

## Registration decision: The Sensible Sentencing Group Trust

### The facts

1. The Sensible Sentencing Group Trust (the Applicant) was established as a trust on 3 September 2001. The trustees were incorporated as a board under the Charitable Trusts Act 1957 on 1 February 2002. The Applicant applied to the Commission for registration as a charitable entity under the *Charities Act 2005* (the Act) on 10 September 2009.
2. The Applicant's aims are set out in the deed of variation of trust dated 16 February 2002:

#### AIMS

*The Board is established to carry out the following aims:*

- 1 *That within New Zealand to educate the public as to the plight of victims of serious, violent and sexual crimes and to ensure such victims and their families are fully aware of their rights and entitlements including that of restorative justice and where appropriate in respect of such victims and their families to provide education as to the relevant issues, advocacy support and to assist them during their time of trauma and to advise and assist in available protection and to make submissions on their behalf.*
  - 2 *To do any other act in furtherance of the charitable objects of this Trust.*
3. On 13 October 2009, the Commission sent the Applicant a notice that may lead to decline. The basis for this notice was that while the aims set out in the Applicant's deed of variation of trust appeared to have charitable elements, these aims appeared to be at variance with the Applicant's mission statement, goals and long-term objectives set out on the Sensible Sentencing Trust website.<sup>1</sup>
  4. On 20 November 2009, the Applicant responded making the following submissions:

*"On any given week I personally would assist 20 to 30 victims with our regional coordinators handling many more enquiries. I receive and respond personally to dozens of emails from victims daily as they seek advice and support. The assistance we give ranges from advising how to get on the victim notification register, assistance with victim impact statements, establishing when a certain offender is coming up for Parole and then finding out if the victim can attend Parole hearings and then supporting them to do so. ...*

*The Sensible Sentencing Trust as I understand it is the only voluntary organisation doing this work. Victims are referred to us by Police, Victim Support and various other agencies including Community Law and Citizens Advice and even members of parliament.*

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<sup>1</sup> <http://www.safe-nz.org.nz/goals.htm>

*The website is manned by volunteers and is very much a work in progress and at present work is underway to develop a victim section.*

*The Trust does not deny that it is involved in political advocacy but it very much refutes the suggestion that this is its primary purpose. Whilst a review of the website and the Trust's public activities in the media may give this impression, these facets of the organisation can be compared to the tip of an iceberg – only the victims and families we directly help can appreciate that our main role, and the one that by far takes up most of our time, is not in fact political at all and is very much founded on helping individuals on a one-to-one basis as they deal with their grief and work their way through the justice system.*

*Due to the sensitive nature of our assistance we are very careful to keep this role between the Trust and the Victim it helps, under the radar at all times with the exception of the Annual Victims' Conference ...*

#### **1) CHARITABLE PURPOSE:**

...

##### *The Relief of Poverty:*

*The Sensible Sentencing Trust has successfully educated the public on the financial predicament (poverty) of many victims which in turn has helped lead to specific funding now being available to ease the poverty they previously faced.*

*Likewise our support of victims of serious violent crimes has not only benefited those victims directly but also the wider community. Our assistance has enabled these people to resume some sort of normality in their lives and in many cases return to work. In short our support has enabled them to become active contributing members of their community once again.*

##### *The Advancement of Education:*

*Although the Commission views the Trust's primary role as political, the Trust argues that in addition to directly supporting victims, its role is chiefly an educational one. It takes the job of educating the public about victims' experiences very seriously and is aware of the responsibility it has as the public voice for victims who wish New Zealanders to better understand what they are going through but do not have the strength or means to do so themselves.*

*In addition to educating the public through its website and media comment, Trust volunteers spend a great deal of their time talking to local community groups right across the country, educating them about the way the justice system works and victim issues.*

*... there is a fine line between educating and advocating – but [the Trust] urges the Commission to acknowledge the Trust's role in educating the public about the way the justice system and the role of victims in that system works.*

Any other matter beneficial to the Community:

While the Trust does not fit into the Commission's reference point of the Statute of Elizabeth (1601) ... it does indeed meet more recent criteria of (a) Protecting human life – in that many of the victims it supports have had family members killed due to the early release of criminals from prison and (b) Facilitating social rehabilitation – in that through its support the Trust helps victims integrate back into the community after trauma and grief has often made it very difficult to do so. ...

**2) TRUST'S PURPOSE AND ACTIVITIES:**

...

Sensible Sentencing Goals

... Some of the Sensible Sentencing Trust goals are designed to reduce the number of victims by ensuring criminals serve their given sentence in full and to benefit the wider community through the creation of fewer victims as a result. ...

**3) POLITICAL ADVOCACY AND THE PRIMARY PURPOSE OF THE TRUST:**

...

... the Trust feels it is being unfairly judged as overly political simply because the political and advocacy aspects of its work are highly visible. ...

Given that political advocacy is an acceptable occupation of a charitable trust provided it is ancillary, we would like to point out the importance of the Trust's voice in the public debate on justice, to provide balance in a debate which frequently includes the political opinions of groups whom the Commission has accorded charitable status to. ...

It appears that we are in fact a victim of our own success in that the media so frequently come to us for comment that we have in the eyes of some become far more political than we actually are in terms of daily activities.

Press releases are now sent out on current events relevant to victims because experience has taught us that it avoids us having to handle endless calls from media wanting our comment on issues. ...

In regards to the Commission's reference to established case law (National Anti-Vivisection Society v Inland Revenue Commissioners, 1948) stating political purposes cannot be considered charitable we refer back to the point made previously that ... the court can now acknowledge that the definition of a 'charitable purpose' must change to reflect current social circumstances. ...

... common sense would dictate that assisting victims on a one-to-one basis in the first instance and educating and advocating for changes to the systems they must work within in the second instance is quite clearly a charitable purpose.

...

*We have no mechanism or means to ensure that issues we raise are picked up politically and we cannot be held accountable for the fact that political parties have seen an opportunity to develop policies in response to public concern. Each and every one of the issues the Trust has publicly raised has been a direct response to concerns raised with us by victims.*

*In general conclusion, we add that since the Commission has drawn our attention to what it sees as unacceptable and overt political advocacy on our website, we have taken immediate action to rectify this by removing such things as the MPs database and all party political references.*

5. The Applicant attached 17 letters of support to its submission.
6. The Applicant sent a further letter to the Commission on 10 December 2009, regarding the legal status of the Trust. The Applicant advised that it is necessary to distinguish between two entities – the Sensible Sentencing Group Trust, which is a charitable trust, and the Sensible Sentencing Trust, which is an unincorporated association.

*"The Trust Deed is for the Sensible Sentencing Group Trust (SSGT), not the Sensible Sentencing Trust (SST). The purpose of this Trust as stated in clause 1 of the Trust Deed is:*

*That within New Zealand to educate the public as to the plight of victims of serious, violent and sexual crimes and to ensure such victims and their families are fully aware of their rights and entitlements including that of restorative justice and where appropriate in respect of such victims and their families to provide education as to the relevant issues, advocacy support and to assist them during their time of trauma and to advise and assist in available protection and to make submissions on their behalf.*

*The SSGT is a charitable trust that clearly has charitable aims and does not have 'members'.*

*We have used the name 'Sensible Sentencing Trust' on the website to represent our public face. This public face represents an unincorporated society that has evolved over the years to represent our collective views on how the law could better work for victims based on our experiences with victims in the SSGT. The SST does have members.*

*However, people making donations are making them to the SSGT and that is what our bank account details are for.*

*There are other examples of organisations that use this mix. For example the National Party is an unincorporated society, but they have an incorporated society, the New Zealand National Party Centre Incorporated, for their property interests.*

*Therefore, we are applying for charitable status under the Charities Act for the SSGT (ie. our Trust Deed), and not the SST (ie. our website). Obviously these two bodies are connected, but it is the SSGT that caters for bulk of our work which is assisting victims."*

7. The Registration and Monitoring Committee considered the Applicant's application at its meeting on 17 December 2009. The Committee requested that further information be sought from the Applicant regarding the distinction between itself and the Sensible Sentencing Trust. That request was sent to the Applicant on 18 December 2009.
8. On 19 January 2010, the Applicant responded to the request for further information, advising the following:

*"The Sensible Sentencing Trust is a nonprofit unincorporated association and as such is not a legal entity; it has no bank accounts or financial transactions. All goods and services such as maintaining the web-site are done on a voluntary basis and paid for by the personnel responsible for that particular operation. The spokesperson, Garth McVicar is not paid and the Sensible Sentencing Trust has no paid employees. Accordingly there are no financial statements for the Sensible Sentencing Trust.*

*...None of the personnel involved with the SST web-site are involved with SSGT. ...*

***Sensible Sentencing Group Trust:** is a registered charity under the Charitable Trusts Act 1957 with a Trust deed (WN1188021) and a registered office in Napier. It has no public profile as its primary functions are to support victims of serious crimes, host the annual Victim Rights Conference and maintain the Napier office. Most victim issues the SSGT deals with are below the radar; in the event publicity or political advocacy is required the matter is dealt with under the banner of the Sensible Sentencing Trust. All media statements are released on SST letterhead as can be seen on the web-site.*

***Sensible Sentencing Trust:** does not have or require an office with approximately 90% of its work being done by Garth McVicar from his farm office, the two organizations do share a common P O Box address and obviously some of the work of the two organizations overlaps but this is very minimal."*

## **The issues**

9. 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 trust 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. In particular:
  - (1) whether the Applicant's stated purposes fall within the definition of charitable purpose in section 5(1) of the Act;
  - (2) whether the Applicant's main activities further any stated charitable purposes or indicate independent non-charitable purposes.

## The law on charitable purpose

10. Under section 13(1)(a) of the Act, a trust qualifies for registration if it is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.
11. In order to be a valid trust at law, a trust that is for charitable purposes must be exclusively charitable or it will be void for uncertainty.
12. 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>2</sup> This means that the purpose must be directed at benefitting the public or a sufficient section of the public.
13. Section 5(3) of the Act provides that for an entity to have charitable purposes, any non-charitable purpose must be ancillary to a charitable purpose.
14. In considering an application for registration, section 18(3)(a) of the Act requires the Commission to have regard to the entity's activities at the time the application was made, the entity's proposed activities, and any other information that the Commission considers relevant.

## Charities Commission's analysis

15. The Commission considers that clause 2 of the Applicant's deed of variation of trust is a power. The aims in clause 1 are not directed at the advancement of religion, the Commission has therefore considered whether these purposes could be charitable under the relief of poverty, the advancement of education and any other matter beneficial to the community.

### Relief of poverty

16. To be charitable under the relief of poverty, a purpose must:
  - be directed at people who are poor, in need, aged or suffering genuine hardship, and
  - provide relief.
17. "Poverty" is interpreted broadly in law and a person does not have to be destitute to qualify as "poor".<sup>3</sup> People who are in need, aged, or who are suffering genuine financial hardship from a temporary or long-term change in their circumstances are likely to qualify for assistance. Generally, this will

<sup>2</sup> See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.

<sup>3</sup> *Re Bethel* (1971) 17 DLR (3d) 652 (Ont. CA); affirmed sub nom *Jones v Executive Officers of T Eaton & Co Ltd* (1973) 35 DLR (3d) 97 (SCC) referred to in *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342. See also *Re Pettit* [1988] 2 NZLR 513.

include anyone who does not have access to the normal things of life which most people take for granted.<sup>4</sup>

18. To provide "relief" the people who would benefit should have an identifiable need arising from their condition that requires alleviating and these people should have difficulty in alleviating that need from their own resources.<sup>5</sup>
19. Purposes that provide basic necessities, such as shelter and amenities have, where the beneficiaries of these necessities are recognised as being in need of them, been upheld as for the relief of poverty.<sup>6</sup> However, the courts will invalidate a gift the purpose of which extends beyond the relief of poverty.<sup>7</sup>
20. In its letter of 20 November 2009, the Applicant submits that it relieves poverty by "successfully educating the public on the financial predicament (poverty) of many victims and that the trust's action has enabled victims of crime to become active contributing members of their community once again".
21. The Commission considers that the following purposes set out in clause 1 are likely to amount to relief of poverty:
  - ensuring that victims of serious, violent and sexual crimes and their families are fully aware of their rights and entitlements, including that of restorative justice;
  - assisting victims of serious, violent and sexual crimes during their time of trauma; and
  - advising and assisting victims of serious, violent and sexual crimes about available protection.

#### Advancement of education

22. 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 or promotion of a particular point of view.<sup>8</sup>
23. In New Zealand in the case of *Re Collier (deceased)*<sup>9</sup>, Hammond J set out the test for determining whether the dissemination of information qualified as charitable under the head of advancement of education:

<sup>4</sup> *Inland Revenue Commissioners v Baddeley* [1955] AC 572; [1955] 1 All ER 525, applied in *Re Pettit* [1988] 2 NZLR 513 and *Re Centrepoint Community Growth Trust* [2000] 2 NZLR 325.

<sup>5</sup> *Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney-General* [1983] Ch 159; [1983] 1 All ER 288. See also *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

<sup>6</sup> *Flynn v Mamarika* (1996) 130 FLR 216 at 227-228 per Martin CJ.

<sup>7</sup> *Re Gwyon* [1930] 1 Ch 255; *Re Pieper (deceased)* [1951] VLR 42 at 44 per Smith J and *Re Blyth* [1997] 2 Qd R 567 at 581 per Thomas J.

<sup>8</sup> *In re Shaw (deceased)* [1957] 1 WLR 729; as interpreted in *Re Hopkins' Will Trusts* [1964] 3 All ER 46. See also *Re Collier* [1998] 1 NZLR 81.

<sup>9</sup> [1998] 1 NZLR 81, 91-92.

*"It must first confer a public benefit, in that it somehow assists with the training of the mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the work must reach some minimal standard. For instance, in Re Elmore [1968] VR 390 the testator's manuscripts were held to be literally of no merit or educational value."*

24. The Commission considers that the following purposes set out in clause 1 are likely to amount to advancing education:

- educating the public as to the plight of victims of serious, violent and sexual crimes; and
- educating victims of serious, violent and sexual crimes about relevant issues, advocacy support.

25. In order to determine whether the remaining purpose in clause 1, making submissions on behalf of victims of serious, violent and sexual crimes, is charitable the Commission has considered the Applicant's mission statement, goals, and long term objective set out on the 'Goals, Vision Statement and Mission' page (<http://www.safe-nz.org.nz/goals.htm>) of the Sensible Sentencing Trust website:

***Mission Statement***

*To obtain a large base of community support, and ensure safety for all New Zealanders from violent and criminal offending, through education, development of effective penal policies, and the promotion of responsible behaviour, accountable parenting, and respect for each other at all levels of society.*

***Sensible Sentencing Goals:***

*To ensure that adults and children are equally and adequately protected from those who have committed murder and other serious violent crimes. Such protection to require the offender to serve all of the sentences which are imposed.*

*Life means Life.*

*To enact legislation that will ensure that the early release of offenders on parole is not automatic, and that parole be granted only in exceptional cases where the offender can clearly demonstrate that he or she is no longer a risk to society.*

*To initiate adequate legislation and policies to ensure that serious violent offenders receive the maximum penalties as prescribed by the Crimes Act.*

*To ensure that victims of violent crime and their families or their representatives to have input into court proceedings prior to sentencing.*

*To ensure that juries to be able to recommend sentencing to Judges*

*To ensure that any offenders who commit multiple crimes receive cumulative sentences rather than concurrent sentences.*

***Sensible Sentencing Long Term Objective***

*To allow Law and Order to be properly treated and developed as foundations of New Zealand society, along with Health and Education.*



26. Numerous press releases on this website indicate advocacy for a particular point of view regarding parliamentary legislation, government departments and members of Parliament.<sup>10</sup> For example:

- 'ANOTHER PIECE OF LABOUR'S LEGISLATION GONE, NOW GET RID OF THE ANTI-SMACKING LAW' (<http://www.safe-nz.org.nz/Press/2009anotherpiece.htm>)
- 'MINISTER OF COURTS SNUBS VICTIMS CONFERENCE' (<http://www.safe-nz.org.nz/Press/2009ministersnubs.htm>)
- 'Keys [sic] nightmare - Is National to become a one-hit wonder?' (<http://www.safe-nz.org.nz/Press/2009onehit.htm>)
- 'OCC [Office of the Children's Commissioner] is a Crock' (<http://www.safe-nz.org.nz/Press/2009occacrock.htm>)
- 'DAVID "FIREBRAND" GARRETT - VERSUS - "GRAB-A-HEADLINE" COSGROVE' (<http://www.safe-nz.org.nz/Press/2009firebrand.htm>)
- 'SENSIBLE SENTENCING TRUST NEW ZEALAND'S MOST SUCCESSFUL LOBBY GROUP' (<http://www.safe-nz.org.nz/Press/2008successful.htm>)

27. The webpage 'Our Achievements To Date'<sup>11</sup>, lists legislation and ministerial activity which has occurred as a result of the Trust's lobbying. The webpage also lists the following as an achievement:

*"Public Awareness*

*Our biggest success by far is the huge public awareness that has been achieved to date, to political parties your voice through the Sensible Sentencing Trust equates to votes: There lies the secret of our success!!!!"*

28. The webpage 'Our Achievements To Date' also lists legislation (on such matters as 'Abolish Parole', 'Right to defend your property' and 'No Bail for violent offenders') that the Trust claims to be presently promoting or developing.

29. The 'FAQ (Frequently Asked Questions)' webpage<sup>12</sup> states:

*"Is this group affiliated with ACT or any other political party?"*

*No, Sensible Sentencing is an apolitical organisation, we do not align ourselves with any particular political party or ideology, instead we seek to persuade politicians of all stripes to support our goals. We gave Labour a hard time whn [sic] they were in power, but we will be equally hard on National should they fall short in balancing the scales of justice so that victims get a better deal."*

<sup>10</sup> The Applicant, in its letter of 20 November 2009, advised that it had taken action to remove from its website such things as the MP database and all party political references.

<sup>11</sup> <http://www.safe-nz.org.nz/achieve.htm>

<sup>12</sup> <http://www.safe-nz.org.nz/faq.htm>

30. Furthermore, the letters of support submitted by the Applicant also indicate that one of its main purposes is to change the law:

- *Yes, the Sensible Sentencing Trust do also lobby for change BUT this is an integral part of the support they and only they provide us and that needs to be put into perspective with what else they do; changing legislation is vitally important to create a safer environment for all and the work the Sensible Sentencing Trust do for victims is mainly behind the scene to maintain privacy and dignity for those of us concerned. (Letter 1).*
- *The second part of the SST, the campaigning for change, has also helped me. (Letter 2).*
- *Recently some initiatives were implemented by the Government that would not have been identified if they had not been highlighted by the Sensible Sentencing Trust and its' members (Letter 3).*
- *The big difference is that SST needs more public support to force changes in thinking in the Legal and Justice systems – very powerful groups. (Letter 4).*
- *There was no money for me in that lobbying, I did it because I needed it done and through my process doors were opened for those who would come after me. (Letter 5).*
- *By Garth McVicar standing up for what he believes in, has given many New Zealanders understanding the need for changes to our criminal friendly system and the need to keep the repeat offenders where they cant prey on innocent people (the person that killed Krystal had 15 previous convictions) yet was still out on the streets where she should never have been. (Letter 6).*
- *As our current legislation is failing New Zealanders SST has taking in on itself to lobby for legislative changes (Letter 7).*

31. In *Charity Law in Australia and New Zealand*, Gino Dal Pont states that “an apparently political purpose can be upheld if it can be properly construed as an educational purpose”.<sup>13</sup> Courts have held that in order for a trust to be charitable for the advancement of education, the information provided must not be limited to one side of complex issues. The test to decide whether the activity is political or genuinely educational is “one of degree of objectivity or neutrality surrounding the endeavour to influence, and assesses whether the political change is merely a by-product or is instead the principal purpose of the gift or institution”.<sup>14</sup>

32. A distinction must be made between propagating a view that can be characterised as political and the desire “to educate the public so that they could choose for themselves, starting with neutral information, to support or oppose certain views.”<sup>15</sup> Therefore a disposition can be validly construed

<sup>13</sup> *Charity Law in Australia and New Zealand*, Oxford, Oxford University Press, 2000 at 209  
<sup>14</sup> *Re Bushnell (deceased) Lloyds Bank Ltd and others v Murray and others* [1975] 1 All ER 721 as applied by *Public Trustee v. Attorney-General* (1997) 42 NSWLR 600 at 608.

<sup>15</sup> *Re Bushnell (deceased)* [1975] 1 All ER 721 at 729.

as being for educational purposes notwithstanding that, because of the educational programme, the law may be changed.<sup>16</sup>

33. In *Re Koeppler Will Trusts*,<sup>17</sup> a gift to an association that contributed to an informed international public opinion and to the promotion of greater co-operation in Europe and the West in general, was held to be educational because it was neither of a party political nature, nor was it designed to change the law or governmental policy even though it could touch on political matters. Slade LJ described the activities of the association as “no more than genuine attempts in an objective manner to ascertain and disseminate the truth”.<sup>18</sup>
34. In considering the purposes of an entity, the main purpose of that entity must be found. It is the purpose in question that must be political; the mere fact that political means are employed in furthering charitable objects does not necessarily render the gift or institution non-charitable. The dissenting judges in *Vancouver Society of Immigrant and Visible Minority Women v MNR*,<sup>19</sup> summarised the law as follows: “(a) an organisation must be constituted exclusively for charitable purposes; and (b) its activities must be substantially connected to, and in furtherance of, those purposes”.
35. In *Public Trustee v Attorney-General*,<sup>20</sup> Santow J stated that seeking the amendment of the law, according to law is not a “political” purpose, but a legitimate one if the main purpose is charitable even if the means seem “political”.
36. As indicated in the Applicant’s letter of 20 November 2009, the Applicant is involved in political advocacy. However, the Applicant submits that “the Trust feels it is being unfairly judged as overly political simply because the political and advocacy aspects of its work are highly visible”. The Applicant further acknowledged that some of its actions, “led to National pledging to change the Bail Act if elected and they have done so. This action clearly shows that political advocacy can have a clear public benefit.”
37. The Commission considers that to the extent that the Applicant is educating the public as to the plight of victims of serious, violent and sexual crimes, educating victims of serious, violent and sexual crimes about relevant issues, and providing advocacy support, this may be charitable under the advancement of education.
38. The Applicant’s mission statement, goals, and long term objective, and information set out on the Sensible Sentencing Trust website, however, indicates that the Applicant’s activities extend much further than merely assisting victims and include the advocacy of particular points of view in relation to sentencing and penal policy.

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<sup>16</sup> *In the Estate of Cole (deceased)* (1980) 25 SASR 489 at 495.

<sup>17</sup> [1986] 1 Ch 423.

<sup>18</sup> [1986] 1 Ch 423 at 437.

<sup>19</sup> [1999] 1 SCR 10 at paragraph 56.

<sup>20</sup> (1997) 42 NSWLR 600 at 618.

39. The Commission considers that one of the Applicant's main purposes is "political" because it is clearly advocating for changes in the law which are not ancillary to its charitable purposes. On the authority of the court cases cited above, this will not amount to advancing education.

Other matters beneficial for the public

40. In order for a purpose to qualify as "any other matter beneficial to the community", the purpose must be beneficial to the community and must be within the spirit and intendment of the purposes set out in the Preamble to the *Charitable Uses Act 1601* (the Statute of Elizabeth). The purposes in the Preamble are as follows:
- relief of aged, impotent, and poor people
  - maintenance of sick and maimed soldiers and mariners
  - schools of learning
  - free schools and scholars in universities
  - repair of bridges, ports, havens, causeways, churches, sea banks, and highways
  - education and preferment of orphans
  - relief, stock or maintenance of houses of correction
  - marriage of poor maids
  - supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed
  - relief or redemption of prisoners or captives and
  - aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.<sup>21</sup>

41. In *Travis Trust v Charities Commission*<sup>22</sup>, 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."*

*Protection of human life*

42. The Applicant, in its letter of 20 November 2009, states that it protects human life "in that many of the victims it supports have had family members killed due to the early release of criminals from prison".
43. Courts have held as charitable purposes for the protection of human life as being similar to the intent of the Statute of Elizabeth, especially "the repair of sea banks". Since the encroachment of the sea threatens both life and

<sup>21</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>22</sup> CIV-2008-485-1689, High Court, Wellington, 3 December 2008 at para 20.

property, it is clear that the protection of human life and property is within the equity of the Statute.<sup>23</sup>

44. In *Re Workingham Fire Brigade Trusts*,<sup>24</sup> Danckwerts J held that a voluntary non-profit-making fire brigade which had been formed at a public meeting to meet a public need of fighting fires in the district was a charitable organisation:

*"The Brigade was not formed for the benefit of the members, but for the benefit of the public, and its purpose was to prevent damage and loss of life in that community. It seems to me that the provision of a public fire brigade of this kind is as much a public charitable purpose as the provision of a lifeboat, which has been held in a number of cases to be a public charitable purpose."*

45. Courts have also found that entities for the promotion of road safety or for the prevention of accidents (whether upon the roads or elsewhere) would obviously be valid as being directed to the prevention of damage and loss of life.<sup>25</sup>
46. The Applicant submits that its purposes in clause 1 are charitable because they are to protect life in ensuring that "all New Zealanders are adequately insulated and protected from violent and serious criminal offenders".
47. The Commission considers that the Applicant's stated purposes may promote the protection of human life, for example, if they prevent victims of serious crime or their families from committing suicide.
48. However, the Applicant has not provided any evidence of how ensuring stricter laws concerning violent crimes will protect human life. Advocating for stricter laws concerning violent criminals is not similar to providing lifeboats or fire brigades, or providing education on road safety. Debate is still open between those who campaign for stricter penalties for violent criminals and those who promote less stringent penalties as to the most efficient way to protect human life.

#### *Social rehabilitation of victims of crimes*

49. The Applicant, in its letter of 20 November 2009, states that it facilitates social rehabilitation "in that through its support the Trust helps victims integrate back into the community after trauma and grief has often made it hard to do so".
50. In *Centrepont Community Growth Trust v Commissioner of Inland Revenue*, the New Zealand High Court held that treatment by psychological healing to treat people with emotional and psychological disturbances was

<sup>23</sup> *Attorney-General v Brown* (1818) 1 Swan 265; *Wilson v Barnes* (1886) 38 Ch D 507, CA

<sup>24</sup> [1951] Ch 373.

<sup>25</sup> *The League of Highway Safety and Safe Drivers Ltd* [1965] Ch com Rep 27 cited by Hubert Picarda, *The Law and Practice Relating to Charities*, 3<sup>rd</sup> Ed., London, Butterworths, 1999 at 152.

beneficial to the community and therefore charitable under 'any other matter beneficial to the community'.<sup>26</sup>

51. In *Re Twigger*,<sup>27</sup> Tipping J held that associations such as women's refuges, rape crisis groups, pregnancy support groups, and battered women's support groups were charitable without having to establish that the beneficiaries in question are poor or impotent, though this may in fact also be the case. The Commission considers that groups established to support victims of violent crimes are similar to the groups mentioned in *Re Twigger*.
52. The Commission has considered the submissions made by the Applicant and the letters of support provided by the Applicant. The letters state that the Trust has assisted victims of violent crimes by:
- putting them in contact with other people who have experienced similar traumatic events
  - channelling their fear of the justice system into action
  - channelling their anger at the way victims are treated by the justice system into positive responses by giving them a voice
  - lobbying to change the ways victims of crime are treated so that others will be spared the problems that they have encountered.
  - lobbying for better recognition of the victims in the justice system
  - promoting emotional healing through the process of lobbying and helping other victims of crime.
53. The Commission considers that providing social rehabilitation for victims of violent crimes would be charitable under "any other matter beneficial to the community".

#### Public benefit

54. Since *Bowman v Secular Society Ltd*<sup>28</sup>, courts have consistently held that a trust or a society for the attainment of political objects is not charitable, not necessarily because it is invalid but because the courts have no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift.
55. In *McGovern v Attorney General*<sup>29</sup>, Slade J held that a trust whose main objects was to secure the alteration of the law would not be regarded as charitable because the court had no adequate means of judging whether a proposed change in the law would or would not be for the public benefit. He further held that if a principal purpose of the trust was to reverse government policy or particular administrative decisions of governmental authorities it would not be charitable.

<sup>26</sup> *Centrepoint Community Growth Trust v CIR* [1985] 1 NZLR 673 at 698-699.

<sup>27</sup> [1989] 3 NZLR 329 at 339-340.

<sup>28</sup> [1917] AC 406.

<sup>29</sup> [1982] Ch 321 at 338-340.

56. The New Zealand Court of Appeal, in *Molloy v Commissioner of Inland Revenue*<sup>30</sup>, held that the Society for the Protection of the Unborn Child, the main object of which was to preserve the integrity of the current law on abortion against the claims of those who desired its alteration, was not a charitable society. Somers J stated:

*"...reason suggests that on an issue of a public and very controversial character, as in the case of abortion, both those who advocate a change in the law and those who vigorously oppose it are engaged in carrying out political objects in the relevant sense. The law, statutory or otherwise, is not static... The inability of the court to judge whether a change in the law will or will not be for the public benefit must be as applicable to the maintenance of an existing provision as to its change. In neither case has the Court the means of judging the public benefit."*

57. In *Public Trustee v Attorney-General*<sup>31</sup>, Santow J summarised the law concerning "political" purposes. He stated that an organisation "whose main purpose is directed to altering the law or government policy, as distinct possibly from an organisation to encourage law reform generally, cannot be saved from being political by appeal to the public interest". In that case, although the judge took a very progressive view of "advocacy", he nevertheless struck down as non-charitable clauses purporting to change the law discriminating against aboriginal people.
58. The judge in that case went on to state that seeking the amendment of the law, according to law, is not a "political" purpose, but a legitimate one if the main purpose is charitable even if the means seem "political". "If political persuasion [other than direct lobbying of the government for legislative or policy change] were not permitted at all, many such educative trusts would be inherently incapable of ever achieving their objects".<sup>32</sup> As Gino Dal Pont wrote "the issue is one of degree, for activities directed at political change may demonstrate an effective abandonment of charitable objects".<sup>33</sup>
59. In *Re Collier (deceased)*<sup>34</sup>, Hammond J considered that there are three different categories of political trust which have been impugned in the case law. The first category is "that charitable trusts to change the law itself are invalid". The second category, trusts to support a political party, is rejected because "it is thought undesirable for the advantages of charity to be conferred on trusts which overtly secure a certain line of political administration and policy". The third category of prohibited political trust are those for the perpetual advocacy of a particular point of view or propaganda trust. This is because the Court has no means of judging whether or not a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift.

<sup>30</sup> [1981] 1 NZLR 688, 695-696.

<sup>31</sup> (1997) 42 NSWLR 600, 619.

<sup>32</sup> *Public Trustee v Attorney-General* (1997) 42 NSWLR 600, 618.

<sup>33</sup> *Charity Law in Australia and New Zealand*, Oxford, Oxford University Press, 2000 at 209.

<sup>34</sup> [1998] 1 NZLR 81.

60. Hammond J criticised these decisions, especially in light of section 13 (freedom of thought, conscience, and religion) and section 14 (freedom of expression) of the *New Zealand Bill of Rights Act 1990*. Nevertheless, he wrote:

*"I have considerable sympathy for that viewpoint which holds that a Court does not have to enter into the debate at all, hence the inability of the Court to resolve the merits is irrelevant". He went on to say "In this Court at least, there is no warrant to change these well established principles – which rest on decisions of the highest authority – even though admirable objectives too often fall foul of them".<sup>35</sup>*

61. In *Victorian Women Lawyers' Association Inc v Commissioner of Taxation*<sup>36</sup>, the court made the following obiter comments about political purposes:

*"The High Court's formulation suggests that a trust may survive in Australia as charitable where the object is to introduce new law consistent with the way the law is tending. In his paper in the Australian Bar Review, Santow J also observed that the trust which has an undoubtedly charitable object does not lose its charitable status simply because it also has an object of changing the law or reversing policy (at 248): "the question is always whether that political object precludes the trust satisfying the public benefit requirements".*

62. Also, the Federal Court of Australia has recently held that an entity whose purposes and activities were aimed at influencing government to ensure foreign aid was delivered in a particular manner, did not have exclusively charitable purposes because of its political purposes.<sup>37</sup> In reaching its decision the court relied on a similar position taken by Chadwick LJ in *Southwood v Attorney-General*,<sup>38</sup> who said:

*"The court was in no position to determine that promotion of the one view rather than the other was for the public benefit. Not only did the court have no material on which to make that choice; to attempt to do so would be to usurp the role of government.*

*So the court could not recognise as charitable a trust to educate the public to an acceptance that peace was best secured by demilitarisation in the sense in which that concept was used by the appellants.*

*Nor, conversely, could the court recognise as charitable a trust to educate the public to an acceptance that war was best avoided by collective security through membership of a military alliance - say, NATO."*

63. The Commission acknowledges that some of the activities carried on by the Applicant in relation to lobbying could be ancillary to its charitable purposes. This would be the case, for example, where presentations are made by the Applicant to legislative or government committees concerning assistance for victims of serious crimes.

<sup>35</sup> *Re Collier (deceased)* [1998] 1 NZLR 81 at (p. 15)

<sup>36</sup> [2008] FCA 983, paragraph 128 (Federal Court of Australia).

<sup>37</sup> *Commissioner of Taxation v Aid/Watch Incorporated* [2009] FCAFC 128.

<sup>38</sup> [2000] TLR 541.



64. However, the Applicant's mission statement, goals, and long term objective, its letter of 20 November 2009, several of the letters of support, and information set out on the Sensible Sentencing Trust website, all indicate that the Applicant is also lobbying the government to change the laws to support particular views on sentencing and penal policy.
65. The Commission therefore considers that a main purpose of the Applicant is to advocate for changes in the law or the policy or decisions of central government. According to the jurisprudence cited above, such a purpose cannot be considered to provide public benefit.

#### Applicant's submissions

66. The Applicant, in its letter of 10 December 2009, states that its application relates to the charitable trust incorporated under the name "The Sensible Sentencing **Group** Trust", rather than an unincorporated association known as "The Sensible Sentencing Trust".
67. However, the Commission notes that in earlier correspondence the Applicant does not appear to have made any distinction between itself and "The Sensible Sentencing Trust". In particular:
- the Applicant's application form (Form 1) lists "Sensible Sentencing Trust" as the other name that it is known by
  - the Applicant's letter of 20 November 2009:
    - is on "Sensible Sentencing Trust" letterhead
    - refers consistently to "The Sensible Sentencing Trust" and makes no reference to "The Sensible Sentencing **Group** Trust"
    - defends its involvement in political advocacy
    - refers to the Sensible Sentencing Trust website (<http://www.safe-nz.org.nz>) as "our website"
    - states that the goals and vision statements (set out on its website) have been created "as best we can with the experience we have".
  - none of the letters of support which accompanied the Applicant's letter of 20 November 2009 stated that these individuals had received support from "The Sensible Sentencing **Group** Trust" – all references are to "The Sensible Sentencing Trust".
68. The Applicant's letter of 19 January 2010 (also on "Sensible Sentencing Trust" letterhead) states that "None of the personnel involved with the SST web-site are involved with the SSGT".
69. The above statement appears to contradict statements in the Applicant's earlier correspondence which states:
- "since the Commission has drawn our attention to what it sees as unacceptable and overt political advocacy on **our website**, we have taken immediate action to rectify this by removing such things as the MPs database and all party political references" (letter of 20 November 2009, emphasis added); and
  - "We have used the name 'Sensible Sentencing Trust' on the website to represent **our public face**" (letter of 10 December 2009, emphasis added).

70. The Commission considers that the Applicant has provided insufficient evidence of a distinction between itself and an unincorporated association known as "The Sensible Sentencing Trust".

### Conclusion

71. The Commission concludes that some of the Applicant's purposes expressed in clause 1 are charitable under the relief of poverty, the advancement of education, and any other matter beneficial to the community. The Applicant's mission statement, goals, long term objective, letter of 20 November 2009, information set out on the Sensible Sentencing Trust website, and several of its letters of support, however, all indicate that making submissions on behalf of victims and advocating for political change is a non-charitable main purpose of the Applicant that is not ancillary to its charitable purposes.

### Section 61B of the Charitable Trusts Act

72. In order to be a valid trust at law, a trust for charitable purposes must be exclusively charitable or it will be void for uncertainty. Section 61B of the *Charitable Trusts Act 1957* however, can operate in two situations to "save" a trust that has both charitable and "non-charitable and invalid" purposes.
73. The first is where the entity's **stated purposes** include charitable and non-charitable purposes (in which case the non-charitable purposes may be "blue pencilled out"). The second is where the stated purposes are capable of both a charitable and a non-charitable **interpretation** and the primary thrust of the gift is considered to be charitable (in which case the purposes could be deemed to apply only in terms of the charitable interpretation).<sup>39</sup>
74. In *Re Beckbessinger Tipping J* held:

*"In the case of designated and identifiable organisations it may well be necessary to have evidence as to whether or not they are charitable to determine the flavour of the gift. The Court cannot in my judgment say, ... that because a gift might have been applied for charitable purposes, s 61B can be used to save it. The testator must be shown to have had a substantially charitable mind but to have fallen foul of the law of uncertainty by including either actually or potentially a non-charitable element or purpose."<sup>40</sup>*

75. The Commission considers that some of the Applicant's stated purposes are charitable under the relief of poverty, the advancement of education, and any other matter beneficial to the community. An analysis of the Applicant's activities (as directed by section 18(3)(a) of the *Charities Act 2005*) indicated by its mission statement, goals, long term objective, letter of 20 November 2009, several of its letters of support, and information set out on the Sensible Sentencing Trust website, however, does not provide evidence of a "substantially charitable mind" with an intention to create a

<sup>39</sup> *Re Beckbessinger* [1993] 2 NZLR 362, 373.

<sup>40</sup> *Re Beckbessinger* [1993] 2 NZLR 362, 376.

charitable trust, but which was not conveyed by the drafting. The Commission therefore considers that section 61B of the *Charitable Trusts Act 1957* cannot operate to validate the trust.

### **Charities Commission's determination**

76. The Commission therefore determines that the Applicant has failed to meet an essential requirement for registration as a charitable entity 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, as required by section 13(1)(a) 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



.....  
Trevor Garrett  
Chief Executive

16/3/10  
.....  
Date