

Registration decision: New Zealand Credit and Finance Institute Incorporated

Facts

The Applicant is a society incorporated under the Incorporated Societies Act 1908. The constitution of the Applicant indicates that its general purposes are to:

- establish an organisation for those persons engaged in the field of credit and finance, and
- promote professional unity, and the education and professional advancement of persons working in the field of credit and finance.

The Applicant applied to the Charities Commission ("the Commission") for registration as a charitable entity on 8 March 2007 on the basis that the Applicant is established for purposes beneficial to the community.

The Commission analysed the Applicant's application and on 14 May 2007 sent the Applicant a 'Notice that may lead to decline of registration' because "the purposes of the New Zealand Credit and Finance Institute Incorporated do not meet the registration requirements in section 5(1) of the Charities Act 2005".

In that letter the Commission advised that "... while your rules do contain a charitable purpose (advancing education), they also contain non-charitable purposes that, when put alongside the actual activities of the society ... can be considered to be something more than just ancillary or incidental to the charitable purpose".

On 17 May 2007 the Commission received a letter from the Applicant providing further information regarding the purposes and activities of the Applicant.

The issues

The issue that the Commission has to consider is whether the Applicant is established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Charities Act 2005 (the "Charities Act").

The law on charitable purpose

Section 5 of the Charities Act defines 'charitable purpose' as including every charitable purpose relating to:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; or
- any other matter beneficial to the community.

The Commission applies the common law test (and any applicable statutory tests) for charitable purpose to determine whether an entity meets the requirements for registration.

Under section 5 of the Charities Act, to be established and maintained exclusively for charitable purposes, all of an applicant's purposes must be charitable in nature, or the non-charitable purposes must be ancillary to a charitable purpose.

In the assessment of charitable purpose the law requires the Commission to consider:

- (a) the purposes of the Applicant described in its application;
 - (b) the purposes stated in the Applicant's constitution; and
 - (c) the activities of the Applicant.
- (section 18(3) of the Charities Act).

Commission's analysis

The Commission has considered the general purposes of the Applicant by considering each of the Applicant's objects, as expressed in its constitution, both individually and collectively¹.

The Applicant's purposes, as set out in the objects clause (clause 3) of its constitution, as revised in May 2004, are as follows:

- 3.1 to provide and maintain an organisation for those persons engaged in a field of credit and finance.
- 3.2 To promote professional unity amongst such persons engaged in the field of credit and finance and to promote cooperation and mutual assistance between them.
- 3.3 To promote the education, whether general or specific, and professional advancement of persons with a view to assisting them in becoming proficient in the field of credit and finance.

The Applicant's bylaws contain details of the activities that the Applicant is permitted to undertake to carry out its objects.

Object 3.1

- 3.1 to provide and maintain an organisation for those persons engaged in a field of credit and finance.

The intent of object 3.1 is that the Applicant will establish and maintain a professional body for persons working in a field of credit and finance.

¹ National Anti-Vivisection v Inland Revenue Commissioners [1948] AC 31

This purpose relates to the members of the Applicant. The Applicant is to be established to confer benefits on its members. The Commission considered whether the activities conferring these benefits could also be considered to confer public benefits by encouraging appropriate standards of practice and knowledge among members of the credit and finance profession. The Commission is of the view that any benefits flowing from the establishment of the Applicant will necessarily largely be for the private benefit of the Applicant's members.

Conferring a private benefit is only consistent with charitable purpose, where any private benefits are necessarily incidental to a public benefit. The courts have held that an organisation that exists primarily to advance the interest of its members, cannot be said to be charitable, because it confers private benefits, even where the carrying out of its objects also results in benefit to the community².

In *Inland Revenue Commissioners v Yorkshire Agricultural Society*³ the Court said:

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

The object set out in clause 3.1 is not a charitable object, as it is considered to be primarily for the private benefit of members and is not therefore incidental to any public benefit.

Object 3.2

3.2 To promote professional unity amongst such persons engaged in the field of credit and finance and to promote cooperation and mutual assistance between them.

The intent of this object is that the Applicant will promote unity, cooperation and assistance between the members of the Applicant.

The purpose is clearly directed at the members of the Applicant and their interaction with one another. Any benefits flowing from this object will solely or principally be private benefits to the members of the Applicant and for the reasons stated above, the object contained in clause 3.2 is not charitable.

² *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380 at 405

³ [1928] 1 KB 611 AT 631

Object 3.3

- 3.3 To promote the education, whether general or specific, and professional advancement of persons with a view to assisting them in becoming proficient in the field of credit and finance.

The intent of this object is to promote the education, and professional advancement of persons involved in the field of credit and finance.

The purpose appears to be directed at members of the Applicant, however, the additional information supplied by the Applicant on 17 May 2007 indicates that educational opportunities provided by the Applicant are available to members of the public as well as to its members. The Applicant submits that by providing educational opportunities to members of the public it provides public as well as private benefits and is therefore charitable.

The Courts have required substantive public benefit to be demonstrated before holding that a professional body is charitable.

In the IPENZ case⁴ (*Institution of Professional Engineers New Zealand Incorporated v Commissioner of Inland Revenue*) Tipping J stated:

"... I consider that the following words of Lord Normand in the Glasgow Police Association case are highly material: -

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

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

The purpose in object 3.3 of "... [promoting] the education ... and professional advancement of persons with a view to assisting them in becoming proficient in the field of credit and finance" could fall under the second head of charity (advancement of education) if it provides a substantive public benefit.

While the educational opportunities provided by the Applicant are apparently available to interested members of the public, it appears that they are primarily intended to benefit the Applicant's members and that any public benefit provided is incidental and not substantive, making object 3.3 non-charitable.

⁴ [1992] 1 NZLR 570

Alternative view

If the educational opportunities offered under object 3.3 did provide a substantive public benefit (making object 3.3 charitable) this would not make the Applicant charitable.

In *re Mason (deceased)*⁵ the Court held that an institution whose main object is the protection and advantage of those practising in a particular profession is not charitable. For object 3.3 to render the Applicant charitable (that is, exclusively charitable) it would have to be the Applicant's main purpose, with the purposes in objects 3.1 and 3.2 being ancillary to it. It is not considered that this is the case.

When considered collectively, the stated objects of the Applicant indicate that the main purpose of the Applicant is to benefit members of the credit and finance profession rather than members of the public, and is therefore not charitable.

The applicant's activities

The assessment of the Applicant's activities from material supplied by the Applicant indicates that the majority of the activities undertaken by the Applicant provide benefits to its members and that these benefits do not confer any public benefit and are not incidental to any public benefits provided. The Applicant's activities are therefore not charitable.

Charities Commission's determination

The finding of the Charities Commission is that the Applicant has failed to meet an essential requirement for registration in that the Applicant is not established and maintained exclusively for charitable purposes under section 13(1)(b)(ii) of the Charities Act 2005 due to objects 3.1 to 3.3 of its constitution.

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


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Sid Ashton - Chair

9/8/07
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Date

⁵ [1971] NZLR 714