

## Registration decision: Five Finger Crafts Incorporated

### The facts

1. Five Finger Crafts Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 12 June 1987.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 24 April 2008.
3. The rules document originally supplied by the Applicant did not contain a specific objects clause, but stated:

*"Five Finger Crafts is an Incorporated Society which is designed to provide a retail outlet where people may sell their handcrafts and share their talents. ...*

*The Society is a non-profit organisation and any monies not used for overheads, improving Facilities or holding seminars etc. will be donated to Charities."*

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 Applicant did not have exclusively charitable purposes. The primary purpose appeared to be operating a retail outlet where members could sell their homemade goods and retain the income for themselves after paying a small commission to the Applicant. Donating any surplus money to charities appeared to be ancillary to this main non-charitable purpose. In addition, the rules did not contain a provision requiring surplus assets to be distributed to charitable purposes in the event of the Applicant winding up.
5. On 26 March 2009, the Applicant provided another version of its rules (dated 15 June 1987). Clause 2 of this document states that the Applicant's objects are:

*(a) To engage in activities of general nature for the purposes of raising charitable institutions.*

*(b) To provide a market place to facilitate the collection and sale of homemade and handmade goods and goods and produce of all descriptions approved by the Committee.*

*(c) To do all other such lawful things as are incidental or conducive to the attainment of the above objects or any of them.*

*(d) To exercise such disciplinary powers as shall be set out in the Rules of the Association.*

*(e) To make Bylaws or Regulations for the performance or furtherance of any of the foregoing objects."*

6. Clause 22 of the rules provides:

*"Before any winding up or dissolution of the Association all debts due by the Association shall be paid and any balance of the Association's fund shall be donated to a charity or charities situated in the Lumsden, Mossburn or Riversdale areas ..."*

7. The Commission analysed the version of the rules dated 15 June 1987 and concluded that the Applicant met registration requirements in relation to winding up because clause 22 restricts distribution of surplus assets on winding up to charitable purposes.
8. On 26 March 2009, the Applicant was sent a second notice that may lead to a decline on the basis that clause 2(b) was a primary non-charitable purpose. The Commission also noted that the Applicant's financial statements for 2006-07 showed that only \$10.00 from a total income of \$18,344.10 was given to a registered charity, the Cancer Society. The largest expenditure was on payout (\$11,140.04), which appeared to indicate that the primary purpose of the society was to provide a private benefit for members.
9. On 7 April 2009, the Applicant responded to the second notice making the following submissions:

*"The key benefit is that we provide a forum for members of the community to get together and continue to foster and appreciate arts and crafts. One of our goals is to try and keep these dwindling skills 'alive' and 'remembered' in a changing society where they are not 'essential' as they used to be. We believe that by keeping these skills alive, we are preserving our heritage as well as our sense of community well being and spirit."*

*"Any income generated, helps members pay for petrol and other travel related costs required to get to meetings, fundraising events or to the Craft Museum. Some members live a significant distance away and at the stage of life when they are on pensions and other limited incomes."*

## **The issues**

10. 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 society or institution established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual, as required by section 13(1)(b) of the Act.

## **The law on charitable purpose**

11. Under section 13(1)(b) of the Act, a society or institution must be established and maintained for exclusively charitable purposes and must not be carried on for the private pecuniary profit of any individual.
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>1</sup> This means that the purpose must be directed at benefitting the public or a sufficient section of the public.

13. 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).<sup>2</sup> 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.
14. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
15. 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**

16. The Commission considers that the Applicant’s purposes set out in clauses 2(c) to (e) are ancillary to the purposes in clauses 2(a) and (b).
17. The purpose set out in clause 2(a) is charitable under the established principle that to further a charitable purpose carried on by another is itself charitable.<sup>3</sup> Activities identified in the Applicant’s letter of 7 April 2009, such as providing voluntary staff for the Craft Museum and fundraising for charitable institutions in the community, are clearly undertaken under this clause.
18. The purpose set out in clause 2(b) does not indicate an intention to relieve poverty, or advance education or religion. This purpose has therefore been considered in relation to “any other matter beneficial to the community”.

### **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 purpose must be beneficial to the

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

<sup>2</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>3</sup> *Re White’s Will Trusts* [1951] 1 All ER 528.

community and be within the spirit and intendment of the purposes set out in the Preamble to the Statute of Elizabeth.

20. The Applicant has suggested that providing "a market place to facilitate the collection and sale of homemade and handmade goods and goods and produce of all descriptions" benefits the community by allowing members of the community to get together and foster and appreciate arts and crafts.
21. When considering whether the Applicant's purposes are within the spirit and intendment of the Preamble to the Statute of Elizabeth, and in particular, the "supportation, aid and help of young tradesmen and handicraftsmen", it is necessary to consider the High Court of Justice's decision in *Commissioners of Inland Revenue v White*.<sup>4</sup>
22. In *White*, the Court considered that in a contemporary context the "supportation, aid and help of young tradesmen and handicraftsmen" would mean those people who perform an art, trade or profession requiring special skill or knowledge. In that case, the applicant's purposes involved encouraging the exercise and maintaining the standards of crafts both ancient and modern, preserving and improving craftsmanship and fostering, promoting and increasing public interest in such crafts.
23. While an indirect effect of the Applicant's purpose in clause 2(b) may be to foster some public interest in crafts, this purpose does not appear to be restricted to the performance of an art, trade or profession that requires special skill or knowledge, nor does it specify that any particular standard of craftsmanship must be maintained for the benefit of the public.
24. The Commission considers that while it is possible that the purpose set out in clause 2(b) provides some benefit to the community, it is not within the spirit and intendment of the purposes set out in the Preamble to the Statute of Elizabeth.

#### Public or private benefit

25. 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.<sup>5</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>6</sup>
26. The Applicant's annual financial statement for 2006-07 shows that only \$10.00 from the total income of \$18,344.10 was given to a registered charity, the Cancer Society. The largest expenditure was on payout to members (\$11,140.04). This indicates that a primary purpose of the society is to carry on a business that provides private benefits to its members.

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<sup>4</sup> (1982) 55 TC 651.

<sup>5</sup> *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.

<sup>6</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.

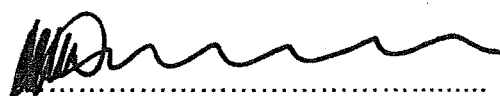
27. In *Commissioners of Inland Revenue v White*, the Court cited the established principle set out in *Hadaway v Hadaway*,<sup>7</sup> that assisting persons carrying on a particular trade or business or profession will not be charitable unless there is a condition that this assistance can only be made for a purpose which is itself charitable. This principle has also been set out in *Crystal Palace Trustees v Minister of Town and Country Planning*,<sup>8</sup> and *Inland Revenue Commissioners v Oldham Training and Enterprise Council*.<sup>9</sup>
28. The Applicant has indicated that "any income generated helps members pay for petrol and other travel related costs required to get to meetings, fundraising events or to the Craft Museum." The Applicant's rules, however, do not restrict the purposes to which members can apply the money that they receive from the Applicant.
29. As set out in *Dunne v Byrne*<sup>10</sup> if the recipient of a gift is given a discretion to apply the funds to charitable purposes, the mere fact that the person is the holder of an office with charitable duties will not make the gift charitable.

### Charities Commission's determination

30. 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 established and maintained for exclusively charitable purposes, as required by section 13(1)(b)(i) of the Act, and is carried on for the private pecuniary profit of individuals in contravention of section 13(1)(b)(ii) 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

<sup>7</sup> [1955] 1 WLR 16 (PC).

<sup>8</sup> [1951] 1 Ch 132.

<sup>9</sup> [1996] STC 1218.

<sup>10</sup> [1912] Ch 105.