

Registration decision: Rakaia River Fishing Promotions Incorporated

The facts

1. Rakaia River Fishing Promotions Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 24 June 1983.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 8 July 2008.
3. The Applicant's purposes are set out in clause 3 of the Constitution:

3. OBJECTS

To be beneficial to the community by protecting and enhancing the fishery and environment of the Rakaia River by:-

1. *Running an annual fishing competition.*
2. *Using the profits of such a competition to further the main object.*
3. *Any other means which will further the principal object."*

4. The Commission analysed the application for registration and on 19 March 2009, sent the Applicant a letter seeking further information about the activities conducted under clause 3, particularly how it protects and enhances the fishery and environment of the Rakaia River.
5. On 2 April 2009, the Applicant responded by email, providing the following information about its activities:
 - The Applicant works closely with North Canterbury Fish & Game Council whose statutory function is to look after the acclimatised fishery for the public of New Zealand. A levy from each entrant in the Applicant's annual fishing contest is paid to North Canterbury Fish & Game Council, which is spent for the benefit of the Rakaia fishery.
 - The Applicant provides voluntary labour and funds to North Canterbury Fish & Game Council to run a hatchery on the Rakaia River. The projects that the Applicant has supported so far include the building of bird protection screens, the provision of a pumping system to clean the races, and the purchase of a salmon egg sorting machine.
 - Each year the Applicant plants in excess of 200,000 salmon eggs into selected spawning streams. The claimed benefit to the general public from this activity is that the fish returning to the river system are then available to be caught.
 - The Applicant has also been involved in assisting with flood protection and restoration of the spawning streams, providing rearing tanks for Glenarriffe Research Station, assisting with funding for the

hearing to protect the Rakaia River with a National Conservation Order, submitting a number of submissions to various water right applications to extract water from the river, purchasing salmon smolt for release into the river system, and advocating for and providing access to the river for the public.

- The Applicant is currently in the process of bringing an expert from Canada to do research into their salmon breeding programme.
 - The Applicant supports a programme to give under-privileged children a day of fishing, at the end of which the children are allowed to keep the tackle provided. (The Applicant acknowledges that this purpose is not covered in its Constitution.)
 - The Applicant benefits the community by giving local groups such as Rakaia Lions, Rakaia Scouts, various sporting clubs and Plunket the opportunity to raise funds by providing services at the Applicant's annual fishing competition.
6. The Commission analysed the further information provided by the Applicant and on 14 April 2009, sent the Applicant a notice advising that its application may be declined on the basis that the main purposes set out in clause 3 were not exclusively charitable purposes.
7. On 13 May 2009, the Applicant responded to the notice submitting the following:
- The English case of *Re Clifford* is not applicable to the current situation because:
 - In England, most salmon fishing is carried out on private waters, exclusively by the wealthy and inaccessible to the public. There was no benefit to the community in the case of *Re Clifford* because the entity was private and exclusive, so the public could not benefit from the bequest. In New Zealand, there are no private rivers and so it is free and open to any member of the public to enjoy river-related activities.
 - The case is nearly 100 years old and so is no longer relevant.
 - The Applicant is involved with the protection of the river. The Rakaia River is the subject of a National Water Conservation Order, which was secured with the assistance of the Applicant.
 - The Applicant donates thousands of dollars every year to the Rakaia community, such as Scouts, swimming, soccer, karate, hockey and netball clubs, Plunket, Rakaia Lions and two community centres.
 - The Applicant holds an annual fishing competition, which promotes the sport of fishing and a social spirit among participants, and provides a platform for organisations such as Fish & Game to educate the public on its activities.

- The Applicant considers it is charitable in two ways: by providing public amenities and recreational activities (by protecting the river and looking out for the access to it), and by protecting the environment.

The issues

8. 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, whether all of the Applicant's purposes fall within the definition of charitable purpose in section 5(1) of the Act.

The law on charitable purpose

9. Under section 13(1)(b)(i) of the Act, to be registered as a charitable entity, a society or institution must be established and maintained for exclusively charitable purposes.
10. 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.
11. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
12. In considering an application for registration, 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

13. The Commission does not consider that the Applicant's purposes in clause 3, of protecting and enhancing the fishery and environment of the Rakaia River, are aimed at relieving poverty, advancing education or religion. The Commission has therefore considered whether these purposes could be charitable under "any other matter beneficial to the community".
14. 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

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

the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth).²

15. In *Kaikoura County v Boyd*³, the court held that the improvement and protection of the Waimangarara River was a charitable purpose under "other matters beneficial to the community". Similarly, the Commission considers that the purpose of protecting and enhancing the environment of the Rakaia River, set out in clause 3, would be charitable under "any other matter beneficial to the community".
16. The Commission has then assessed whether the remaining purpose in clause 3, of protecting and enhancing the fishery of the Rakaia River, is charitable under "any other matter beneficial to the community".
17. As identified in *Re Clifford Mallam v McFie*⁴, some benefits to the community may arise from restocking a river with fish. However, in that case the court decided that the preservation and improvement of fishing in certain waters was not a charitable purpose. Swinfen Eady J held:

"The objects of the society are most laudable, namely, the preservation and improvement of fishing in certain waters; but the immediate objects of the society are the preservation and improvement of fishing in certain private waters rented by the society as a means of recreation of its members. No doubt the restocking of the private waters with fish would benefit the waters above and below the waters rented by the society so that some benefits would accrue to the public generally, but however desirable the object the legacy cannot be supported on the ground that the society is a charitable society. As Lindley, L.J. observed in Re Nottage ... 'I am not aware of any authority pointing to the conclusion that a gift for the encouragement of mere sport can be supported as charitable.' There is no decision to the effect that a gift for the encouragement of mere sport is charitable; and the legacy cannot be supported as a charitable gift."⁵

18. The Applicant has correctly identified that the case of *Re Clifford* relates to the preservation and improvement of private, rather than public, stretches of water. The Commission notes, however, that the court based its decision on the fact that gifts for the encouragement of "mere sport" had never been held to be charitable.

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.

³ [1948] NZLR 233, 261.

⁴ (1911) 106 LT 14.

⁵ (1911) 106 LT 14, 16.

19. In *Travis Trust v Charities Commission*⁶, Williams J made the following comments in relation to sports and recreation:

*In the area of sport and leisure, the general principle appears to be that sport, leisure and entertainment for its own sake is not charitable but that where these purposes are expressed to be and are in fact the means by which other valid charitable purposes will be achieved, they will be held to be charitable. The deeper purpose of the gift or trust can include not just any of the three original Pemsel heads but also any other purpose held by subsequent cases or in accordance with sound principle to be within the spirit and intendment of the Statute of Elizabeth. In the areas of sport, the deeper purpose is usually health or education.”*⁷

20. The Commission does not consider that a deeper purpose of protecting and enhancing the fishery of the Rakaia River is education or health. In order to justify a conclusion that such a purpose would promote health, the Commission would require evidence that participation in this type of fishing would provide general health benefits for all those who participated. The Applicant has not provided any evidence, and the Commission has not found evidence, to justify a conclusion that fishing promotes public health through cardiovascular fitness.
21. The Commission has considered whether this purpose could be held to be charitable under section 61A of the Charitable Trusts Act 1957. Section 61A states:

61A Trusts for recreational and similar purposes

- (1) *Subject to the provisions of this section, it shall for all purposes be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare:*
Provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.
- (2) *The requirement of subsection (1) of this section that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless—*
- (a) *The facilities are provided with the purpose of improving the conditions of life for the persons for whom the facilities are primarily intended; and*
- (b) *Either—*
- (i) *Those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity, disablement, poverty, race, occupation, or social or economic circumstances; or*
- (ii) *The facilities are to be available to the members of the public at large or to the male or female members of the public at large.*

⁶ (High Court, Wellington, 3 December 2008, Joseph Williams J, CIV-2008-485-1689).

⁷ *Travis Trust v Charities Commission* (High Court, Wellington, 3 December 2008, Joseph Williams J, CIV-2008-485-1689) para 52.

- (3) *Without restricting the generality of the foregoing provisions of this section it is hereby declared that, subject to the said requirement, subsection (1) of this section applies to the provision of facilities at public halls, community centres, and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.*
22. The Commission does not consider that the protection and enhancement of the fishery could be considered to be a "facility", the "organising of any activity", or the "provision and maintenance of grounds and buildings" to be used for recreational facilities as envisaged by section 61A. This is because, as the Applicant acknowledges, the Rakaia River "is already there and about as public as you can get."⁸
23. Even if it was considered that the Applicant's purpose amounted to the provision of a facility under section 61A(3), the Commission does not consider that this will meet a need of the community, which as a matter of social ethics ought to be met, nor is it provided with the purpose of improving the condition of life for the persons for whom it is primarily intended.

Ancillary purpose?

24. The Commission has considered whether the Applicant's purpose of protecting and enhancing the fishery of the Rakaia River is ancillary to a charitable purpose, in terms of section 5(3) of the Act.
25. Information provided by the Application in its letter of 13 May 2009 indicates that it was involved in obtaining a National Water Conservation Order for the Rakaia River several years ago. More recently, the Applicant has undertaken activities including:
- funding three major projects: building bird protection screens, purchasing a \$5,000 pumping system to clean the races and purchasing a \$10,000 salmon egg sorting machine;
 - planting salmon eggs into selected spawning streams;
 - providing rearing tanks for Glenarriffe Research Station; and
 - purchasing salmon smolt for release into the river system.
26. This information indicates that increasing the number of salmon in the Rakaia River is not ancillary to protecting the environment.

Conclusion

27. The Commission concludes that protecting and enhancing the environment of the Rakaia River is a charitable purpose, but that protecting and enhancing the fishery is a non-charitable purpose which is not ancillary to a charitable purpose.

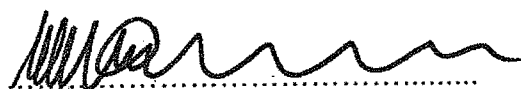
⁸ Letter from Rakaia River Fishing Promotions to the Commission dated 13 May 2009.

Charities Commission's determination

28. 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 for exclusively charitable purposes, as required by section 13(1)(b)(i) 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

24/8/09

Date