

Deregistration decision: The Joanne Wilson Medical Trust Board

The facts

1. The Joanne Wilson Medical Trust Board (the Trust) was established as an incorporated trust under the Charitable Trusts Act 1957 on 18 February 1992. The Trust was registered as a charitable entity under the Charities Act 2005 (the Act) on 17 December 2008 with registration backdated to 30 June 2008.

2. The purposes of the Trust are set out in clause 11 of the Trust Deed:

"THE objects of the Trust shall be:

Primary Objectives

The accumulation and application of funds for the general purpose of providing pre-operative and post-operative surgical and medical care (whether in New Zealand or elsewhere) the specific charitable objective being to provide funds to enable heart and lung transplant and other critical surgical operations for New Zealand citizens in need of such surgical care.

Secondary Objectives

(a) To make funds available to New Zealand citizens in need of critical surgical care as set forth in the Primary Objectives who, after assessment by the Trustees, are unable to provide the total cost required for the purpose of such critical surgical care as outlined herein.

(b) To make funds available for associated medical, travel and accommodation expenses to New Zealand citizens in need of, or who have received the benefit of critical surgical care as outlined above.

(c) To make funds available for associated travel and accommodation expenses to immediate next-of-kin of New Zealand citizens who are in receipt of or who are to receive critical surgical care as outlined above.

(d) To make funds available at the discretion of the trustees to further any research in connection with the primary objectives stated above in New Zealand."

3. The Commission received the Trust's first annual return on 8 September 2009. A covering letter submitted with the Trust's annual return stated that no financial accounts had been produced because the Trust had only derived \$387.50 in income and made one grant of \$100.00 to Joanne Wilson.

4. The Commission reviewed the Trust's annual return, and on 14 December 2009, sent the Trust a section 50 letter requesting further information about the number of grants made and to whom the grants had been made.

5. On 18 December 2009, the Trust responded to the section 50 letter advising the Commission as follows:

"The Joanne Wilson Medical Trust was formed on 3 February 1992. Its purpose was to receive funds to assist Joanne Wilson with a heart-lung transplant operation. This operation was successfully undertaken at St Vincent's Hospital in Sydney in 1992. Whilst Joanne has struggled from time to time, she still lives in Christchurch and is reasonably well.

From time to time, from the balance of funds held, monies are withdrawn, to pay medical expenses on behalf of Joanne. Payments are not substantial."

6. On 23 December 2009, the Commission sent the Trust a notice of intention to remove from the register on the basis that a trust for the benefit of a sole beneficiary did not provide sufficient public benefit to meet the requirements for registration as a charity.
7. On 6 January 2010, the Trust responded by advising the Commission that it would not be challenging the initial decision to remove the Trust from the register, noting that the case law cited in the notice had been helpful in reaching this decision.

The issues

8. The Commission has considered whether or not the Trust remains qualified for registration as a charitable entity, in terms of section 32(1)(a) of the Act. In this case, the key issue for consideration is whether the Trust is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) of the Act.
9. In particular, the Commission has considered whether all of the Trust'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 and deregistration

10. The essential requirement for registration under section 13(1)(a) of the Act is that the trust is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.
11. 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 to benefiting the public or a sufficient section of the public.
12. In relation to non-charitable purposes carried on by an entity, section 5(3) of the Act provides that any non-charitable purpose that is merely ancillary to

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

a charitable purpose will not prevent an entity from qualifying for registration as a charitable entity.

13. Section 32(1)(a) of the Act provides that an entity may be removed from the register if the entity is not, or is no longer, qualified for registration as a charitable entity.
14. When considering whether a registered entity continues to qualify for charitable status, section 50(2) of the Act empowers the Commission to examine and enquire into matters in connection with charitable entities or persons, including:
 - (a) *the activities and proposed activities of the charitable entity or person:*
 - (b) *the nature, objects, and purposes of the charitable entity:*
 - (c) *the management and administration of the charitable entity:*
 - (d) *the results and outcomes achieved by the charitable entity or person:*
 - (e) *the value, condition, management, and application of the property and income belonging to the charitable entity or person.*

Charities Commission's analysis

15. The Commission has considered the Trust's stated purposes, relevant case law and information about the Trust's activities submitted to the Commission in response to the Commission's section 50 letter. The purposes in clause 11 do not indicate an intention to advance education, advance religion, or provide some other matter beneficial to the community. These purposes have therefore been considered in relation to the relief of poverty.

Relief of poverty

16. To be charitable under this head of charity, a purpose must be directed at people who are poor, in need, aged, or suffering genuine hardship, and it must be capable of providing relief.
17. Both the primary and secondary **stated** objectives of the Trust set out in clause 11 indicate an express intention to provide relief to people in need of surgical and medical care. The Commission considers that these objectives are prima facie charitable under the first head of charity.

Public benefit

18. It has long been established that a trust cannot be considered charitable unless it provides public benefit, that is, it must benefit the community or a sufficient section of the community.²
19. In *Oppenheim v Tobacco Securities Trust Co Ltd*³ the court accepted that a narrower class of person could constitute sufficient public benefit in a

² *Jones v Williams* (1767) 2 Amb 651.

³ [1951] AC 297.

number of **financial** poverty cases. This was upheld by the House of Lords in *Dingle v Turner*⁴, which created an exemption to the *Oppenheim* rule for charities with purposes intended to relieve financial poverty.

20. In *Re Dunlop*⁵, Carswell J confirmed that the financial poverty exception did not apply to the **relief of the aged and the impotent** under the first head of charity.
21. In the New Zealand case of *Re Doug Ruawai*⁶, the court considered whether a Trust providing support to a single person in need of medical care was charitable. In that case McGechan J wrote:

"Clearly it [the Trust] is not charitable. The general public might be surprised to hear that, but the law of Charities is a technical field in which some very ancient history still comes through and as the law at present stands this trust is not charitable because it is not for public purpose, rather it was for the private benefit of one named individual the late Mr. Douglas Ruawai. It does not come within the exceptional and controversial class of the so called poor relations case not only because it is for the benefit of one named individual, but because it is not for the relief of poverty or impotence as such but for the relief of a person".

22. Information provided by the Trust to the Commission indicates that in fact the Trust's intention is to provide benefits to only one person, Joanne Wilson. While Mrs Wilson is not a "named" beneficiary of the Trust's purposes, as in the case in *Re Doug Ruawai*, the Commission considers that this case is valid authority for finding that the Trust is not providing sufficient public benefit.

Conclusion

23. The Commission concludes that the Trust has failed to meet an essential requirement for continued registration as a charity in that the Trust is not of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes

Charities Commission's determination

24. The Commission determines that the Trust is not, or is no longer, qualified for registration as a charitable entity because the Trust is not of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) of the Act.
25. Under section 35(1) of the Act, the Commission is satisfied that it is in the public interest to proceed with the Trust's removal from the register and that one ground for removal from the register has been satisfied, that is, the Trust is not qualified for registration as a charitable entity.

⁴ [1972] AC 601.


⁵ [1984] NI 408, 423.

⁶ *Attorney-General V Doug Ruawai Trust* (High Court) Palmerston North, CP285/86, 24 November 1987.

26. The decision of the Commission is therefore to remove the Trust from the register, pursuant to section 31 of the Act, with effect from 18 March 2010.

For the above reasons, the Commission determines to deregister the Trust as a charitable entity by removing the Trust from the Register.

Signed for and on behalf of the Charities Commission



Trevor Garrett
Chief Executive

18/3/10

Date