

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

CIV 2009-485-2633

IN THE MATTER OF the Charities Act 2005

AND

IN THE MATTER OF an appeal from a decision of the Charities
Commission

IN RE THE GRAND LODGE OF ANTIENT
FREE AND ACCEPTED MASONS IN
NEW ZEALAND

Hearing: 9 August 2010

Counsel: P D McKenzie QC for Appellant
 T Warburton and R Berkeley for Respondent

Judgment: 23 September 2010

JUDGMENT OF SIMON FRANCE J

Introduction

[1] Freemasonry is a non-profit organisation. Its membership is limited to men over the age of 21. They come together to promote and advance virtues which the membership consider integral to the development of a person's character. These include good citizenship, morality, charity, compassion, brotherly love and a belief in a supreme architect of heaven and earth.

[2] The assets of freemasonry are held at two levels. First, individual groups, known as Craft Lodges, may own their own building and other assets. Second, there is an overarching body, the Grand Lodge, which is responsible for the administration and governance of freemasonry in New Zealand. This body holds the bulk of the assets and receives the bulk of the income. It receives annual payments from Craft Lodges, and generally runs freemasonry.

[3] For the purposes of this case there are two sub-groups within the Grand Lodge that are crucial:

- a) first, there are trustees appointed to hold on trust all the property and income of the Grand Lodge;
- b) second, there is a Board of General Purposes which is responsible for all decisions relating to the Grand Lodge, including how the assets and income of the trustees will be managed and spent.

[4] The Grand Lodge has enjoyed tax exempt status as a charity for more than 50 years. However, as required by new legislation, the trustees of the Grand Lodge assets re-applied to a new body, the Charities Commission, for registration as a charity. The trustees said that all the property of the Grand Lodge was held and deployed for charitable purposes, or purposes ancillary to charitable purposes.

[5] The application failed. Charities law requires that all the purposes for which money is received, held and expended must be charitable in order for a body to have charitable status. The Commission ruled that whilst some of the purposes of the Grand Lodge were charitable, not all of them were. In particular, freemasonry as a whole was not.

[6] The Grand Lodge (by its trustees) appeals. There are two limbs to the appeal. It is first argued that because the Grand Lodge has held charitable status for more than 50 years, it was not open to the Charities Commission to reach a different decision. Second, it is said that the Commission erred in its assessment. I have found it convenient to address the appeal grounds in reverse order.

The applicable law

[7] Until recently, a body's status as a charity was determined by the Commissioner of Inland Revenue. It was his responsibility because status as a charity had significant taxation benefits.

[8] The Charities Act 2005, which came into force in July 2008, changed that. It established a Charities Commission and a charities register. The advantages available under the taxation legislation were thereafter to be accorded only to bodies that were registered by the Charities Commission as charities. However, the new Act did not change the tests for determining a charity. It only changed the decision maker.

[9] In order to be a charity, a body must exist only for charitable purposes. There are two aspects to that statement – first, it must exist for charitable purposes, and second, those charitable purposes must be its only purposes. Third, the carrying out of those exclusively charitable purposes must confer a public benefit.

[10] There are four recognised charitable purposes:¹

- a) the advancement of religion;
- b) the advancement of education;
- c) the relief of poverty;
- d) other matters beneficial to the community.

The Grand Lodge sought to bring itself within this fourth head of matters beneficial to the community.

[11] The fourth head of charity requires that the purposes for which the charity exists are purposes that are conceptually beneficial to the public,² and are purposes that fall within the spirit and intent of the purposes listed in the Preamble to the Statute of Elizabeth. This last requirement needs explanation.

[12] The Statute of Elizabeth (the Charitable Uses Act) was passed in 1601. It was the first attempt to legislate in the area, and its preamble has come to define the scope of this fourth head of charity. What is required is to consider its spirit and intent, and assess the present case against that, particularly by having regard to other decisions that have been made over the years in relation to this head of charity. The matters covered have gradually extended over the years by this process of analogy. The Preamble reads:

...some for Relief of aged, impotent and poor People; some for Maintenance of sick and maimed Soldiers and Mariners, Schools of Learning, Free Schools and Scholars in Universities; some for Repair of Bridges, Ports, Havens, Causeways, Churches, Sea Banks and Highways; some for Education and Preferment of Orphans, some for or towards Relief, Stock, or Maintenance for Houses of Correction, some for Marriages of poor Maids, some for Supportation, Aid and Help of young Tradesmen, Handicraftsmen and Persons decayed, and others for Relief or Redemption of Prisoners or Captives, and for Aid or Ease of any poor inhabitants concerning the Payments of Fifteens, setting out of Soldiers and other Taxes...

¹ Charities Act 2005, s 5(1).

² I use the word conceptually to distinguish this aspect of the inquiry from the third requirement of charitable status, namely that the way the purposes are carried out confers a public benefit.

Understanding the application

[13] The trustees of the Grand Lodge chose to make a single application in relation to all the assets they held. That means that all the property held on trust, and all the expenditure they make, must be for a charitable purpose (or be ancillary to such a purpose).

[14] The assets fall into three groups:

- a) assets held under the auspices of the Fund of Benevolence;
- b) assets held pursuant to particular trusts which have their own stated purposes;
- c) all other assets held on behalf of the Grand Lodge for its general purposes.

[15] Everyone accepts that the assets and expenditure of the Fund of Benevolence fall within charitable purposes. It does not need further consideration.

[16] As for the particular trusts, the Commission said it did not have any information about them so could not decide. Mr McKenzie QC accepts that these trusts must be the subject of individual applications. In my view that really means, of itself, that the application should fail. The application covered these assets, and they cannot be said to be held for charitable purposes. Therefore the purposes of the trusts are not shown to be exclusively charitable. There was no amendment to the application to exclude these assets. However, in anticipation that an amended application might be made that is limited to the Fund of Benevolence and the general funds, it is appropriate to continue to address the issues covered on the appeal.

[17] It is at this point that the entity known as the Board of General Purposes becomes pivotal. It is the body which effectively controls matters, subject to direction from the two yearly meeting of the Grand Lodge.³ The Board oversees the people who run the Fund of Benevolence, it attends to day to day administration of the Grand Lodge's affairs, and it directs the trustees in relation to the general funds.

[18] There are two sources of information about what this Board does. First, clause 222 of the Constitution provides:

- a. The Board has the general care and regulation of all the affairs of Grand Lodge and shall take into account all matters concerning the Craft in New Zealand.
- b. The Board shall control and administer the property and finance of Grand Lodge. Provided however, that notwithstanding any other provision contained within these rules or the Collected Rulings no distribution of income after expenses shall be made except for charitable purposes.

...

[19] Second, the Grand Lodge's submission to the Commission says that:

The Board of General Purposes is charged with governing the overall administration and operations of the Grand Lodge. Principally, this involves administering the various sources of funding of the Grand Lodge and running and organising the activities of its members at the Communication. As discussed below, the funds received less the cost of these operations are either directly applied to charitable purposes by the Board of General Purposes or transferred to the Board of Benevolence for the application to various other charitable purposes. (my emphasis)

[20] In my view, because of clause 222(b), the issues in this case are quite narrow. Clause 222(b) is a new provision, passed seemingly in response to early concerns raised by the Charities Commission. Clause 222(b) says that the surplus assets and income of the Grand Lodge must be deployed in favour of charitable purposes. That can, I believe, be accepted at face value. It means that, after the necessary expenditure in running freemasonry has been incurred, the balance will be expended only on charity.

³ Although constitutionally a two year event I understand it is now held every three years.

[21] Therefore, the case comes down to what are these “expenses” that clause 222(b) refers to. Obviously it is the expenditure of the Board in pursuit of its governance of freemasonry role. Does this expenditure take the appellants outside charitable purposes? Of clause 222(b) the Commission said:

The Commission does not consider this sufficient to render the purpose of promoting freemasonry in New Zealand charitable. The activities done to promote freemasonry in New Zealand could be regarded as expenses of the Grand Lodge and therefore would be subject to the charitable purpose limitation.

[22] I agree. It seems to me that all the clause says is that once the money needed to carry out the Grand Lodge’s role in relation to freemasonry has been spent, anything left over will go to charity.

[23] That commitment is not in any way to be trivialised. It is known that, in addition to the activities done under the name of the Fund of Benevolence, the Grand Lodge itself does charitable things such as funding scholarships (open to all) and University Chairs. But obviously it is not all it does. It also administers freemasonry and spends money on doing so. So the question remains: is that money expended for charitable purposes, or is it activity and expenditure ancillary to a charitable purpose?

[24] It is appropriate at this point to touch on one aspect of charities law not previously addressed. When a charity attains a certain size, it will inevitably have a secretariat of some sort. Some charities also engage in fundraising ventures, or activities that are designed to raise their profile, such as sponsorship. Strictly speaking these activities are not in themselves charitable, but the law provides that purposes which are not charitable in themselves, but which are ancillary to a charitable purpose, do not undermine charitable status.⁴ It is a limited exemption on the requirement that the purposes be exclusively charitable.

⁴ Charities Act 2005, s 5(3).

[25] The proposition advanced for the appellants, as I understand it, is that freemasonry as a whole is charitable. Activities such as expenditure on training of members, buildings, and ceremony are auxiliary to the charitable aims of freemasonry and so do not undermine its charitable essence.

What does the Grand Lodge do?⁵

[26] I have already set out the formal description, from the Constitution, of what the role of the Board of General Purposes is, and the description given by the Grand Lodge. In general terms, as the Commission said, it is to promote and administer freemasonry in New Zealand.

[27] I have found detail on what this involves rather skimpy but from the material filed the following emerges.⁶ Concerning what is known as the Craft, (ie the practices and rules of freemasonry) the Grand Lodge at the two yearly meeting, and the Board of General Purposes in between times by delegation, deal with any matters that arise. This includes the capacity to make rulings, to publish such rulings and to expel members.

[28] Financially, there are three matters on which to comment. First, the Grand Lodge receives capitation fees for all members. Second, the Grand Lodge administers an investment fund in conjunction with a leading bank. Members invest in the Fund and agree that part of the interest payable will go to the Grand Lodge. Third, there is a dedicated Masonic Building Fund, which is used to assist with the building and maintenance of Masonic Lodges. The money is distributed by way of repayable loans to individual Craft Lodges.

⁵ In this context I use the terms Grand Lodge and Board of General Purposes interchangeably. Likewise, although formally the applicants are the trustees of the assets, in reality the application succeeds or falls on the status of the Grand Lodge itself.

⁶ I exclude from the discussion the charitable activities with the surplus money. That purpose, and activity pursuant to it, is obviously charitable.

[29] The Grand Lodge also undertakes pastoral activities in relation to its members. It organises training seminars. The details of what these involve are not really provided but I gather it is a matter of training members in public speaking, and communication skills. I assume they also provide teaching and training in relation to the other skills and virtues which are core to freemasonry beliefs.

[30] The Grand Lodge also organises the two yearly gathering of members who hold the status of Master Mason or higher. Finally it produces a quarterly publication for its members. I do not know what it covers.

[31] Not included in any of this description is what is involved in the day to day practice of freemasonry. The position of the appellant is that such activities are the responsibility of the individual Craft Lodges and not the Grand Lodge.

[32] Whilst commenting on what is not included, I observe there is no information on the scale of this expenditure, or proportionately how it relates to the surplus funds available for charity. Nor is it disclosed what proportion of these general funds are reserved, for example, for the Building Fund.

The submission on behalf of the Grand Lodge

[33] It is submitted that the overarching principles of freemasonry are directed at cultivating and encouraging charitable giving and community mindedness on the part of its members. The purposes of freemasonry are shaped by those virtues.

[34] The Constitution sets out the principles which guide the practice of freemasonry. They are:

Freemasonry as a Society is

Charitable – its resources are devoted to the welfare and happiness of Mankind.

Benevolent – believing that the good of others is of primary concern.

Communal – it promotes ethical conduct and responsible attitudes amongst its members, and attitudes of heart and mind which will help them to practice charity and goodwill to all.

Educational – its authorised ceremonials teach a system of morality and brotherhood based upon Universal Truth.

Reverent – it acknowledges a Supreme Being, Creator of the Universe whom all men should revere. The Volume of the Sacred Law is open whenever a Lodge is in session and is a constant reminder of that fundamental duty.

Social – it encourages the meeting together of men for the purposes of fellowship, instruction and charity.

[35] It is submitted that an organisation dedicated to the advancement of these principles is one which falls within the fourth head of charity, namely matters beneficial to the community. It is noted that the first three of these principles – Charitable, Benevolent and Communal – are clearly charitable objectives. Whilst the next three – educational, reverent and social – have members as their focus, the proposition is that they promote a charitable and moral ethos within the membership. This is a benefit to society.

[36] In accordance with the settled approach in this area, Mr McKenzie focuses on other cases which have been held to come within this fourth head of charity. His submission is that the case for freemasonry is at least as strong. These cases will be considered later so are not discussed at this stage.

[37] Concerning expenditure directed at its members, Mr McKenzie submits that if the overall purposes fall within the fourth head, then expenditure which provides for membership activities must itself either have a charitable purpose or be auxiliary to it.

[38] Finally, concerning the third requirement of benefit to the public, Mr McKenzie submits the question for decision is whether on the one hand the entity promotes the public benefit, (which would satisfy charities law) or alternatively whether its activities are principally directed to advancing the moral or spiritual welfare of a restricted membership. It is accepted that this latter focus, though having admirable features, does not represent the level of public focus necessary for charitable status.

[39] In support of the proposition that freemasonry falls on the right side of the line, attention is drawn to the first three outward looking principles. Freemasonry encourages its members to perform works of charity, and to have “attitudes of heart and mind which will help members to practice charity and goodwill to all”. It is finally submitted that a defined and restricted membership is not a block on establishing the necessary public benefit.

Decision

[40] The proposition which the Grand Lodge advanced to the Commission was that factually:

- a) the Grand Lodge was established and maintained exclusively for charitable purposes, and its operations, structures and codes of conduct are designed to further these charitable purposes;
- b) any income it derives is derived for charitable purposes;
- c) it provides a public benefit through its charitable activities.

[41] Put in this way the proposition is that freemasonry as a whole is a charitable endeavour, and the Grand Lodge is just the mechanism by which that charitable enterprise is run. The Commission rejected the claim because it considered that the head of charity into which the freemasons claimed to fit required a level of openness and accessibility to the public which was not present. Further, the Commission did not accept that freemasonry provided the type of direct public benefit required of a charity.

[42] Another aspect of the Grand Lodge’s submission was that it was:

important that the activities of the Craft Lodges are correctly differentiated from those of the Grand Lodge. The practice of freemasonry is the responsibility of each individual member. As such the promotion and advancement of the virtues, as set out in the Antient charges, are undertaken by each individual member at Craft Lodge level.

[43] There is a degree of inconsistency in this. The claimed overall charitable purposes of the Grand Lodge can only come from its relationship to freemasonry, yet the submission also seeks to separate the Grand Lodge from the day to day activities of individual members.

[44] In the end the focus must be on the applicants, who are the trustees of the Grand Lodge. The application relates to the trust under which the trustees hold the property of the Grand Lodge. To achieve the status of charity it must be shown that all the purposes for which that money and property is held are charitable.

[45] Some of the purposes are unquestionably charitable. Into that camp I put the purposes that attach to the assets and income of the Fund of Benevolence. I also accept that clause 222(b) of the Constitution means that the undefined surplus of the general funds which the trustees hold are likewise held solely for charitable purposes.

[46] However, the issue is whether the “non surplus” part of the general funds is held exclusively for charitable purposes. It is to be remembered in this regard that one may in fact be talking about all of the general funds. The priority of the Grand Lodge is to spend the money on carrying out its role as superintending authority of freemasonry in New Zealand. It is only after that is done that anything left over is dedicated to external charitable endeavours.

[47] It is not possible to conclude that all of the purposes of the Grand Lodge are charitable. The Grand Lodge organises ceremonial meetings for its members. It is the supreme judicial power, setting rules for the Craft and having the power to discipline and expel members. It publishes collected rulings. It organises training seminars which are limited to its membership, itself limited, and which have as their aim the self-improvement of individual members. It makes loans to its members for building works.⁷

⁷ In *Shears v Miller* HC Timaru CP 10/99, 30 May 2000, Chisholm J held that a trust created to build a Masonic complex was not a charitable trust.

[48] None of this could be said to be charitable in its own right. The claim must be that these non-charitable purposes are ancillary to giving effect to the overall charitable purpose of freemasonry. Because they are ancillary, they do not undermine the need to be wholly charitable.⁸

[49] Assuming freemasonry to be charitable, in principle, I do not consider that the claim that these activities are ancillary is made out. There is little discussion on what is an ancillary activity, but in *Re Education New Zealand Trust*⁹ Dobson J doubted that an activity that represented 30% of the Trust's endeavour could be said to be ancillary. I agree that ancillary must have a quantitative component, and do not consider that the applicants in the present case have demonstrated these activities are ancillary. Factually no information is provided as to what proportion of expenditure they represent. Conceptually, under the Constitution, the expenditure could be 100% of the general funds. Realistically that cannot amount to an ancillary purpose.

[50] Section 5(4) of the Act defines ancillary in these terms:

5 Meaning of charitable purpose and effect of ancillary non-charitable purpose

...

(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.

[51] To whatever extent the freemasonry functions of the Grand Lodge fail to meet this definition under a quantitative assessment, they equally do so under a qualitative assessment. These functions of the Grand Lodge are not independent purposes, nor are they secondary or incidental to the charitable purposes of freemasonry.

⁸ Section 5(3).

⁹ *Re Education New Zealand Trust* HC Wellington CIV 2009-485-2301, 29 June 2010.

[52] The reality is that these functions and purposes are why the Grand Lodge exists at all. The functions are integral purposes of freemasonry. The provision of training seminars which have as their focus the teaching of the virtues on which freemasonry is based, and the improvement of the communication and public speaking capacities of the membership are not ancillary to the charitable endeavours. They are essential and independent purposes.

[53] None of this is to say that charities may not engage in non-charitable endeavours. It has long been recognised that social events which provide fellowship and boost the esprit de corps are permissible.¹⁰ In *Re Coxen*¹¹ the provision of an annual dinner for trustees was held not to undermine the charitable status. *Tudor on Charities* states that:¹²

The non-charitable purpose must be entirely subsidiary to the main charitable purposes and must not be too large a proportion of the organisation's activities in relation to its charitable purposes.

[54] Nothing in the evidence satisfies me that the non-charitable activities of the Grand Lodge could meet this description.

[55] That is sufficient to dispose of this aspect of the appeal but I go on to briefly explain why I do not consider anyway that the basic purposes of freemasonry meet the requirements of a charity. That is in no way to say they are not laudable, it is just that not all purposes that have benefits to the community are charitable, and this is one such case.

[56] As a starting point, I consider that the general purposes and principles of freemasonry are capable of qualifying under the fourth head of charity. They present at least as compelling a case as other organisations which have come under this head. These include: a society whose objects are the study and dissemination of ethical principles and the cultivation of a rational religious sentiment,¹³ a trust set up to

¹⁰ *Barralet v Attorney-General* [1980] 3 All ER 918 (Ch) at 922f.

¹¹ *Re Coxen* [1948] Ch 747.

¹² Jean Warburton et al *Tudor on Charities* (9th ed, Sweet & Maxwell, London, 2003) at [1-1012].

¹³ *Barralet*.

advance the teachings of Rudolph Steiner,¹⁴ a trust for promoting temperance¹⁵ and a gift for the furtherance of religious and mental improvement.¹⁶

[57] In *United Grand Lodge of Ancient Free and Accepted Masons v Holborn Borough Council*,¹⁷ the Court identified the purposes of freemasonry as to:

promote and advance those virtues which every Freemason is charged to cultivate: good citizen, honest work, morality and wisdom, brotherly love, compassion, charity to the poor and belief in a supreme architect of heaven and earth.

[58] In my view that description illustrates that by analogy the purposes could come with the fourth head.

[59] However the way the purposes are given effect to means charitable status is unavailable. Freemasonry is inward looking, and its funds and organisation exist primarily for its members. It is a membership limited to men aged over 21. It does not proselytize. It seeks to achieve its aims by making its members better people.

[60] Whilst ultimately there may be a public benefit in this, it is too remote. The method by which it is achieved is the improvement of the character of its members. It exists for the self improvement of its members and whilst praiseworthy, it cannot qualify as a charity. Nor does the fact that the membership does some charitable activity alter its characteristics. That is true of many organisations.

[61] This lack of public access and public benefit was the reason that the Commission rejected the application. I agree with that assessment, and for that reason also would decline the application.

¹⁴ *Re Price* [1943] 2 All ER 505 (Ch).

¹⁵ *In Re Hood* [1931] 1 Ch 240.

¹⁶ *In Re Scowcroft* [1898] 2 Ch 638.

¹⁷ *United Grand Lodge of Ancient Free and Accepted Masons v Holborn Borough Council* [1957] 3 All ER 281.

The existing tax exempt status of the Grand Lodge

[62] As noted, the new Act transfers the decision making function from the Commissioner of Inland Revenue to the new Charities Commission. The Charities Commission, by its decision whether to accept an organisation for registration as a charity, determines as well the organisation's tax status. The tax exemptions apply to charitable activities only if the organisation is registered.

[63] The appellant's starting point is that the substantive law has not changed, either as regards tax law or charities law. It is therefore submitted that there are limits on the capacity of a new decision maker to reach a contrary conclusion to the status quo. I summarise the arguments as contending for either an absolute block on the capacity of the Charities Commission to deny the Grand Lodge's application, or alternatively for a proposition that existing charity status is a dominant factor of weight in assessing the application.

[64] Concerning the proposition that there is an absolute bar, the following arguments are made. The Charities Commission is a Crown entity. It is another emanation of the Crown and ought not to change an existing ruling when neither the facts nor the law have changed. There is nothing in the Charities Act to suggest that it intended to change existing law, and clear language to that effect is needed. Next it is argued, although not in these words, that there is a substantive legitimate expectation that must prevail absent any change in the facts or the law. Although it is accepted that the tax Commissioner is not estopped from changing his own decisions, that rule does not apply because he is not in fact changing his mind. It is a different Crown body that is just reaching a different decision and that is not permissible. Finally, it is suggested that to reach a different decision is an abuse of power such as would support judicial review of the tax Commissioner if it was him purporting to act this way.

[65] The alternative argument is that the Charities Commissioner is obligated by s 18(3)(a)(iii) to have regard to any other information it considers is relevant. This is read as requiring the Commissioner to have regard to existing status, even if the Commissioner does not think it relevant.

[66] I do not accept these propositions. Whilst it is true that tax exempt status has been granted since 1933, the tax Commissioner has never given reasons. It is difficult to give weight to an earlier conclusion when it is unsupported by explanation and so one is unaware of the reasoning behind it. The reality is that there now exists a new regime. A specialist body is established to oversee charitable status, and the activities of charitable entities. Although the law as to the definition of a charity has not changed, the procedure for applying that definition, and the recognition and regulation of charitable entities, has changed. It is also plain that more careful scrutiny of the area was intended by the new legislation.

[67] If existing status was intended to be protected, the Act would have said so and indeed had to say so. As it happens, in s 13, the Act preserves the (temporary) effect of some previous binding rulings made by the tax Commissioner under his legislation. That is the extent to which the status quo is preserved. Of itself, I consider these factors are decisive. It is inconceivable that Parliament intended existing charitable status to be protected from reassessment, yet did not say so. The fact that the Act does expressly preserve some very limited existing rulings makes it plain that its intention was not otherwise to protect existing status.

[68] The appellant's submission runs contrary to existing rules. It is accepted that the tax Commissioner is not estopped from revisiting his own decisions. The effect of the appellant's argument is to say:

- a) the Commissioner is not estopped and could change the existing status – but he is no longer the decision maker, so cannot for that reason;
- b) the Charities Commission is the decision maker – but is estopped from declining charitable status because of the decision of the previous decision maker who is no longer allowed to bring about a change.

[69] The proposition is not credible. There is nothing to suggest that the need for charities to apply to be registered was only a matter of appearances as regards bodies with existing charitable status. It is not an argument that was raised or considered in

the other appeals that have been heard, and I consider that was for good reason. If the Charities Commission was to be so limited in its initial role, Parliament would have said so. It did not.

Conclusion

[70] The appeal fails.

[71] Whilst I consider the overall aims of freemasonry could come within the fourth head of charity, there are substantial aspects of the implementation that are not for a charitable purpose. Nor are these activities ancillary, but rather are independent purposes designed for the benefit of the members. These activities of the Grand Lodge and freemasonry generally do not benefit the public other than indirectly and intangibly by seeking to produce members who are better citizens. This is insufficient to meet the public benefit requirement and for both these reasons the Grand Lodge's application was rightly declined. The application could also have been rejected because it could not be said that the "particular trusts", which are part of the application, are charitable trusts and for that reason also the applicants have failed to show their purposes are exclusively charitable.

[72] Finally I reject as untenable the proposition that the Charities Commission was bound to give effect to the existing charitable status. The legislation does not say that, and its scheme and purpose suggests the opposite.

[73] If the parties cannot agree on costs, memoranda may be filed.

Simon France J

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