

## Registration Decision: Rotary International District 9920 Incorporated

### The facts

1. Rotary International District 9920 Incorporated (“the Applicant”) was incorporated under the Incorporated Societies Act 1908 on 23 August 2006.
2. The entity applied to the Charities Commission for registration as a charitable entity on 16 August 2010.
3. The constitution supplied by the Applicant contains the following purposes and relevant definitions:

**4. Objects** *The Objects of the District are to:*

- a) *provide for the efficient administration of the Clubs within the District by RI, the Governor and the District Board.*
- b) *Assist Clubs within the District to advance the “object of Rotary” as defined in the constitutional documents.*
- c) *Advance the service aspect of the “object of Rotary” by undertaking, and/or encouraging member Clubs, through voluntary effort, a wide range of service activities indicated by, but not limited to the following:*
  - *Financial help for needy families.*
  - *Relief and aid following natural disasters.*
  - *Health, education, immunisation programmes and clean water supply systems.*
  - *Sponsorships and scholarships for students and university teachers.*
  - *Support for life skills education in schools.*
  - *Vocational, group study and student exchanges.*
  - *Literacy programmes, speech competitions and youth leadership training.*
  - *Supporting communities by supporting or enhancing facilities.*

### 1.02 Definitions

“Club” *a club being a member of RI located with the District*

“RI” *Rotary International*

4. On 1 September 2010, the Commission sent a notice that may lead to decline to the Applicant on the basis that the purposes set out in clauses 4 a) and b) were not charitable purposes.
5. On 6 September 2010, the Applicant responded to the notice, submitting that the Applicant's rules had been amended on the same terms as those of another organisation that has been registered by the Commission.

### **The issue**

6. The issue that the Commission has to consider is whether the Applicant is a society or institution established and maintained exclusively for charitable purposes, as required by section 13(1)(b) 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, and if there are any non-charitable purposes, whether these are ancillary to a charitable purpose.

### **The law on charitable purposes**

7. Under section 13(1)(b) of the Act, a society or institution qualifies for registration if it is established and maintained exclusively for charitable purposes and is not carried on for the private pecuniary profit of any individual.
8. 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 benefiting the public or a sufficient section of the public.
9. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
10. In considering an application, section 18(3)(a) of the Act requires the Commission to have regard to the activities of the entity at the time the application was made, the entity's proposed activities, and any other information that the Commission considers relevant.

### **Commission's analysis**

11. The Commission considers that the Applicant's purpose set out in clause 4 c) is likely to relieve poverty, advance education, and provide a benefit to the community through advancing the **service aspect** of the object of Rotary, and encouraging and carrying out service activities; and is therefore charitable.

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

12. The Commission considers that the purposes in clauses 4 a) and b) do not indicate an intention to relieve poverty or advance religion or education. These purposes have therefore been considered in relation to “any other matter beneficial to the community”. Firstly, however, it is necessary to consider the effect of clauses in the Applicant’s constitution which could be seen to limit the Applicant to carrying out charitable purposes only.

Effect of clauses purporting to limit purposes

13. Clause 12 of the Applicant’s constitution states:

**12. Non Profit Society:**

*This District shall be a non-profit society. Its purpose shall be charitable and benevolent and to encourage, promote and extend the object of Rotary International and to maintain the relationship as a district of RI. It shall pay no dividend and no part of its money, property or other assets shall be distributed to its members, directors or officers*

14. In *M K Hunt Foundation Ltd v Commissioner of Inland Revenue*,<sup>2</sup> Hardie Boys J cited with approval the comments Lawrence LJ made in *Keren Kayemeth le Jisroel Ltd v Commissioners of Inland Revenue*.<sup>3</sup> In that case, the statute there under consideration contained the phrase ‘for charitable purposes only’, and Lawrence LJ said in the Court of Appeal that “it is not enough that the purposes described in the memorandum should include charitable purposes. The memorandum must be confined to those purposes.”<sup>4</sup> Hardie Boys J further wrote that

*... in so holding, Lawrence L.J. makes it clear in his judgment that he had in mind, not merely the phrase ‘charitable purposes only’, but also the cases which show that non-charitable objects will prevent recognition of the body in question as a charitable trust.*<sup>5</sup>

15. In *Commissioner of Inland Revenue v White*,<sup>6</sup> the Court considered limitations in the constitution of the Clerkenwell Green Association. The court noted that the constitution showed a clear intention that this object was exclusively charitable but went on to say:

*The charitable intention, clear as it is, is not conclusive in establishing charitable status, however, because clause 2(b) limits the field in which the charitable intention is to be effectuated. If the objects specified in clause 2(b) are of such a nature that there is not charitable purpose which will assist their achievement, then there is no charitable purposes within the specified field and the Association would not be entitled to registration as a charity. In other words, the mere insertion of the word “charitable” in clause 2(b) is not by itself enough to establish that the objects of the Association are charitable.*<sup>7</sup>

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<sup>2</sup> [1961] NZLR 405, 407.

<sup>3</sup> [1932] 2 KB 465.

<sup>4</sup> [1931] 2 KB 465, 481.

<sup>5</sup> [1961] NZLR 405, 408.

<sup>6</sup> (1980) 55 TC 651.

<sup>7</sup> (1980) 55 TC 651, 653.

16. Finally, in *Canterbury Development Corporation v Charities Commission*,<sup>8</sup> Young J wrote that “the mere fact that the constitution says that CDC’s objects are charitable does not make CDC charitable although such a declaration is relevant in assessing whether they are”.<sup>9</sup> The Judge went on to say “in the end the objects and operation of the organisations either support a charitable purpose or they do not.”<sup>10</sup> Young J concluded that CDC’s objects did not support a charitable purpose.
17. The Commission further notes that non-profit organisations are not necessarily charitable, and benevolent purposes are not necessarily restricted to those which are charitable.
18. The Commission does not consider that the inclusion of clause 12 provides conclusive evidence that the Applicant’s specific purposes are in fact exclusively charitable.

Other matters beneficial to the community

19. 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>11</sup>
20. Concerning the first leg of the test (beneficial to the community), the Supreme Court of Canada in *Vancouver Society of Immigrant and Visible Minority Women v MNR*<sup>12</sup> summarised what is meant by the public benefit requirement. Gonthier J wrote that “There must be an objectively measurable and socially useful benefit conferred; and it must be a benefit available to a sufficiently large section of the population to be considered a public benefit.”<sup>13</sup>
21. Concerning the second leg of the test, the courts have established that the purposes must also be within the spirit and intendment of the Statute of Elizabeth.<sup>14</sup> This requirement is cumulative in the sense that both requirements must be met before a purpose can be said to be charitable under the fourth head of charity.<sup>15</sup>

<sup>8</sup> HC WN CIV 2009-485-2133 [18 March 2010].

<sup>9</sup> HC WN CIV 2009-485-2133 [18 March 2010] at para 56.

<sup>10</sup> HC WN CIV 2009-485-2133 [18 March 2010] at para 56.

<sup>11</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>12</sup> *Vancouver Society of Immigrant and Visible Minority Women v MNR* [1999] 1 SCR 10.

<sup>13</sup> *Vancouver Society of Immigrant and Visible Minority Women v MNR* [1999] 1 SCR 10 at para 41 per Gonthier J dissident. Gino Dal Pont, *Charity Law in Australia and New Zealand*, Oxford, Oxford University Press, 2000 at 174-175.

<sup>14</sup> *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147, 157 and *Re Tennant* [1996] 2 NZLR 633, 638.

<sup>15</sup> *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31, 41.

22. Grounds for holding that the objects are not within the spirit and intendment of the Statute of Elizabeth may be found in the facts of the application but also in cases decided by the Court on similar facts. In *Travis Trust v Charities Commission*<sup>16</sup>, Joseph Williams J. noted that

*... regard must be had to the particular words of the preamble and, it has now long been held, any cases in which purposes have been found to be within the spirit and intendment of the preamble by analogy.*

23. 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.<sup>17</sup>

#### *Applicant's purposes*

24. The purpose of the Applicant under clause 4 a) is to “provide for the efficient administration of the Clubs within the District by RI, the Governor and the District Board”.

25. The courts will consider that promoting the efficiency of charities is a charitable purpose. However, promoting the efficiency of Rotary clubs, which are not necessarily charitable, is not a charitable purpose.

26. The purpose of the Applicant under clause 4 b) is to “Assist Clubs within the District to advance the ‘object of Rotary’ as defined in the constitutional documents.”

27. The “object of Rotary” is set out on the website of Rotary International:

*The Object of Rotary is to encourage and foster the ideal of service as a basis of worthy enterprise and, in particular, to encourage and foster:*

*FIRST. The development of acquaintance as an opportunity for service;*

*SECOND. High ethical standards in business and professions, the recognition of the worthiness of all useful occupations, and the dignifying of each Rotarian’s occupation as an opportunity to serve society;*

*THIRD. The application of the ideal of service in each Rotarian’s personal, business, and community life;*

*FOURTH. The advancement of international understanding, goodwill, and peace through a world fellowship of business and professional persons united in the ideal of service.*<sup>18</sup>

28. The Commission considers that the purposes set out in the “object of Rotary” are worthwhile, but are not charitable at law. The individual components of the “object of Rotary” are not charitable purposes in themselves.

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<sup>16</sup> (2009) 24 NZTC 23,273, 23,277.

<sup>17</sup> In Re Cumming [1951] NZLR 498, 501.

<sup>18</sup> <http://www.rotary.org/en/AboutUs/RotaryInternational/GuidingPrinciples/Pages/ridefault.aspx>, last accessed 28 September 2010.

29. The Commission considers that the encouragement of the general “ideal of service”, as stated in the introduction to the object of Rotary, is too vague to be considered a charitable purpose, although the specific service activities referred to in clause 4 c) are likely to be charitable.
30. *First component of the object of Rotary:* The “development of acquaintance as an opportunity for service” is not a charitable purpose. In particular, it indicates a purpose of providing social and entertainment activities for members. The courts have held that an entity whose dominant purpose is entertainment and amusement of its members is not charitable.<sup>19</sup> In the first case interpreting the Charities Act 2005, *Travis Trust v Charities Commission*, Joseph Williams J made the following comments concerning sport, leisure and entertainment:
- 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 purposes 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.*<sup>20</sup>
31. *Second and third components of the object of Rotary:* The promotion of “high ethical standards in business and professions” and the “application of the ideal of service in each Rotarian’s personal, business, and community life” are not charitable purposes beneficial to the community. In the recent High Court decision *Re The Grand Lodge of Antient Free and Accepted Masons in New Zealand*, Simon France J held in relation to Freemasonry that “[i]t exists for the self improvement of its members and whilst praiseworthy, it cannot qualify as a charity”. While the organisation in question aimed to make its members better people, this was judged to be an inward looking purpose which did not provide a sufficient public benefit.<sup>21</sup> Such purposes are distinct from outward-looking service activities.
32. *Fourth component of the object of Rotary:* The advancement of “international understanding, goodwill, and peace” is not a charitable purpose. Courts have held that purposes such as the promotion of international friendship or understanding are not charitable.

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<sup>19</sup> *Inland Revenue Commissioners v Baddeley* [1955] AC 572; *Canterbury Orchestra Trust v Smitham* [1978] 1 NZLR 787.

<sup>20</sup> (2009) 24 NZTC 23,273, 23,281.

<sup>21</sup> HC WN CIV 2009-485-2633 [23 September 2010] at paras 59-60.

See for example:

- *Taxation Review Authority Case 46*<sup>22</sup>
- *Anglo-Swedish Society v Inland Revenue Commissioners*<sup>23</sup>
- *Buxton v Public Trustee*<sup>24</sup>
- *Toronto Volgograd Committee v Minister of National Revenue*.<sup>25</sup>

33. For the above reasons, the Commission has considered that many applications from individual Rotary clubs do not meet registration requirements in relation to charitable purpose. However, the Commission has registered a number of Rotary charitable trusts which are focussed on carrying out service activities such as those referred to in clause 4 c).
34. The Commission considers that the Applicant's purposes in clauses 4 a) and b) of administering clubs and promoting the object of Rotary are not limited to encouraging and carrying out charitable service activities, advancing the service aspect of the object of Rotary. The Applicant has not provided evidence of any such limitation. These non-charitable purposes are independent purposes, and cannot be seen as ancillary to the charitable purposes of the Applicant.

#### Applicant's submissions

35. The Applicant submitted in its letter of 6 September 2010 that the Applicant's rules have been amended on the same terms as those of another organisation which has been registered by the Commission.
36. The Commission 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 Act. The fact that other entities have been registered by the Commission has no bearing on the Applicant's eligibility for registration.

#### Conclusion

37. The Commission concludes that the purpose set out in clause 4 c) may be charitable, but that the purposes set out in clauses 4 a) and b) are non-charitable purposes which are not ancillary to the charitable purpose.

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<sup>22</sup> [1980] 3 TRNZ 665.

<sup>23</sup> [1931] 47 TLR 295.

<sup>24</sup> [1962] 41 TC 235.

<sup>25</sup> [1988] 30 ETR 159.

**Charity Commission's determination**

38. 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) 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

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Trevor Garrett  
Chief Executive

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Date