

Registration decision: Western Bay of Plenty Tourism and Visitors Trust

The facts

1. The trustees of the Western Bay of Plenty Tourism and Visitors Trust (the Applicant) were incorporated as a board under the Charitable Trusts Act 1957 on 8 July 2002.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 18 May 2008.
3. Clause 5 of the Applicant's Trust Deed states:

"The charitable objects of the Trust shall be to promote the economic welfare and development of the Western Bay of Plenty Region and its citizens through the marketing, management and any other activity which impacts on that region as a visitor and tourist destination."

4. The Commission analysed the application for registration and on 8 January 2009 sent the Applicant a notice advising that its application may be declined on the basis that the purposes in clause 5 primarily appeared to provide private benefits to business owners in the tourism industry, which is not a charitable purpose.
5. On 7 April 2009, the Applicant responded to the notice submitting that its purpose and activities are charitable on the grounds that they are to advance "other matters beneficial to the community". The Applicant also stated that its services include:

"the promotion of public amenities and recreational facilities, providing assistance to social welfare beneficiaries, youth at risk and other members of the public who are in special need, assisting in the education of members of the public, and facilitating opportunities to increase employment in the local area."

6. The Applicant stated that its two i-SITE centres could be regarded as public amenities similar to a library or an art gallery:

"These centres also provide promotional material for a wide range of recreational activities and services available to the public and visitors. This service directly benefits the general public and provides a secondary benefit to the tourism operators."

7. The Applicant gave the following examples of its services:
 - providing free local information for residents and visitors, including information on attractions, activities, accommodation, obtaining work, and directions

- providing free quotes and bookings for coaches and ferries for clients of Work and Income New Zealand, Child Youth and Family, and the Police
- providing work experience for a student once a week
- allowing polytechnic students to visit their centres to discuss the qualifications and skills required to work in an i-SITE office
- accommodating the executive officer of Tauranga Moana Maori Tourism in its offices.

The issues

8. 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, whether the Applicant's purposes fall within the definition of charitable purpose in section 5(1) of the Act.

The law on charitable purpose

9. Under section 13(1)(a) of the Act, a trust must be of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.
10. Section 5(1) of the Act defines charitable purpose as including every charitable purpose, whether it relates to the relief of poverty, the advancement of education, the advancement of religion, or any other matter beneficial to the community. In addition, to be charitable at law, a purpose must be for the public benefit.¹ This means that the purpose must be directed at benefitting the public or a sufficient section of the public.
11. In order for a purpose to qualify as "any other matter beneficial to the community", the purpose must be beneficial to the community and be within the spirit and intendment of the purposes set out in the Preamble to the Statute of Charitable Uses 1601 (Statute of Elizabeth).² In determining what is within the "spirit and intendment" of the Preamble to the Statute of Elizabeth, it is important to be guided by principle rather than by a detailed analysis of decisions in particular cases.
12. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.

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

² *Re Jones* [1907] SALR 190, 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447, 455; *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138, 146-48; *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659, 667, 669; *Royal National Agricultural and 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.

13. In considering an application for registration, section 18(3)(a) of the Act requires the Commission to have regard to:

- “(i) the activities of the entity at the time at which the application was made; and
- (ii) the proposed activities of the entity; and
- (iii) any other information that it considers is relevant; ...”

Charities Commission’s analysis

14. The Commission considers that the Applicant’s purposes set out in clause 5 of the Trust Deed do not amount to relief of poverty or advancement of religion. Therefore, these purposes have been considered in relation to advancement of education and “any other matter beneficial to the community”.

Advancement of education

15. The Applicant stated, in its letter dated 7 April 2009, that its primary purpose is to provide free local information to residents and visitors to the region.

16. Providing information to the public will only be charitable if it amounts to providing some form of education and it ensures that learning is advanced. For example, in the case of *In Re Shaw (deceased)*³, the court held that “if the object be merely the increase of knowledge, that is not in itself a charitable object unless it be combined with teaching or education.”⁴

17. In *Travel Just v Canada Revenue Agency*⁵ the court held that it was doubtful the producing and disseminating materials that would provide travellers and tourists with information on socially and environmentally responsible tourism would qualify as either the publication of research, or as an educational purpose.

18. The Commission concludes that providing information about local attractions and visitor services for the public, as set out in clause 5, does not amount to advancement of education.

Other matters beneficial to the community

19. As noted above, in order for a purpose to qualify as “any other matter beneficial to the community” (the fourth head), the purpose must be beneficial to the community and be within the spirit and intendment of the purposes set out in the Statute of Elizabeth.

³ [1957] 1 WLR 729.

⁴ See also *Re Hopkins’ Will Trusts* [1965] Ch 669, 679. See also *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73, [1971] 3 All ER 1029, [1971] 3 WLR 853; *McGovern v Attorney-General* [1982] 1 Ch 321.

⁵ 2006 FCA 343, [2007] 1 CTC 294.

20. The Commission considers that some of the activities undertaken by the Applicant may provide a benefit to the community, but its primary purpose does not benefit the community in a way that the law regards as charitable.
21. Courts have held the economic development of a region to be charitable under “other matters beneficial to the community”, but only where that region has a particular need.⁶ It is difficult to conclude that the Western Bay of Plenty is an area which is in need of assistance because:
- the unemployment rate in this area is lower than the rest of the country (6.7%, compared with 7.5% for all of New Zealand)
 - more households had access to a motor vehicle (94.7%, compared with 89.9% for all of New Zealand)
 - more dwellings were owned with or without a mortgage (73.8%, compared with 67.8% for all of New Zealand).⁷
22. The Commission does not consider that promoting the economic welfare of this particular region is within the spirit and intendment of the purposes set out in the Preamble to the Statute of Elizabeth.

Public or private benefit

23. The public benefit criterion necessarily requires that any private benefits arising from the Applicant's activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it. It will not be a public benefit if the private benefits are an end in themselves.⁸ In addition, proof that public benefit will necessarily flow from each of the stated purposes is required, not merely a belief that it will or may occur.⁹
24. The Commission considers that the Applicant is promoting tourism in the region through providing information to tourists and that this amounts to promoting the private interests of local business owners.
25. In *Hadaway v Hadaway*¹⁰, the court established the principle that assisting persons carrying on a particular trade or business or profession will only be charitable if there is a condition that this assistance is made for a purpose that is itself charitable. This principle has also been set out in *Crystal Palace Trustees v Minister of Town and Country Planning*,¹¹ *Inland Revenue Commissioners v Oldham Training and Enterprise Council*,¹² and *Re Tennant*.¹³

⁶ *Re Tennant* [1996] 2 NZLR 633.

⁷ Statistics New Zealand, Western Bay of Plenty District Community Profile, (<http://www2.stats.govt.nz/domino/external/web/commprofiles.nsf/d2910d2e37f2350bcc256d090001b4ba/f31aa46f0b4aecedcc256d2b000d2c45?OpenDocument>) last accessed 11/05/2009.

⁸ *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218; *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294.

⁹ *Gilmour v Coats* (1949) AC 26; *Re Blyth* [1997] 2 Qd R 567, 582; *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

¹⁰ [1955] 1 WLR 16 (PC).

¹¹ [1951] 1 Ch 132.

¹² [1996] STC 1218.

¹³ [1996] 2 NZLR 633.

26. The Commission therefore concludes that the purposes set out in clause 5 are not charitable purposes.

Section 61B of the Charitable Trusts Act

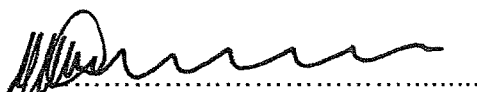
27. In order to be a valid trust at law, a trust for charitable purposes must be exclusively charitable or it will be void for uncertainty. Section 61B of the Charitable Trusts Act 1957 will operate to "save" a trust that has charitable and "*non-charitable and invalid*" purposes.
28. Section 61B can apply in cases where the entity's stated purposes include non-charitable purposes (in which case the non-charitable purposes may be "blue pencilled out"); or where the stated purposes are capable of a charitable or a non-charitable interpretation (in which case the purposes would be deemed to apply only in terms of the charitable interpretation).¹⁴
29. In both instances, the trust's purposes would need to be substantially charitable in nature for section 61B to operate to "save" the trust as a valid charitable trust.¹⁵
30. The Commission does not consider that the Applicant has substantially charitable purposes, and therefore section 61B of the Charitable Trusts Act 1957 cannot operate to validate the trust.

Charities Commission's determination

31. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that the Applicant is not a 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.

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

15/6/09

Date

¹⁴ *Re Ashton (deceased)* [1955] NZLR 192, 205; *Re Beckbessinger* [1993] 2 NZLR 362.
¹⁵ *Re Ashton (deceased)* [1955] NZLR 192, 205; *Re Pettit* [1988] 2 NZLR 513, 543; *Re Howey* [1991] 2 NZLR 16, 21; *Re Beckbessinger* [1993] 2 NZLR 362, 374; *Re Collier (deceased)* [1998] 1 NZLR 81, 97