

## **Deregistration decision: Film Central North Island Trust**

### **The facts**

1. Film Central North Island Trust (the Trust) is an unincorporated trust established by trust deed on 29 June 2009. The Charities Commission (the Commission) registered the Trust as a charitable entity under the Charities Act 2005 (the Charities Act) on 4 August 2009.
2. The Trust's purposes are set out in clause 4 of the Trust Deed:

#### **4 CHARITABLE PURPOSES**

4.1 **Purposes:** *The Trustees shall hold the Trust fund upon trust to pay or apply in New Zealand only, the income and capital of the Trust Fund to, and for, all such exclusively charitable purposes in such amounts, at such times, and subject to such terms and conditions as the Trustees may decide. Without derogating from the generality of the Trustees' power to pay or apply funds for charitable purposes, it is hereby recorded that the primary charitable purposes shall be:*

- (a) *To encourage and facilitate artistic achievement in the greater Central North island region screen production industry, by improving and developing the skill of, and opportunities for, people within the Central North Island region, for the general benefit of the public within the Central North Island region. The greater Central North Island region that is encompassed by the Trust is contained at Schedule 1 of this Deed.*
- (b) *To collaborate with any regional film office in New Zealand and the Film New Zealand trust to coordinate activities.*
- (c) *To increase the opportunity for residents of the greater Central North Island region to be involved in screen production, and to be engaged in work related to screen production, and to maximise employment and enterprise opportunities for New Zealand individuals and organisations provided that this object so for the promotion of the public benefit and any benefit to private individuals or organisations is merely incidental.*
- (d) *In every case, ensure there is close co-operation with the New Zealand government, through Film New Zealand or any other relevant agencies, and the New Zealand screen production industry, for the general benefit of the Central North Island public.*
- (e) *To facilitate the dispersal of international training and the transfer of knowledge to the film community of the Central North Island region.*

3. Some time after the Trust's registration, the Commission received information from an applicant for registration with similar purposes to the Trust. That information led to a decision by the Commission to review the Trust's eligibility for registration.
4. At the time of registration, the Trust was newly established and there was no ability to assess its actual activities against its stated purposes. The Commission's investigation was able to draw on information on the Trust's website and information about the activities from the Trust's submissions.
5. On 5 March 2010, the Commission sent the Trust a notice of intention to remove the Trust from the register on the basis that it was not established and maintained exclusively for charitable purposes.
6. On 1 June 2010, the Trust advised the Commission that it objected to removal from the register and made written submissions supporting that objection.
7. During consideration of the Trust's response, the Commission became aware that the 5 March 2010 notice had referred to the wrong section of the Charities Act (section 13(1)(b) rather than 13(1)(a)).
8. On 20 July 2010, the Commission sent the Trust a replacement notice of intention to remove from the register on the basis that it was not a trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.
9. On 9 August 2010, the Trust responded to the notice of 20 July 2010 stating:

*We are of the view that the Charities Commission have had a "change of heart" in what they consider a charitable purpose and intend reversing their previous ruling on this basis. To our knowledge, the Act does not make provision for this and we consider this both unfair and unprofessional.*

*Our Trust has submitted supporting evidence that we are operating in the public interest and all moneys received by the trust will be utilised for charitable purpose...we are not sure as to how the removal of our entity from the Charities Register would be of public good or in the best public interest.*
10. The Trust submitted that its purposes are charitable as the relief of poverty and/or other matters beneficial to the community.
11. On 18 August 2010, the Trust made a further submission that its purposes are charitable as the advancement of education.

## The issues

12. The Commission must consider whether the Trust is not, or is no longer, qualified for registration as a charitable entity under section 32(1)(a) of the Charities Act.
13. In order to be qualified for registration, the Trust must meet all of the essential requirements for registration under the Charities 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 Charities Act.
14. In particular, the Commission must consider:
  - whether all of the Trust's purposes fall within the definition of charitable purpose in section 5(1) of the Charities Act and,
  - if there are any non-charitable purposes, whether these are merely ancillary to a primary charitable purpose or amenable to the operation of section 61B of the Charitable Trusts Act 1957.

## The law on charitable purposes and deregistration

15. The essential requirements for registration are set out in section 13 of the Charities Act. Under section 13(1)(a) of the Charities 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.
16. Section 5(1) of the Charities 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>1</sup> This means that the purpose must be directed to benefiting the public or a sufficient section of the public.
17. In relation to non-charitable purposes carried on by an entity, section 5(3) of the Charities Act provides that any non-charitable purpose that is merely ancillary to a charitable purpose will not prevent an entity from qualifying for charitable status.
18. Further, in relation to non-charitable purposes carried on by a trust, section 61B of the *Charitable Trusts Act 1957* may also operate to save a trust that has both charitable and non-charitable purposes.
19. Section 32(1)(a) of the Charities Act provides that the Commission may remove an entity from the register if the entity is not, or is no longer, qualified for registration as a charitable entity.
20. When considering whether a registered entity continues to qualify for charitable status, section 50(2) of the Charities Act empowers the Commission to examine and enquire into matters in connection with charitable entities or persons, including:

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

- (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.*

21. Under section 35(1)(a) of the Charities Act, if an objection to the removal of an entity from the register is received, the Commission must not proceed with the removal unless it is satisfied that it is in the public interest to proceed with the removal and at least one ground for removal has been satisfied.

## **The Trust's activities**

22. In the response to the notice of intention to remove from the register, the Trust states that all its activities focus on employment and training opportunities in the region. The Trust also provided further information about some of the outcomes achieved through its activities, as follows:

- *Work and Income New Zealand provided 100 people for work as extras on the movie "Yogi Bear" during the time it was being filmed in Whakamaru with a number of those involved going on to work on the movie set of "The Hobbit". The letter also notes the positive impact that this had on the Tokoroa community and the wider South Waikato region.*
- *Members and vehicles of a Rotorua vintage car club were used as extras in the filming of a tele-movie with many of the extras being pensioners. In addition, filming took place outside a Rotorua hotel, which resulted in additional hotel staff being required during filming and provided exposure for the Hotel.*
- *A Canadian film production company advertised in the Rotorua community for extras to take part in filming of a segment of a reality tv series.*
- *An excerpt from a Rotorua school newsletter states that a pupil was selected to be an extra in the "Yogi Bear" filming.*
- *The production of the "Yogi Bear" movie involved a cast of more than 200. Apart from the main cast, all the crew were from New Zealand.*

23. In relation to the Trust's website, the Trust submitted;

*You [the Commission] have stated, "The website is aimed primarily at the film industry... you are correct in the sense that we are aiming to attract screen productions and filming activity to the region. The other part of the website is offering services to the film industry. We have listed under Table 1a all of the services we offer on the website, we would also like to point out that the website is not exclusively for film industry people; any reasonable person interested in offering a service to the screen industry is welcome to register. We thus also have traditionally "non film people" registered as providers. In the public spirit of our entity, we do not turn down reasonable requests for listings. This is very much an inclusive site and not reserved for any specific group of people, this is in the spirit of the Objects as set out in the Trust and was approved. [punctuation added]"*

24. According to information available on the Trust's website,
- *Film Central North Island is a Charitable Trust and operates as a not for profit service to the Film Industry of the Central North Island Region.*<sup>2</sup>
  - *Film Central works alongside all industry players on many projects to provide a seamless service to the film, advertising and television industry.*
  - *Our aim: To provide the finest service in location management and support for both the Television and Screen Production Industries in the Film Central Region. We can assist with: Accommodation, transport, Catering Unit, Movie Screen production, Technical services (camera, sound, lighting), communications, recreation, support services (engineering, hammer hands, marquee hire, talent pool, stunt people, security etc.*<sup>3</sup>

25. The Trust provides services to the film industry through the website's "Directory of Services". This directory lists businesses providing services to the film industry.<sup>4</sup> The Trust provided the following table of the services that are available to the film industry in the service directory.

Table 1a

Accommodation	Makeup & Hair
Actors	Marine Team
Art Department Personnel	Miscellaneous
Camera Technicians	Photography
Catering	Production
Chaperone/Babysitting	Production – Health & Safety
Consents/Surveying	Props Makers & Specialists
Construction Services & Materials	Scouts
Equipment & Hire Companies,	Security
Cranes	Set Painters
Extras	Sound
Health Services	Stunts / Martial Arts
Helicopters & Air	Translating
Horses / Animal Wranglers	Transport & Buses, Trucking
Leisure Activities	Companies
Lighting & Grips	Venues
Line Production	Video Production
Location	Wardrobe
	Warehousing

26. A FAQ page on the website seeks to address issues relevant to the film production industry such as tax, immigration and work visa issues, filming location guides, credit facilities, money exchange and transfer rates.<sup>5</sup>
27. A location gallery page highlights the central North Island's geographic features.<sup>6</sup>

<sup>2</sup> <http://www.filmcentral.co.nz/about.asp> "About Us" (15- 27 August 2010)  
<sup>3</sup> <http://www.filmcentral.co.nz/support.asp> "Support Services" (15- 27 August 2010)  
<sup>4</sup> <http://www.filmcentral.co.nz/directory.asp> "Directory of Services" (15- 27 August 2010)  
<sup>5</sup> <http://www.filmcentral.co.nz/faq.asp> "FAQ Page" (15-27 August 2010)  
<sup>6</sup> <http://www.filmcentral.co.nz/location.asp> "Location Gallery" (15-27 August 2010)

28. A page entitled “Our Film Region” informs the reader that the Trust is “*building a database of suppliers and partners who are geared up to respond to the challenging and urgent nature of screen production*”.<sup>7</sup>
29. A copy of the “Trustee Charter” is available on the website.<sup>8</sup> The Charter states:

### **Part 3 Board Governance Process**

#### **3.1 Role of the Board**

3.1.1 The role of the Board is to effectively represent, and promote the interests of the Stakeholders with a view to adding long-term value to the infrastructure of the film industry

30. The term “stakeholders” is defined as follows:

#### **Part 1 Interpretation**

##### **1.1 In this Charter:**

...

“Stakeholders” means the stakeholders of Film Central North Island which includes the screen production industry and central and local government

## **Charities Commission analysis**

31. The Commission has assessed the Trust’s stated purpose clauses drawing on information available on the Trust’s website, and the relevant case law.
32. The Commission considers that the purposes in clauses 4.1(b) and 4.1(d) are ancillary. None of the purposes in clause 4 disclose an intention to advance religion. The Commission has considered the purposes in clauses 4.1(a) and (e) in relation to the advancement of education and clause 4.1(c) in relation to the relief of poverty and “other matters beneficial to the community”. As a preliminary matter however, the Commission has considered the effect of the general purpose in clause 4.1.

### Effect of clause purporting to limit purposes

33. Clause 4.1 of the trust deed states:

*4.1 Purposes: The Trustees shall hold the Trust fund upon trust to pay or apply in New Zealand only, the income and capital of the Trust Fund to, and for, all such exclusively charitable purposes in such amounts, at such times, and subject to such terms and conditions as the Trustees may decide. Without derogating from the generality of the Trustees’ power to pay or apply funds for charitable purposes, it is hereby recorded that the primary charitable purposes shall be:*

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<sup>7</sup> <http://www.filmcentral.co.nz/region.asp> “Our Film region” (15-27 August 2010)

<sup>8</sup> <http://www.filmcentral.co.nz/about.asp> “About Us” (15-27 August 2010)

34. In *M K Hunt Foundation Ltd v Commissioner of Inland Revenue*,<sup>9</sup> Hardie Boys J cited with approval the comments Lawrence LJ made in *Keren Kayemeth le Jisroel Ltd v Commissioners of Inland Revenue*.<sup>10</sup> In that case, the statute there under consideration contained the phrase ‘for charitable purposes only’, and Lawrence LJ said in the Court of Appeal that “it is not enough that the purposes described in the memorandum should include charitable purposes. The memorandum must be confined to those purposes”.<sup>11</sup> Hardie Boys J further wrote that

*... in so holding, Lawrence L.J. makes it clear in his judgment that he had in mind, not merely the phrase ‘charitable purposes only’, but also the cases which show that non-charitable objects will prevent recognition of the body in question as a charitable trust.*<sup>12</sup>

35. In *Commissioner of Inland Revenue v White*,<sup>13</sup> the Court considered limitations in the constitution of the Clerkenwell Green Association. The court noted that the constitution showed a clear intention that this object was exclusively charitable but went on to say:

*The charitable intention, clear as it is, is not conclusive in establishing charitable status, however, because clause 2(b) limits the field in which the charitable intention is to be effectuated. If the objects specified in clause 2(b) are of such a nature that there is not charitable purpose which will assist their achievement, then there is no charitable purposes within the specified field and the Association would not be entitled to registration as a charity. In other words, the mere insertion of the word “charitable” in clause 2(b) is not by itself enough to establish that the objects of the Association are charitable.*<sup>14</sup>

36. Finally, in *Canterbury Development Corporation v Charities Commission*,<sup>15</sup> Young J wrote that “the mere fact that the constitution says that CDC’s objects are charitable does not make CDC charitable although such a declaration is relevant in assessing whether they are”.<sup>16</sup> The Judge went on to say “in the end the objects and operation of the organisations either support a charitable purpose or they do not.”<sup>17</sup>

37. In *CDC, Young J* concluded that CDC’s objects did not support a charitable purpose.

38. The Commission does not consider that the inclusion of clause 4.1 provides conclusive evidence that the Trust’s specific purposes are in fact exclusively charitable.

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<sup>9</sup> [1961] NZLR 405, 407.

<sup>10</sup> [1932] 2 KB 465.

<sup>11</sup> [1931] 2 KB 465, 481.

<sup>12</sup> [1961] NZLR 405, 408.

<sup>13</sup> (1980) 55 TC 651.

<sup>14</sup> (1980) 55 TC 651, 653.

<sup>15</sup> HC WN CIV 2009-485-2133 [18 March 2010].

<sup>16</sup> HC WN CIV 2009-485-2133 [18 March 2010] at para 56.

<sup>17</sup> HC WN CIV 2009-485-2133 [18 March 2010] at para 56.

## Relief of Poverty

39. To be charitable as the relief of poverty, 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.
40. The law interprets “poverty” broadly so a person does not have to be destitute to qualify as poor.<sup>18</sup> People who are in need, aged,<sup>19</sup> 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 include anyone who does not have access to the normal things of life that most people take for granted.<sup>20</sup> 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>21</sup>
41. In relation to purposes purporting to be provided for the relief of poverty, Young J in *Canterbury Development Corporation v Charities Commission*,<sup>22</sup> stated:

*The appellant submits that "the generation of jobs is a purpose that is entirely within the meets and bounds of the relief of poverty, head of charity". The appellant's case is that the work of the CDC creates jobs and therefore benefits the unemployed in two ways:*

- (a) *where there is a chain of employment the creation of a new job results in movement of employed persons thus leaving employment for the unemployed*
- (b) *the creation of skilled jobs creates the need for service jobs thus providing jobs for the unemployed*

*I do not consider the purpose of CDC is to assist the unemployed and thereby relieve poverty. I accept the unemployed could be one of the ultimate beneficiaries of its work. The aim of the CDC is to assist businesses to prosper (within the criteria of those whom it will help). This in turn, it believes, will contribute to Christchurch and Canterbury's economic wellbeing. As a result, jobs may be created and those who are unemployed may obtain some of those jobs.*

*In considering whether the purpose of the CDC is the relief of the unemployed it is appropriate to consider both the terms of the constitution and the activities of CDC (s18(3)). The only purpose which deals with unemployment is the initial part of cl 2.2(a). None of the activities of the CDC are directly focused on the creation of employment for the unemployed.*

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<sup>18</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.

<sup>19</sup> *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

<sup>20</sup> *Inland Revenue Commissioners v Baddeley* [1955] AC 572; [1955] 1 All ER 525, applied in *re Pettit* [1988] 2 NZLR 513 and *Re Centrepont Community Growth Trust* [2000] 2 NZLR 325.

<sup>21</sup> *Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney-General* [1983] Ch D 1 All ER 288. See also *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

<sup>22</sup> HC WN CIV 2009-485-2133 [18 March 2010] paras 27-29.

*What is illustrated by this analysis is that the purpose of CDC is not relief of poverty through providing those who are unemployed with jobs. It is to improve the general economic wellbeing of the area. In that sense, therefore, CDC's purpose cannot be the relief of poverty. The possibility of helping someone who is unemployed is too remote for it to qualify as the charitable purpose of relief of poverty.*

42. The Trust's purpose in clause 4.1(c) is:

(c) *To increase the opportunity for residents of the greater Central North Island region to be involved in screen production, and to be engaged in work related to screen production, and to maximise employment and enterprise opportunities for New Zealand individuals and organisations provided that this object so for the promotion of the public benefit and any benefit to private individuals or organisations is merely incidental.*

43. In the response of 9 August 2010, the Trust submitted that the purpose in clause 4.1(c) is charitable as the relief of poverty through the creation of employment opportunities. The Trust contends the examples of film production activities quoted above are evidence of this.

44. To the extent that the Trust's activities result in disadvantaged/poor people such as WINZ beneficiaries, elderly people and school students gaining employment, the Commission acknowledges such activities may support a charitable purpose of relieving poverty. However, clause 4.1(c) is not *expressly* directed at people who are poor or disadvantaged. In addition, the Commission is not satisfied that the examples of outcomes related to the Trust's activities do in fact demonstrate that its purposes are *impliedly* aimed at providing relief of poverty or other disadvantage for the following reasons:

- The submission in regard to "*Spies and Lies*" gives no indication that *any* employment was created let alone employment for poor or disadvantaged individuals. The fact that some extras were pensioners can only be regarded as an incidental outcome of the Trust's activities. There does not appear to be any actual requirement that extras be poor, disadvantaged, or elderly.
- The advertisement for "*The Skinny Dip*" states that participants will be paid "*an ex gratia honorarium*" rather than wages or salary as employees. The advertisement also does not require that extras be poor or disadvantaged.
- The submission relating to "*The Biggest Loser*" states that "*local businesses and suppliers not normally involved in film work*" benefited. The Commission does not regard this benefit to private businesses servicing the film industry to be the creation of employment for poor or disadvantaged individuals.
- According to the TV3 article relating to the production of the movie "*Yogi Bear*", filming was primarily carried out in the Auckland district, which is not within the Trust's area of operation. Information available online indicates that some filming was carried out in the Trust's area of operation for one week between 30 November 2009 and 6 December 2009. The Commission does not consider one week's temporary work is capable of relieving poverty or other disadvantage.

- The online advertisement for the “*Yogi Bear*” film production states that the film producer required “*large numbers of families, young and old, American looking. All ages.*”<sup>23</sup> The Commission does not consider that the advertisement is aimed at creating employment for poor or disadvantaged people.
45. The Commission has also been unable to find any information on the Trust’s website that suggests the Trust impliedly seeks to create employment for poor or otherwise disadvantaged people.
46. Given that the purpose identified in clause 4.1(c) is not expressly aimed at relieving poverty and the Trust’s activities and website do not appear to be directly aimed at creating employment for unemployed or disadvantaged individuals, the Commission does not consider the purpose in clause 4.1(c) is charitable as the relief of poverty.

#### Advancement of education

47. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. The modern concept of “education” covers formal education, training and research in specific areas of study and expertise. It can also include less formal education in the development of individual capabilities, competencies, skills, and understanding, as long as there is a balanced and systematic process of instruction, training and practice.<sup>24</sup> In order to advance education, learning must be passed on to others.
48. Education does not include advertisements for particular goods or services or promotion of a particular point of view.<sup>25</sup> If research is being conducted, it must be carried out in an objective and impartial way and the useful results made available, or accessible to the public.
49. In the New Zealand High Court case of *Re Collier (deceased)*<sup>26</sup>, Hammond J set out the test for determining whether the dissemination of information qualified as charitable under the head of advancement of education:

*It must first confer 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, deceased [1968] VR 390 the testator’s manuscripts were held to be literally of no merit or educational value.*

<sup>23</sup> <http://www.thebigidea.co.nz/>

<sup>24</sup> *Re Mariette* [1915] 2 Ch 284. (See also *Chesterman v Federal Commissioner of Taxation* (1923) 32 CLR 362; *Lloyd v Federal Commissioner of Taxation* (1955) 93 CLR 645; *Chartered Insurance Institute v London Corporation* [1957] 1 WLR 867; *Flynn v Mamarika* (1996) 130 FLR 218.)

<sup>25</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>26</sup> [1998] 1 NZLR 81, 91-92

50. In *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue*<sup>27</sup>, Iacobucci J stated:
- [T]he threshold criterion for an educational activity must be some legitimate, targeted attempt at educating others whether through formal or informal instructions, training, plans of self study, or otherwise.*
51. Under clause 4.1(a), the Trust's expressed purpose includes to "encourage and facilitate artistic achievement" and under clause 4.1(e) to "facilitate the dispersal of international training and the transfer of knowledge".
52. In relation to clause 4.1(e) specifically, the Trust submits that, "A long term goal of the Trust is education and one of our trustees is in the education sector. We need to grow first".
53. The Trust also submits that it has "worked closely with Waiariki Institute of Technology and is also on the University of Auckland's Film and Television Studies database/mailling list". In support of this contention, the Trust provided an email from Auckland University Career Services, inviting the Trust to participate in the expo section of a film careers information event for students later in 2010.
54. The Commission accepts that the language used in clauses 4.1(a) and (e) is capable of identifying purposes that advance education in the modern context. Further, the Commission acknowledges the Trust's future aspirations to provide education. However, the Commission has been unable to find any information on the Trust's website or in its submissions that suggests the Trust carries out any educational activities. In addition, the Commission does not accept that an invitation to participate in an expo about post-tertiary employment options for students is sufficient evidence to show that the advancement of education is one of the Trust's primary purposes. The Commission therefore considers that the advancement of education is not a primary purpose of the Trust.
55. In addition, the Commission is concerned that the purpose disclosed in clause 4.1(a) does not meet the public benefit requirements essential for registration as a charity.
56. *Re Mason*<sup>28</sup> concerned an entity involved in the production and publication of law reports and the provision of a law library primarily for use by lawyers, law students and judges. The New Zealand Supreme Court in this case held the objects of the Auckland District Law Society to be entirely wholesome and likely to lead to the *ultimate* benefit of the public. However, the Court considered this fell short of making the society a charity, distinguishing between charitable institutions whose main object was the advancement of education, which provided a clear public benefit, and non-charitable institutions whose main object was the protection and advantage of those practising in a particular profession.

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<sup>27</sup> (1999) 169 DLR (4<sup>th</sup>) 34, 114.

<sup>28</sup> [1971] NZLR 714, 721.

57. McMullin J gave examples of charitable institutions, such as an institute of pathology<sup>29</sup> and a college of nursing.<sup>30</sup> His Honour also provided examples of non-charitable institutions such as an insurance institute<sup>31</sup> and a society of writers.<sup>32</sup> These institutions lacked the requisite public benefit because they primarily conferred private benefits on members. It is clear that the promotion of charitable purposes must be an entity's predominant object and any private benefits to individuals that result from an entity's activities must be of a subsidiary or incidental nature.<sup>33</sup>
58. While the distinction in *Re Mason* was drawn in relation to the issue of whether purposes that predominantly benefit a beneficiary class of "professionals" is charitable, the Commission considers the issue here is analogous and the reasoning is therefore highly relevant.
59. Applying the reasoning in *Re Mason* to the present case, the Commission considers that individuals working within the screen production industry are the primary beneficiaries of the purpose expressed in clause 4.2(a) and the benefits conferred are of a predominantly private nature. For this reason, the Commission does not consider that clause 4.1(a) meets the public benefit requirements for registration.

#### Any other matter beneficial to the community

60. In order to be considered charitable as "any other matter beneficial to the community", purposes 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)<sup>34</sup>, namely:
- 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

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<sup>29</sup> *Royal College of Surgeons of England v National Provincial Bank* [1952] AC 631; [1952] 1 All ER 984.

<sup>30</sup> *Royal College of Nursing v St Marylebone Corporation* [1959] 1 WLR 1077; [1959] 3 All ER 663.

<sup>31</sup> *Chartered Insurance Institute v Corporation of London* [1957] 1 WLR.

<sup>32</sup> *Society of Writers to Her Majesty's Signet v Commissioners of Inland Revenue* (1886) 2 TC 257.

<sup>33</sup> *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380.

<sup>34</sup> *Re Jones* [1907] SALR 190, 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447, 455; *Scottish Burial Reform and Cremation Trust 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 Trust of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147, 157; *Re Tennant* [1996] 2 NZLR 633, 638.

- 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.
61. However, not all organisations having purposes that benefit the community will be charitable. The purposes must benefit the community in a way that the law regards as charitable.
62. According to *Charity Law in Australia and New Zealand*:
- ... it is not all objects of public utility that are charitable, 'for many things of public utility may be strictly matters of private right, although the public may indirectly receive a benefit from them.' Nor are essentially economic or commercial objects within the spirit of the Preamble.*<sup>35</sup>
63. In *Travis Trust v Charities Commission*,<sup>36</sup> William J notes that;
- ...regard must be had to the particular word 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.*
64. In *Canterbury Development Corporation v Charities Commission, (CDC)*<sup>37</sup> when discussing whether economic development can fall within the “spirit and intendment of the Statue of Elizabeth”, Ronald Young J stated:
- What must be kept in mind is that the charitable purpose of benefit to the community is a community benefit to assuage need. In cases such as Re Tennant [1996] 2 NZLR 633 and Tasmanian Electronic Commerce Centre v Commissioner of Taxation [2005] FCA 439 focus is on providing community benefit where an identified need is established. **Save for advancement of religion all charitable purpose can be seen as meeting a need.***<sup>38</sup> [emphasis added]
65. The dictum of Ronald Young J in *CDC* is demonstrated in cases such as *Re Tennant*<sup>39</sup>, *Tasmanian Electronic Commerce Centre Pty Ltd v Commissioner of Taxation*<sup>40</sup> where economic development has been recognised as charitable in circumstances where essential services are required or where the community is under a particular disadvantage.

<sup>35</sup> Gino Dal Pont, 2000, Oxford University Press, p 178; citing *Nightingale v Goulburn* (1847) 5 Hare 484, 490 and *Re Davis (deceased)* [1965] WAR 25, 28.

<sup>36</sup> HC WN CIV 2008-485-1689 [3 December 2008] at para 20.

<sup>37</sup> HC WN CIV 2009-485-2133 [18 March 2010].

<sup>38</sup> HC WN CIV 2009-485-2133 [18 March 2010] at para 42.

<sup>39</sup> [1996] 2 NZLR 633.

<sup>40</sup> (2005) 142 FCR 371.

66. *Re Tennant* related to the gift of a creamery to a rural community. In that case, Hammond J stated:

*Obviously each case will turn on its own facts. I would not be prepared to say that there may not be cases which would fall on the other side of the line because of private profit making of some kind. But here the settlor was attempting to achieve for a **small new rural community** what would then have been central to the life of that community: a cluster complex of a school, public hall, church and creamery.<sup>41</sup>*  
[Emphasis added]

67. Similarly, in *Tasmanian Electronic Commerce Centre Pty Ltd v Federal Commissioner of Taxation*, the Australian Federal Court of Appeal decided that the entity was charitable because it was created to develop internet and communications infrastructure for Tasmania, a particularly economically disadvantaged area. Heeney J wrote:

*As has been seen, the genesis of TECC was the provision of large amounts of Federal funding to assist “regional, rural and remote communities” a current euphemism for those parts of Australia which **are economically disadvantaged or, put more bluntly, poor, compared with the rest of the nation ... Tasmania is a particular case in point.** The combination of small population and long distances from markets and raw materials meant that conventional manufacturing industry was always to be at a disadvantage.<sup>42</sup>* [Emphasis added]

68. On the other side of the case law recognising the circumstances in which economic development may be charitable is the case of *Commissioners of Inland Revenue v Oldham Training and Enterprise Council*,<sup>43</sup> where an entity whose purposes were to promote trade, commerce, enterprise and support services and advice to new businesses was held to be not charitable. The Court in this case stated,

*On any fair reading, [the purposes] must extend to enabling Oldham TEC to **promote the interests of individuals engaged in trade, commerce or enterprise and provide benefits and services to them** [...] Such efforts on the part of Oldham TEC may be intended to make the recipients more profitable and thereby, or otherwise, to improve employment prospects in Oldham. But the existence of these objects, in so far as they confer freedom to provide such private benefits regardless of the motive or the likely beneficial consequences for employment, must disqualify Oldham TEC from having charitable status. The benefits to the community conferred by such activities are too remote.*

69. The Commission recognises that specific localities within the central North Island region may have a particular need for economic development. However, the Trust’s express purposes and activities are not limited to these disadvantaged localities; they are directed to the economic development of the wider Central North Island region generally. Nor are the particular services provided by the Trust to the film industry an “essential service”.

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<sup>41</sup> *Re Tennant* [1996] 2 NZLR 633, 640.

<sup>42</sup> (2005) 142 FCR 371, 389.

<sup>43</sup> (1996) 69 Tax Cases 231, 251.

70. The Commission does not therefore consider that the purposes in clauses 4.1(a) and (c) fall within the spirit and intendment of the purposes set out in the Preamble to the Statute of Elizabeth.

#### Private or public benefit

71. In order to fall under “any other matter beneficial to the community”, the benefits must be to the community rather than to private individuals. Any private benefits arising from the Trust’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.<sup>44</sup> 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.<sup>45</sup>
72. The Courts have found purposes such as those of the Trust to be charitable as the promotion of industry and commerce under “any other matter beneficial to the community” when the purposes are for the public benefit and not for the benefit of private individuals.
73. Thus, in *Inland Revenue Commissioners v Yorkshire Agricultural Society*<sup>46</sup> the improvement of agriculture was held to be charitable when it was for the benefit of the public at large. However, Lord Hanworth made it clear that the promotion of agriculture for private profit or benefit would not be charitable.
74. In *Crystal Palace Trustees v Minister of Town and Country Planning* a body of trustees was entrusted with the control and management of Crystal Palace and park as a public place for education and recreation, and for the promotion of industry, commerce and art. Danckwerts J stated:
- ... it seems to me that the intention of the Act in including in the objects the promotion of industry, commerce and art, is the benefit of the public, that is, the community, and is not the furtherance of the interests of individuals engaging in trade or industry or commerce by the trustees.*<sup>47</sup>
75. In *Hadaway v Hadaway* the Privy Council held that assisting persons carrying on a particular trade or business or profession would not be charitable unless there was a condition that this assistance could only be made for a purpose which was itself charitable. In that case, the court held that any eventual benefit to the community was too remote:

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<sup>44</sup> *Inland Revenue Commissioners v Oldham Training and Enterprise Council* (1986) STC 1218; *Travel Just v Canada Revenue Agency* 2006 FCA 343 [2007] 1 CTC 294.

<sup>45</sup> *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.

<sup>46</sup> [1928] 1 KB 611.

<sup>47</sup> [1951] 1 Ch 132, 142.

*The promotion of agriculture is a charitable purpose, because through it there is a benefit, direct or indirect, to the community at large: between a loan to an individual planter and any benefit to the community the gulf is too wide. If there is through it any indirect benefit to the community, it is too speculative.*<sup>48</sup>

76. In *Commissioners of Inland Revenue v White and Others and Attorney General* it was held that the entity's purpose to "promote any charitable purpose which will encourage the exercise and maintain the standards of crafts both ancient and modern, preserve and improve craftsmanship and foster, promote and increase the interest of the public therein" was charitable. However, Fox J stated:

*The three cases which I have last mentioned seem to me to establish that the promotion or advancement of industry (including a particular industry such as agriculture) or of commerce is a charitable object provided that the purpose is the advancement of the benefit of the public at large and not merely the promotion of the interests of those engaged in the manufacture and sale of their particular products. ... The charitable nature of the object of promoting a particular industry depends upon the existence of a benefit to the public from the promotion of the object.*<sup>49</sup> [Emphasis added].

77. In that case, Fox J found that the purposes of the Association were capable of providing a public benefit and that any private benefit to individual craftsmen was not an object of the Association.

78. In *Commissioners of Inland Revenue v Oldham Training and Enterprise Council*, the Court held:

*[T]he second main object, namely promoting trade, commerce and enterprise, and the ancillary object, of providing support services and advice to and for new businesses, on any fair reading must extend to enabling Oldham TEC to promote the interests of individuals engaged in trade, commerce or enterprise and provide benefits and services to them [...] Such efforts on the part of Oldham TEC may be intended to make the recipients more profitable and thereby, or otherwise, to improve employment prospects in Oldham. But the existence of these objects, in so far as they confer freedom to provide such private benefits regardless of the motive or the likely beneficial consequences for employment, must disqualify Oldham TEC from having charitable status. The benefits to the community conferred by such activities are too remote.*<sup>50</sup> [Emphasis added].

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<sup>48</sup> [1955] 1 WLR 16, 20 (PC).

<sup>49</sup> (1980) 55 TC 651, 659.

<sup>50</sup> (1996) 69 Tax Cases 231, 251.

79. In *Commissioner of Taxation v Triton Foundation*,<sup>51</sup> the Federal Court of Australia held that a foundation set up to assist inventors provided sufficient public benefit. In reaching this conclusion, the court noted that the Foundation's purposes were particularly directed at young people, but were also available to "any member of the community who had the desire or inclination to use them", and a number of the resulting inventions had been of benefit to the community.
80. In *Travel Just v Canada (Revenue Agency)*,<sup>52</sup> the Canadian Federal Court of Appeal considered a case relating to an entity whose purposes were the creating of model tourism development projects and the production and dissemination of tourism information. The Court found that promoting commercial activity with a strong flavour of private benefit was not a purpose beneficial to the public and expressed doubt that the dissemination of information as described would qualify as either publication of research or an educational purpose.

81. In *Canterbury Development v Charities Commission*, Ronald Young J held:

*The important point in this case is that CDC's assistance to business is not collateral to its purposes but central to it. The purposes of CDC's assistance to business is, as the constitution identifies, and the operation confirms, to make the businesses more profitable. CDC believes this assistance will, in turn, result in benefit to the Canterbury community. The **central focus however remains on increasing the profitability of businesses not public benefit.** ...*

*Any public benefit therefore from CDC's purpose and operation's is in my view too remote to establish CDC as a charity. Public purpose is not the primary purpose of CDC's objects or operation. Its primary purpose is the assistance of individual businesses. The creation of jobs for the unemployed, as opposed to jobs for those who are employed and not in need, is hoped for, but remote and uncertain, result of the way in which CDC approaches its task. The relief unemployment is certainly not a direct object of purpose of CDC's function. **The public benefit is hoped for but ancillary. In the same way the general economic lift for the Canterbury region from CDC's work is the hoped for result of helping individual businesses. It is remote from the purpose and operation of CDC.** Public benefit is not at the core of CDC's operation.<sup>53</sup> [Emphasis added]*

82. The Commission considers that the Trust's purposes are predominantly directed at conferring private benefits on individuals and organisations supporting or working in the film industry. Such purposes might have a beneficial consequence for employment in general but none are directly focussed on creating employment for the unemployed. As such, any public benefit arising from the Trust's activities is too remote to bring the purposes within the spirit and intendment of the Statute of Elizabeth.

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<sup>51</sup> (2005) 147 FCR 362.

<sup>52</sup> 2006 FCA 343 [2007] 1 CTC 294, 2007 DTC 5012 (Eng.) 354 NR 360.

<sup>53</sup> *Canterbury Development v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010] at paras 60, 67.

83. Based on the Trust's express purposes and information available on the Trust's website, the Commission considers that the provision of services to the film industry and businesses servicing the film industry is a primary purpose of the Trust. The primary benefits arising from this purpose will therefore accrue to the owners of businesses within the film industry and servicing the film industry. Any benefits that may be conferred on the community at large will be too remote to give the purposes a charitable nature.
84. The Commission therefore concludes that the Trust has a main purpose of assisting business owners to receive private pecuniary profit. This constitutes private benefit rather than public benefit.

### Conclusion

85. The Commission concludes that the purposes set out in clauses 4.1(a) (c) and (e) are non-charitable purposes. These non-charitable purposes are not ancillary to any charitable purposes and therefore, the Trust does not meet the requirements of section 13(1)(a) of the Charities Act.

### Section 61B of the *Charitable Trusts Act 1957*

86. 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.
87. 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>54</sup>
88. 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>55</sup>

89. The Commission has analysed the wording of the Trust's purposes, surrounding context, and activities. The Commission does not consider that these provide evidence of "a substantially charitable mind" with an intention to create a charitable trust, but which was not conveyed by the drafting.

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<sup>54</sup> *Re Beckbessinger* [1993] 2 NZLR 362, 376.

<sup>55</sup> *Re Beckbessinger* [1993] 2 NZLR 362, 376.

90. On this basis, the Commission considers that the Trust's purposes are not substantially charitable and therefore section 61B of the Charitable Trusts Act 1957 cannot operate to validate the trust.

Public interest

91. Section 10(1)(a) of the Charities Act obliges the Commission to promote public trust and confidence in the charitable sector. The Commission considers that public trust and confidence in registered charitable entities would not be maintained if entities which did not meet the essential requirements for registration remained on the register. The Commission therefore considers it is in the public interest to remove the Film Central North Island Trust from the register.

**Charities Commission's determination**

92. The Commission determines that the Trust is not, or is no longer, qualified for registration as a charitable entity because it 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 Charities Act.
93. Under section 35(1) of the Charities 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.
94. The decision of the Commission is therefore to remove the Trust from the Register, pursuant to section 31 of the Charities Act, with effect from 21 October 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

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Date