

Registration decision: Sri Lanka Friendship Society Waikato Incorporated

The facts

1. Sri Lanka Friendship Society Waikato Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 20 September 1994. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity on 8 August 2007.
2. The Commission analysed the application and on 21 December 2007 sent the Applicant a letter advising that, in relation to its originally submitted rules, its application for registration might be declined. The Commission:
 - (a) advised that the winding up provisions in the Applicant's Rules did not meet the requirements in section 13(1)(b)(ii) of the Charities Act 2005 (the Act);
 - (b) requested further information about the Applicant's activities as set out in clauses 2.1 and 2.2 of the Rules, which then read as follows:
 - "2.1 To promote, uphold and honour the cultural heritage and the identity of Sri Lanka*
 - 2.2 To organise and participate in Cultural, Social, Sports and such other activities to promote unity, the well being and the identity of the society within the community."*
3. The Applicant responded in a letter dated 25 February 2008¹ stating that it had amended its winding up clause to meet the requirements of the Act. The Applicant also amended its objects clause, amending the original clause 2.1 and adding clauses 2.2 and 2.6.
4. The Applicant's objects provide as follows:
 - "2 Objects*
 - The main objects of the Society shall be*
 - 2.1 To promote, uphold and honour the cultural heritage and to support all attempts to maintain the identity of Sri Lanka*
 - 2.2 To respect Sri Lanka as a single sovereign state*

¹ It is noted that this letter was date-stamped by the Commission as having been received on 29 January 2008.

- 2.3 *To organise and participate in Cultural, Social, Sports and such other activities to promote unity and well being of the Sri Lankan Community in New Zealand*
 - 2.4 *To promote the welfare of new settlers into the community*
 - 2.5 *To appreciate and participate in multicultural activities as a mean[s] to promote goodwill and social harmony within the New Zealand Community*
 - 2.6 *To subscribe and affiliate with similar organisations in promoting similar objects throughout New Zealand."*
5. The Commission sent the Applicant a second notice that may lead to a decline on 5 May 2008 on the basis that clauses 2.1 and 2.2 were not charitable. The Commission considered that the purpose in clause 2.1, in relation to supporting all attempts to maintain the identity of Sri Lanka, and clause 2.2, referring to respecting Sri Lanka as a sovereign state, allowed the Applicant to be involved in non-charitable activities.
6. The Applicant responded in a letter dated 30 February 2008² reiterating that clauses 2.1 and 2.2 were charitable, and noting that clauses 11 and 12.3 of its constitution "restrain funds being sent out from New Zealand to whichever country". The Applicant also asked the Commission to consider clause 2.1 as ancillary to a charitable purpose under section 5(3) of the Act.

The issues

7. The issues that the Commission has to consider are:
- (a) whether the Applicant is established and maintained exclusively for charitable purposes as required by section 13(1)(b)(i) of the Act, considering clauses 2.1 and 2.2 of its Rules appear to provide for political or patriotic purposes; and
 - (b) if clauses 2.1 and 2.2 are non-charitable, whether those purposes are ancillary to a charitable purpose.

The law on charitable purposes

8. 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.
9. 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

² It is noted that this letter was date-stamped by the Commission as being received on 4 June 2008.

the community". Section 5(3) of the Act provides that any non-charitable purpose must be merely ancillary to a charitable purpose.

10. In addition, to be charitable at law, a purpose must be aimed at benefiting the public or a sufficient section of the public.
11. In *A-G v National Provincial and Union Bank*³, the House of Lords held that a trust for patriotic purposes was void. The Court stated that patriotic purposes are not necessarily charitable.
12. In terms of academic comment⁴, purposes promoting peace and international understanding and friendship have been categorised as political purposes, which have been held by the Courts to be non-charitable.

Charities Commission's analysis

13. The Commission considers that the purpose set out in the first part of clause 2.1 of the Applicant's Rules, "To promote, uphold and honour the cultural heritage of Sri Lanka ..." is charitable in terms of promoting culture and heritage for the advancement of education.⁵
14. However, the Commission is of the view that the second part of clause 2.1, "... to support all attempts to maintain the identity of Sri Lanka", and clause 2.2, "To respect Sri Lanka as a single sovereign state", do not fall within any of the four heads of charity. These purposes appear to fall into the category of "patriotic purposes" or "political purposes", and the Courts have held that political purposes are non-charitable.
15. Consequently, the Commission concludes that the Applicant is not established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act.
16. The Commission has considered whether clauses 2.1 and 2.2 can be considered ancillary to a charitable purpose, under section 5(3) of the Act. Section 5(4) of the Act provides as follows:

"(4) For the purposes of subsection (3), a non-charitable purpose is ancillary to a charitable purpose of the trust, society, or institution if the non-charitable purpose is—

- (a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society, or institution; and*
- (b) not an independent purpose of the trust, society, or institution."*

³ [1924] AC 262.

⁴ *The Law and Practice Relating to Charities*, Hubert Picada, 1999, 3rd edition, pp170-172.

⁵ See *Latimer v CIR* [2002] 3 NZLR 195.

17. In the Commission's letter to the Applicant dated 21 December 2007, the Commission requested further information about the Applicant's activities undertaken under clause 2.1, which then read as follows: "to promote, uphold and honour the cultural heritage and the identity of Sri Lanka".
18. In responding to the Commission's letter, the Applicant supplied revised Rules that contained an amendment to clause 2.1 by adding "to support all attempts to maintain the identity of Sri Lanka" and a new clause 2.2. The Commission did not receive any information to support a view that these purposes could be considered ancillary. Rather, the amendments appeared to underline and reinforce the view that those purposes were main independent purposes.

Charities Commission's determination

19. 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 purposes include political purposes, which are not charitable and are not ancillary to a charitable purpose.

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

9-7-08
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Date