of indubitably charitable objects."<sup>17</sup>

33. In *Re Collier (deceased)*,<sup>18</sup> Hammond J. considered that there are three different categories of political trust which have been impugned in the case law. The first category is "that charitable trusts to change the law itself are invalid". The second category, trusts to support a political party, is rejected because "it is thought undesirable for the advantages of charity to be conferred on trusts which overtly secure a certain line of political administration and policy". The third category of prohibited political trust is those for the perpetual advocacy of a particular point of

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<sup>13</sup> [1917] AC 406.

<sup>14</sup> [1981] 1 NZLR 688 at 695-696.

<sup>15</sup> [1982] Ch 321 at 338-340.

<sup>16</sup> [1997] 42 NSWLR 600 at 619.

<sup>17</sup> (1997) 42 NSWLR 600, 621.

<sup>18</sup> [1998] 1 NZLR 81.

view. This is because the Court has no means of judging whether or not 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.

34. Courts have held that in order for a trust to be charitable for the advancement of education, the information provided must not be limited to one side of complex issues. The test to decide whether the activity is political or genuinely educational is “one of degree of objectivity or neutrality surrounding the endeavour to influence, and assesses whether the political change is merely a by-product or is instead the principal purpose of the gift or institution”.<sup>19</sup> A distinction must be made between propagating a view that can be characterised as political and the desire “to educate the public so that they could choose for themselves, starting with neutral information, to support or oppose certain views”.<sup>20</sup>
35. In *In Re Draco Foundation (NZ) Charitable Trust*,<sup>21</sup> the court held that the provision of information on a website was not charitable under advancement of education. Ronald Young J stated:

*Here much of the partisan material is an attempt by Draco to influence local or central government or other officials to a particular point of view...In a democracy citizens are free to pursue such advocacy but the activity is essentially political and therefore not a charitable purpose.*

36. In *Greenpeace of New Zealand Incorporated*,<sup>22</sup> Heath J followed the long line of case law above in determining that Greenpeace’s political activities could be seen as an independent purpose. Heath J stated:

*In my view, the extent to which Greenpeace relies on its political activities to advance its causes means that the political element cannot be regarded as “merely ancillary” to Greenpeace’s charitable purposes. 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.*<sup>23</sup>

37. Clause 3 of the Applicant’s rules document sets out the purposes of the society as:

3.1 *The objects of the Council shall be to*

- (a) *assist in the maintenance of civil liberties including freedom of speech and assembly,*
- (b) *advance measures for the recovery and enlargement of civil liberties,*
- (c) *encourage and support debate and dialogue within New Zealand on civil liberties, and*

<sup>19</sup> *Re Bushnell (deceased) Lloyds Bank Ltd and others v Murray and others* [1975] 1 All ER 721 as applied by *Public Trustee v. Attorney-General* (1997) 42 NSWLR 600 at 608.

<sup>20</sup> *Re Bushnell (deceased) Lloyds Bank Ltd and others v Murray and others* [1975] 1 All ER 721 at 729.

<sup>21</sup> CIV 2010-485-1275 15 February 2011.

<sup>22</sup> HC WN CIV 2010-485-829 [6 May 2011].

<sup>23</sup> *Ibid*, paras 73-74.

(d) *educate and inform the people of New Zealand on issues and events arising from the application and operation of international and national treaties and legislation on human rights.*

38. The Commission regards the purposes set out in clause 3 as sufficiently broad as to allow the Applicant to undertake political advocacy as a main purpose.
39. A major activity of the Applicant is making submissions regarding bills before Parliament. The Applicant also reviews policies and practices of government agencies, examines the record of the Government in meeting international human rights obligations, advocates on behalf of individuals and organisations who, in the opinion of the Applicant, have had their civil liberties denied, has become involved in legal proceedings regarding Government censorship decisions, and, generally, makes submissions and public statements on civil liberties issues.
40. Promoting human rights standards amongst the general public in an objective and impartial way would not amount to advocating or opposing a change in the law or government policy and therefore this would not be a political purpose.
41. However, the Commission considers that the purposes and activities of the Applicant are not limited to promoting existing human rights standards, but extend to political advocacy, as the Applicant is attempting to influence Government law making and policy in relation to civil liberties.
42. The Commission also considers that the views put forward by the Applicant are intended to persuade to a particular point of view as there is “no attempt to provide a balanced assessment of opposing views from which knowledge could be accumulated and independent decisions made”.<sup>24</sup>

#### Ancillary purposes

43. In *Greenpeace of New Zealand Incorporated*,<sup>25</sup> Heath J sums up when a purpose can be considered ancillary:

*I agree with Simon France in Re Grand Lodge of Antient Free and Accepted Masons in New Zealand, that both 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 purpose are truly incidental or independent.*

*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*

<sup>24</sup> Ibid, para 56.

<sup>25</sup> HC WN CIV 2010-485-829 [6 May 2011].

*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.*

*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.*

*For the reasons given by Hammond J in Re Collier and Heydon and Kiefel JJ in AidWatch, 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.<sup>26</sup>*

*...  
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.<sup>27</sup>*

44. The Commission considers that, because the views put forward by the Applicant are intended to persuade people to a particular point of view, and the political activities are not necessary to educate the public on issues relating to human rights, the political element cannot be regarded as qualitatively ancillary to any charitable purpose.
45. In *In Re Education New Zealand Trust*,<sup>28</sup> regarding the quantitative aspect, Dobson J stated that "a 30 per cent constituency cannot realistically be characterised as ancillary, secondary, subordinate or incidental."
46. In *Navy Health Limited v Deputy Commissioner of Taxation*,<sup>29</sup> also regarding the quantitative aspect, it was held that a 10 per cent constituency could not be regarded as ancillary.
47. The Commission concludes that the political advocacy the Applicant undertakes is of such significance, qualitatively and quantitatively, that it cannot be viewed as ancillary to any charitable purpose, but is rather an independent purpose.

#### Applicant's submissions

48. In its letter of 10 February 2012, the Applicant states:

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<sup>26</sup> Ibid, paras 66-69.

<sup>27</sup> Ibid, para 74.

<sup>28</sup> HC WN CIV-2009-485-2301 [29 June 2010].

<sup>29</sup> [2007] FCA 931.

*[T]he nature of the Council's submissions are directed towards retaining (or enhancing) existing rights and freedoms - an approach which we believe a vast majority of New Zealanders are likely to endorse.*

*Further, submissions on legislation are able to be undertaken by individuals as well as groups, and are in fact encouraged as an important part of the process of governance in our country, and in undertaking this activity individuals and groups give integrity to the legislative process in this country.*

*NZCCL considers that its submissions have primarily a legal rather than a political purpose and we are focussed on promoting principles already established in New Zealand law. The fact that the Council may challenge those legal processes falls outside the legal assessment that the Commission is entitled to make.*

49. Courts have held that a purpose is political not only for advocating to change the law, but also for advocating for the maintenance of the status quo, as courts cannot assess whether the activities will provide a public benefit or not, and reasoned that if they did attempt this, they would be usurping the role of the legislature.<sup>30</sup>

50. For example, the New Zealand Court of Appeal, in *Molloy v Commissioner of Inland Revenue*,<sup>31</sup> held that:

*[R]eason suggests that on an issue of a public and very controversial character, as in the case of abortion, both those who advocate a change in the law and those who vigorously oppose it are engaged in carrying out political objects in the relevant sense. The law, statutory or otherwise, is not static... 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. In neither case has the Court the means of judging the public benefit.*

51. In the response letter of 10 February 2012, the Applicant states:

*It is correct that NZCCL has made numerous submissions to Select Committees over the years. However, we believe that those submissions differ from those referred to above because they are based on a general point of view as set out in the Bill of Rights Act 1990, and which has application to all New Zealanders. Granted a number of our submissions relate to a small segment of New Zealand society, but this is because the existing rights of that segment are often in the process of being extinguished by the amendments introduced into the Parliament.*

52. The Commission notes that while the *Bill of Rights Act 1990* is relevant to all New Zealanders, the Applicant is making political submissions the effect of which is for the maintenance of existing legislation, and this

<sup>30</sup> See *National Anti-Vivisection Society v Inland Revenue Commissions* [1948] AC 31 at 50; *McGovern v Attorney-General* [1982] 1 CH 321 at 336-337; *Southwood v Attorney-General* [2000] TLR 541.

<sup>31</sup> [1981] 1 NZLR 688 at 695-696 per Somers J.

amounts to political advocacy, which has been held by the courts to be non-charitable.

53. In its letter of 10 February 2012, the Applicant notes that an entity that engages in similar purposes and activities has been registered by the Commission.
54. The Commission points out that it 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 Charities Act. The fact that the entity identified by the Applicant has been registered will have no bearing on the Applicant's eligibility for registration.

#### Conclusion

55. The Commission concludes that the Applicant's purposes set out in clause 3 of its rules and its activities are non-charitable for the reasons stated above.

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

56. The finding of the Commission is 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 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

14/3/12

Date