

## Deregistration decision: Purple Patch (Tauranga) Incorporated

### The facts

#### Registration history

1. Purple Patch (Tauranga) Incorporated (the Society) was incorporated under the Incorporated Societies Act 1908 on 7 May 1991.
2. The Society's purposes are set out in its amended Schedule of Objects:
  - "1. The promotion of charitable objects including provision for the relief of poverty, for the relief of poverty (sic), the advancement of education or religion, or any other matter beneficial to the wider community in the territorial boundaries of the Western Bay of Plenty District Council and Tauranga City Council in accordance with the law of charities in New Zealand.*
  - 2. To generally provide facilities and amenities which will foster the development and improvement of individuals by allowing them an outlet for their creative skills."*
3. The Society was registered as a charitable entity under the Charities Act 2005 (the Act) by the Charities Commission (the Commission) on 18 April 2008. The purpose set out in clause 1 of the Society's objects was considered to be charitable and the Society's letter of 9 July 2007 indicated that it had donated money for charitable purposes. Clause 2 was considered to be charitable in terms of section 61A of the Charitable Trusts Act 1957 and as a purpose that fell under the 4<sup>th</sup> head of charity, 'other purposes beneficial to the community'.

#### Proposed deregistration

4. Following an investigation into a similar organisation that had been set up to allow members to sell their own homemade crafts and goods, the Commission commenced an investigation into the Society's eligibility for registration. The Commission reviewed the Society's financial statements, available on the Companies Office website, and formed the view that the Society's primary purpose appeared to be generating income for its members.
5. On 28 May 2009, the Commission sent the Society a notice of its intention to remove it from the register under section 33 of the Act, on the basis that it was not established and maintained for exclusively charitable purposes. The notice included a summary of the financial information from the Companies Office website. It also noted that the donations that the Society had referred to in earlier correspondence with the Commission regarding its application for registration did not appear on the financial statements.

6. On 15 June 2009, the Society responded to the notice advising that:

*“Our 2<sup>nd</sup> priority is this mortgage as the repayments have to be made each and every month, regardless of us having a good trading month or not. Our 1<sup>st</sup> priority is the members, because they own the stock, for sale in our shop. We sell on commission!”*

7. The Society also advised the Commission that the donations did not appear on the financial statements due to an oversight, but that they were now listed as a separate item. The Society provided cheque butts as evidence of the specified donations.

### **The issue**

8. The Commission has considered whether or not the Society remains qualified for registration as a charitable entity, in terms of section 32(1)(a) of the Act. In this case, the key issue for consideration is whether the Society 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.
9. Because the Society made an objection to its proposed removal from the register, the Commission has also considered whether it is in the public interest to proceed with the removal of the Society from the register, as required by section 35 of the Act.

### **The law on deregistration of charitable entities**

10. Section 31 of the Act provides:

- “(1) An entity is deregistered as a charitable entity if it is removed from the register.*
- (2) An entity is removed from the register if the Commission registers a notice in the register that –*
- (a) states that the entity is removed from the register; and*
- (b) states the date on which the removal is effective.*
- (3) The entity ceases to be a charitable entity on the date referred to in subsection 2(b). ...”*

11. Section 32(1)(a) of the Act provides that the Commission may remove an entity from the register if the entity is not, or is no longer, qualified for registration as a charitable entity.
12. Section 33 of the Act requires the Commission to give notice of its intention to remove an entity from the register.
13. Section 35(1)(a) of the Act provides that if an objection to removal of an entity from the register is received, the Commission must not proceed with the removal unless the Commission is satisfied “that it is in the public interest to proceed with the removal from the register and that one or more of the grounds of removal from the register have been satisfied”.

14. An essential requirement for registration under section 13(1)(b) of the Act is that a society or institution must be established and maintained for exclusively 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.<sup>1</sup> This means that the purpose must be directed at benefitting 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.

### **Charities Commission's analysis**

17. In order to determine whether the Society continues to be established and maintained for exclusively charitable purposes and not for the private pecuniary profit of any individual, the Commission has considered the information provided by the Society, the Society's financial statements for the years 1999 to 2007, and the relevant case law.
18. In considering an application for registration, the Act directs the Commission to have regard to an applicant's current and proposed activities and any other information that the Commission considers to be relevant. The Commission has taken these matters into account as relevant considerations in determining whether the Society remains qualified to be registered.
19. In light of the information that the Commission has received since the Society was registered, the Commission has reconsidered whether the Society has exclusively charitable purposes and whether it is carried on for the private pecuniary profit of any individual.
20. The Commission considers that clause 1 of the Schedule of Objects is charitable by definition. The only activity the Society appears to undertake under clause 1 is donating money to charitable organisations. This is charitable under the established principle that to further a charitable purpose carried on by another is itself charitable.<sup>2</sup> In the period between 2005 and 2007, the Society donated \$1,000 to charitable organisations.
21. The purpose set out in clause 2 has been reconsidered in light of further information about the Society's activities. Clause 2 does not indicate an intention to relieve poverty, or advance education or religion. This purpose has therefore been considered in relation to "any other matter beneficial to the community".

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

<sup>2</sup> *Re White's Will Trusts* [1951] 1 All ER 528.

22. 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).<sup>3</sup>
23. Courts have held the provision of public amenities and recreational facilities such as public halls, libraries, museums, playing fields, swimming pools and botanical gardens to be charitable under the fourth head. While providing a shop for members to sell their handcrafts may provide some benefit to the community, it does not amount to the provision of a public amenity or recreational facility that has a substantial public benefit.
24. When considering whether the Society’s purposes are within the spirit and intendment of the Preamble to the Statute of Elizabeth, and in particular, the “supportation, aid and help of young tradesmen and handicraftsmen”, it is necessary to consider the High Court of Justice’s decision in *Commissioners of Inland Revenue v White*.<sup>4</sup>
25. In *White*, the court considered that in a contemporary context the “supportation, aid and help of young tradesmen and handicraftsmen” would mean those people who perform an art, trade or profession requiring special skill or knowledge. In that case, the applicant’s purposes involved encouraging the exercise and maintaining the standards of crafts both ancient and modern, preserving and improving craftsmanship and fostering, promoting and increasing public interest in such crafts.
26. While an indirect effect of the Society’s purpose in clause 2 may be to foster some public interest in crafts and to encourage the people making the objects, this purpose does not appear to be restricted to the performance of an art, trade or profession which requires special skill or knowledge, nor does it specify that any particular standard of craftsmanship must be maintained for the benefit of the public. The Commission considers that, having regard to the Society’s activities, the purpose in clause 2 is, in fact, to provide for a means by which local craftspeople can have a retail outlet for their crafts and benefit financially accordingly.
27. The Commission is of the view that while it is possible that the purpose set out in clause 2 provides some benefit to the community, it is not within the spirit and intendment of the purposes set out in the Preamble to the Statute of Elizabeth and therefore it is not a charitable purpose.

<sup>3</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>4</sup> (1982) 55 TC 651.

### Public or private benefit

28. 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.<sup>5</sup> 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.<sup>6</sup>
29. In *Commissioners of Inland Revenue v White*,<sup>7</sup> the Court cited the established principle set out in *Hadaway v Hadaway*,<sup>8</sup> that assisting persons carrying on a particular trade or business or profession will not be charitable unless there is a condition that this assistance can only be made for a purpose which is itself charitable. This principle has also been set out in *Crystal Palace Trustees v Minister of Town and Country Planning*,<sup>9</sup> and *Inland Revenue Commissioners v Oldham Training and Enterprise Council*.<sup>10</sup>
30. In *Inland Revenue Commissioners v Yorkshire Agricultural Society*, Lord Atkin said:
- "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."*<sup>11</sup>
31. The Society's financial statements for the years 1999 to 2007 and the submission made in response to the notice, indicate that the primary purpose of the Society is to provide an income for the Society's members. As such, the private benefit is an end in itself rather than incidental to the public benefit.
32. The Commission considers, therefore, that the purpose in clause 2 does not provide sufficient public benefit and that, in fact, the Society is carried on for the private pecuniary profit of individuals.

### Ancillary non-charitable purpose?

33. According to the Society's annual financial statements from 1999 to 2007, the total income for these years ranged from \$144,519 to \$192,107. The largest expenditure was on payment to members after selling their goods in

<sup>5</sup> *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.

<sup>6</sup> *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.

<sup>7</sup> (1982) 55 TC 651.

<sup>8</sup> [1955] 1 WLR 16 (PC).

<sup>9</sup> [1951] 1 Ch 132.

<sup>10</sup> [1996] STC 1218.

<sup>11</sup> [1928] 1 KB 611, 631.

the shop, which ranged from \$107,830 to \$149,885. Between 1999 and 2004, no donations were made to charitable organisations.

Year ended	Total income	Supplier Costs	Donations paid recorded on Financial Statements	Donations paid not recorded on Financial Statements
31/03/2007	\$161,209.63	\$122,307.13	\$600	
31/03/2006	\$155,318.03	\$115,642.31	-	\$200
31/03/2005	\$149,644.00	\$114,943.16	-	\$200
31/03/2004	\$159,246.07	\$119,281.21	-	
31/03/2003	\$144,519.00	\$109,030.00	-	
31/03/2002	\$146,339.00	\$107,830.00	-	
31/03/2001	\$145,844.00	\$110,164.00	-	
31/03/2000	\$160,817.00	\$121,066.00	-	
31/03/1999	\$192,107.00	\$149,885.00	-	

34. The Commission notes that the Society considers that its "1<sup>st</sup> priority is the members, because they own the stock, for sale in our shop. We sell on commission."<sup>12</sup> The Society's financial statements for the years 1999 to 2007 indicate that the primary purpose of the Society is to provide an income for the Society's members, which amounts to the Society being carried on for the private pecuniary profit of individuals.

#### Conclusion

35. The Commission concludes that the purpose set out in clause 1 is charitable, but that in the light of further information about the Society's activities, in particular its financial information, the purpose set out in clause 2 is non-charitable as it is aimed at benefiting the Society's members. The non-charitable purpose in clause 2 is not ancillary to the charitable purpose in clause 1, and the Society is carried on for the private pecuniary profit of its members. The Commission considers that there are grounds to remove the Society from the register on the basis that the Society does not meet the requirements for registration set out in section 13 of the Act.

#### Public interest

36. Under section 35 of the Act, where an objection is made to the proposed removal of an entity from the register, the Commission must not proceed with the removal unless it is satisfied that it is in the public interest to do so, and that –
- one or more of the grounds for removal have been satisfied; or
  - the objection has been withdrawn; or

<sup>12</sup> Society's letter to the Commission dated 15 June 2009.

- any facts on which the objection is based are not, or are no longer, correct; or
  - the objection is frivolous or vexatious.
37. Section 10(1)(a) of the Act obliges the Commission to promote public trust and confidence in the charitable sector. The Commission considers that public trust and confidence in registered charitable entities would not be maintained if entities which did not meet the essential requirements for registration remained on the register. This is particularly relevant for entities such as the Society, which seek funds from the public.
38. The Commission is therefore satisfied that it is in the public interest to proceed with the Society's removal from the register and that one ground for removal from the register has been satisfied, that is, the Society is not qualified for registration as a charitable entity.

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

39. The finding of the Commission is that the Society is no longer qualified for registration as a charitable entity because it is not established and maintained for exclusively charitable purposes as required by section 13(1)(b)(i) of the Act. In addition, the Society is carried on for the private pecuniary profit of individuals and therefore fails to be qualified for registration in terms of section 13(1)(b)(ii) of the Act.
40. The decision of the Commission is therefore to remove the Society from the register, pursuant to section 31 of the Act with effect from 26 August 2009.

**For the above reasons, the Commission determines to deregister the Society as a charitable entity by removing the Society from the Register.**

Signed for and on behalf of the Charities Commission



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Trevor Garrett  
Chief Executive

*26 August 2009*  
Date