

Registration decision: New Zealand National Quality Awards Foundation

The facts

1. New Zealand National Quality Awards Foundation (the Applicant) is a society incorporated under the Charitable Trusts Act 1957. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 24 January 2008.
2. The Applicant's purposes are set out in clause 2.1 of its Rules:

"2. OBJECTS OF THE FOUNDATION

2.1 ...

The objects and powers of the Foundation are:

- a) *To help develop national awareness of the key role which excellence plays in enhancing the performance of New Zealand organisations, public and private, within the New Zealand and global economy;*
- b) *To promote performance excellence principles and practices as an organisational philosophy in order to focus all efforts of the organisation on meeting or exceeding customer expectations using superior organisational practices;*
- c) *To encourage commitment to organisation-wide continuous performance improvement through an internationally comparable New Zealand Business Excellence Awards programme, promoting and recognising the highest levels of excellence and leadership in its use;*
- d) *To provide incentive and motivation across all enterprises in New Zealand from the new entrant to the mature and experienced quality organisation, and also through qualifying industry and sector awards as pre-requisites to the premier New Zealand Business Excellence Awards;*
- e) *To promote and undertake programmes of education and research and to provide seminars and teaching materials designed to further the understanding and use of the New Zealand Business Excellence Awards criteria and assessment methodologies;*
- f) *To promote and educate in the use of the New Zealand Business Excellence Awards criteria as a benchmark framework for performance improvement;*
- g) *To establish, maintain and develop relationships with similar organisations in New Zealand and around the world, and to*

facilitate national leadership and co-ordination of performance excellence where appropriate;

- h) To do all other things incidental or conducive to the attainment of the objects of the Foundation.”*

3. Clause 3.1 of the Rules sets out the Applicant's membership:

“The Members of the Foundation shall comprise the following:

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| Patrons | <i>Organisations committed to taking a leadership role and encouraging performance excellence within the wider community of organisations in New Zealand which are also committed to achieving high levels of performance excellence within their own organisation.</i> |
| Partners | <i>Organisations committed to achieving high levels of performance excellence within their organisation with the ultimate goal of attaining “world-class” performance levels.</i> |
| Corporate Members | <i>Organisations committed to achieving high levels of performance excellence within their organisation.</i> |
| Associate Members | <i>Individual people committed to assisting New Zealand organisation(s) to achieve high levels of performance excellence.”</i> |

4. The Commission analysed the application and on 26 March 2008 sent the Applicant a letter advising that its application for registration might be declined because the Applicant's purposes did not satisfy the charitable purpose requirements of the Act. A minor discrepancy between the Applicant's name on the application for registration and its incorporated name was also brought to the Applicant's attention.

5. The Applicant responded in a letter dated 28 May 2008, advising that the Foundation was formed “for the purposes of contributing to the economic and social well-being of New Zealand by promoting, facilitating and recognising the use of total quality management principles and practices throughout the country.” The Applicant submitted that:

- it provides New Zealand managers with information, resources and forums whereby they can learn and share business improvement practices;
- the training, awards, networking events, and knowledge sharing forums are open to all New Zealand businesses for the purposes of advancing education;
- its awards programme aligns with international awards programmes, enabling New Zealand applicants to benchmark their

- performance against international standards of performance excellence;
- it provides a public benefit in promoting business improvement methodologies and best practice models; and
 - it supplies data from the awards programmes to New Zealand universities to assist in research and associated publications.

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 issues for consideration are:
- (a) whether the Applicant is established and maintained exclusively for charitable purposes as required by section 13(1)(b)(i) of the Act, and
 - (b) if the Applicant has non-charitable purposes, whether those purposes are ancillary to a charitable purpose.

The law on charitable purposes

7. Section 13(1)(b)(i) of the Act provides that to meet the essential requirements for registration, a society or institution must be established and maintained exclusively for charitable purposes.
8. Section 5(1) of the Act provides that "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". Section 5(3) of the Act provides that any non-charitable purpose must be merely ancillary to a charitable purpose.
9. Also, to be charitable at law, a purpose must be aimed at benefiting the public or a sufficient section of the public and it must not be aimed at creating a private pecuniary profit.
10. In considering an application for registration, section 18(3)(a) of the Act states that the Commission must 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.

Relevant cases

11. The Courts have held the promotion of industry and commerce to be charitable, but only where there is public benefit.

12. In *Crystal Palace Trustees v Minister of Town and Country Planning*¹ the Court stated that:

"In those circumstances, it seems to me that the intention of the Act in including in the objects the promotion of industry, commerce and art, is the benefit of the public, that is, the community, and is not the furtherance of the interests of individuals engaging in trade or industry or commerce by the trustees."

13. In that case, the relevant Act entrusted a body of trustees with the control and management of Crystal Palace and park as a public place for education and recreation, and for the promotion of industry, commerce and art.

14. In *IRC v Oldham Training and Enterprise Council*², the Court held that promoting the interests of individuals engaged in trade, commerce or enterprise and providing benefits and services to them conferred private benefits on those individuals regardless of any public benefit. The remoteness of any public benefit disqualified the Council from having charitable status.

15. In *Inland Revenue Commissioners v Yorkshire Agricultural Society*³, the Court stated:

"There can be no doubt that a society formed for the purposes 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."

Charities Commission's analysis

16. The Commission considers that the Applicant's objects set out in clause 2.1(e) and (f) of its Rules indicate a charitable purpose by way of advancing education.
17. The wording of the Applicant's remaining objects in clause 2.1 are ambiguous. In order to determine whether they in fact amount to charitable purposes, the Commission has considered information on the Applicant's website (www.nzbef.org.nz).
18. In regard to its purpose and activities, the Applicant's website records that it:
- *'is committed to assisting New Zealand organisations realise their full potential';*

¹ [1951] Ch 132.

² [1996] STC 1218.

³ [1992] 1 NZLR 570.

- *is mandated 'to assist New Zealand organisations improve their performance and capabilities by providing a best practice business framework and by offering support, training, assessment services, access to Award programmes and networking with like-minded organisations';*
- *'will assist your organisation by providing a blue print for your business improvement journey';*
- *'is committed to helping you improve bottom line results';*
- *provides **membership benefits** including assessment tools, training, networking opportunities, access to best practice information and templates, regular communications, business related articles, presentations and award winning applications, entry to the NZ Business Excellence Awards, and access to experienced authorised consultants; and*
- *'has a range of training options which are deliverable via public course or in-house courses'. [Emphasis added]*

19. The Commission considers that the Applicant has a principal purpose of improving the performance of New Zealand organisations, which it achieves by providing a range of services to member organisations. The Commission is of the view that all of the Applicant's objects listed in clause 2.1 of its Rules, other than those in clauses 2.1(e) and (f), relate to its principal purpose.
20. The Commission accepts that aspects of the Applicant's training programmes that are delivered by way of public training course can be considered charitable in that they advance education. However, the principal purpose of improving the performance of New Zealand organisations provides private benefits for members and any consequent benefit to the community is considered too remote to be of public benefit.
21. The Commission therefore concludes that the Applicant is not established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act.
22. The Commission also concludes that the non-charitable purpose is not ancillary or secondary to a charitable purpose, in terms of section 5(3) of the Act.

Charities Commission's determination

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

Applicant's principal purpose is to provide benefits to its members and any consequent benefit to the community is considered too remote to be of public benefit.

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

5/8/08
Date