

Registration decision: The Bach (Whangarei) Incorporated

The facts

1. The Bach (Whangarei) Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 19 August 2002.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 5 June 2008.
3. Clause 1(a) of the Applicant's rules states that its objects are:
 - (i) *To provide a venue for the showcasing of arts and crafts in Northland.*
 - (ii) *To assist arts/crafts people of Northland in the merchandising of their work.*
 - (iii) *To assist Northland arts/crafts people with employment opportunities.*
 - (iv) *To encourage emerging artisans whether members of the co-operative or not, by providing encouragement, advice, workshops and other educational opportunities to assist and enable them to achieve the co-operative's objectives."*
4. The Commission analysed the application for registration and on 22 January 2009 sent the Applicant a notice advising that its application may be declined on the basis that clauses 1(a)(i) to (iv) were not charitable purposes according to law.
5. On 27 February 2009 the Applicant responded to the notice making the following submissions:
 - *"The Bach is a co-operative ... set up to promote the works of local artists, members or not, to the public. ... This benefits the Northland public, economy and the artists."*
 - *"The Bach offers advice, encouragement, a network and feedback to local artists, as well as a place for them to display and sell their pieces. ... When a piece is sold The Bach takes a small commission to help with the running costs of the co-operative ... Any subsequent small surplus ... is secondary to The Bach's objectives and is kept and used to maintain and update the co-operatives premises, display units and so on, in the end again benefiting the artists and the public."*
 - *"We point you to The Bach's rules which outline the organisations objectives and aims, all of which are to support, encourage and promote Northland artists and their works. Also, section 14 which allows for no private pecuniary profit and section 15 that states that on wind up any surplus will be distributed to other charitable organisations."*
6. The Applicant also gave examples of its recent activities:
 - giving free membership to tertiary students

- giving marketing and presentation support to artists so they can increase the amount that they charge for their work
- purchasing resources in bulk so the savings can be passed on to artists
- helping those with special needs and supporting local products, such as buying products from a local factory crafted by people with disabilities
- advising artists on anything needed to bring their work up to exhibition standard, eg presentation, framing etc and giving promotional advice on publications to approach
- vetting the quality of artwork presented for sale and providing feedback to artists as to how they can improve their works to be commercial acceptable
- providing a website through which the artists are able to promote themselves without the cost of establishing a site themselves.

The issues

7. 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:
 - (a) whether all of the Applicant's purposes fall within the definition of charitable purpose in section 5(1) of the Act, and
 - (b) if there are any non-charitable purposes, whether these are ancillary to a charitable purpose.

The law on charitable purpose

8. Under section 13(1)(b)(i) of the Act, a society or institution must be established and maintained for exclusively charitable purposes.
9. 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.
10. 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 Statute of Charitable Uses 1601 (Statute of Elizabeth).² In determining

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

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*

what is within the "spirit and intendment" of the Preamble to the Statute of Elizabeth, it is important to be guided by principle rather than by a detailed analysis of decisions in particular cases. What is beneficial to the community is a dynamic concept that will be determined by reference to relevant matters existing at the time.

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, 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 Applicant's purposes, set out in clauses 1(a)(i) to (iv), have been considered in relation to advancement of education and "any other matter beneficial to the community".

Advancement of education

14. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. Education does not include advertisements for particular goods or services, promotion of a particular point of view, or the study of subjects that have no educational value.^{3,4}
15. Providing a venue for showcasing arts and crafts in Northland, as set out in clause 1(a)(i), could amount to advancing education if the arts and crafts are of sufficiently high standard to be educative of those people who view the work.^{5,6}
16. Clauses 1(a)(ii) to (iv) set out that the Applicant also aims to assist arts and crafts people to merchandise their work and achieve better employment opportunities by providing encouragement, advice, workshops and other educational opportunities. This is likely to have some educational value, but only for those people who are engaged in producing arts and crafts.

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 *In re Shaw (deceased)* [1957] 1 WLR 729; as interpreted in *Re Hopkins' Will Trusts* [1964] 3 All ER 46.

⁴ *Re Collier* [1998] 1 NZLR 81.

⁵ *Commissioners of Inland Revenue v White* (1982) 55 TC 651.

⁶ *Perpetual Trustee Co Ltd v Groth* (1985) 2 NSWLR 278, 286

17. In *Re Mason*⁷ the Supreme Court considered that while the objects of the Auckland District Law Society were entirely wholesome and likely to lead to the ultimate benefit of the public, they fell short of making the society a charity. In that case, the court made a distinction between charitable institutions whose main object was the advancement of education, which provided a clear public benefit, and non-charitable institutions whose main object was the protection and advantage of those practising in a particular profession. McMullin J cited examples of charitable institutions, such as an institute of pathology⁸ and a college of nursing,⁹ and examples of non-charitable institutions, such as an insurance institute¹⁰ and a society of writers.¹¹ Promotion of charitable purpose must be the institution's predominant object and any benefits to individual members of non-charitable character which result from its activities must be of a subsidiary or incidental character.¹²
18. In *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue*¹³ the High Court held that although the advancement of the science of engineering was beneficial to the general public, a significant and non-incidental function of the institution was to act as a professional organisation for the benefit of engineers. Therefore, it could not be said that the institution was established exclusively for charitable purposes.
19. Conversely, in *Commissioner of Inland Revenue v Medical Council of New Zealand*¹⁴ the Court of Appeal considered that the principal function of the Medical Council was protection of the public. There was a clear and obvious public interest in ensuring high standards in the practice of medicine and surgery. Any benefits to the registered medical practitioners were incidental and consequential therefore the Council was an institution established exclusively for charitable purposes.
20. The Commission is of the view, taking into account the Applicant's rules, and the examples cited in its letter of 27 February 2009, that the purposes set out in clauses 1(a)(ii) to (iv) are primarily aimed at providing increased private financial benefits to arts and crafts people. The Commission therefore concludes that the purposes set out in these clauses do not amount to advancing education for public benefit.

⁷ [1971] NZLR 714, 721.

⁸ *Royal College of Surgeons of England v National Provincial Bank* [1952] AC 631; [1952] 1 All ER 984.

⁹ *Royal College of Nursing v St Marylebone Corporation* [1959] 1 WLR 1077; [1959] 3 All ER 663.

¹⁰ *Chartered Insurance Institute v Corporation of London* [1957] 1 WLR 867; [1957] 2 All ER 638.

¹¹ *Society of Writers to Her Majesty's Signet v Commissioners of Inland Revenue* (1886) 2 TC 257.

Inland Revenue Commissioners v City of Glasgow Police Athletic Association [1953] AC 380.

¹³ [1992] 1 NZLR 570.

¹⁴ [1997] 2 NZLR 297.

Other matters beneficial to the community

21. As noted above, 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 Statute of Elizabeth.
22. The Commission notes that the Statute of Elizabeth includes the supportation, aid and help of young tradesmen and handicraftsmen. In *Commissioners of Inland Revenue v White*¹⁵ the court considered that in a contemporary context this would mean those people who perform an art, trade or profession requiring special skill or knowledge. The court held that there was considerable public benefit in 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. These purposes were therefore considered to be charitable purposes.
23. The Applicant's purposes differ from those cited in *Commissioners of Inland Revenue v White*. The Applicant's purposes are aimed at assisting anyone involved in producing arts and crafts to improve the **presentation** of their work in order for it to be commercially acceptable and to generate more income for the artist. The purposes do not appear to be restricted to those people who perform high quality craftsmanship requiring special skill or knowledge, nor do they aim to maintain or improve any particular standard of craftsmanship for the benefit of the public.
24. Further, *Commissioners of Inland Revenue v White* cites the established principle set out in *Hadaway v Hadaway*,¹⁶ 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*,¹⁷ and *Inland Revenue Commissioners v Oldham Training and Enterprise Council*.¹⁸
25. The Commission concludes that the purposes set out in clauses 1(a)(i) to (iv) do not provide a benefit to the community and are not within the spirit and intendment of the purposes set out in the Preamble to the Statute of Elizabeth.

Charities Commission's determination

26. 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 a society or institution established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the

¹⁵ (1982) 55 TC 651.

¹⁶ [1955] 1 WLR 16 (PC).

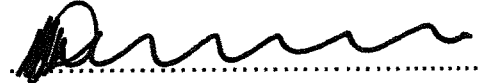
¹⁷ [1951] 1 Ch 132.

¹⁸ [1996] STC 1218.

Act. The Applicant has non-charitable purposes, and these non-charitable purposes are not ancillary to charitable purposes.

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

22/4/09
Date