

Registration decision: RPC South (The Ratas) Incorporated

The facts

1. RPC South (The Ratas) Incorporated (“the Applicant”) was incorporated under the *Incorporated Societies Act 1908* on 16 February 2006.
2. The Applicant applied to the Charities Commission (“the Commission”) for registration as a charitable entity on 6 September 2010.
3. Clause 2 of the Applicant’s rules document sets out the purposes of the society as:
 - 2.1 *The primary objects of the Society are to:*
 - (a) *Promote the sport of Rowing.*
 - (b) *Make regulations to advance the attainment of the above object.*
 - (c) *Do any act or thing incidental or conducive to the attainment of any of the above objects.*
 - 2.2 *Without detracting from the primary objects, the secondary objects of the Society are to:*
 - (a) *Provide a high performance environment for the development of Rowers, particularly in the South Island.*
 - (b) *Establish codes of behaviour applicable to Members.*
4. Clause 4.1(b) and clause 5 state:
 - (b) **Active Rowing Member**
Those active Rowers who are invited by the Executive to become Active Rowing Members of the Society. ...

5. Admission of Members

 - 5.1** *Active Rowing Members who are invited by the Executive to become Members shall complete an application form provided (and supply such information as may be required) by the Executive.*
 - 5.2** *The Executive shall have complete discretion whether or not to invite an Active Rowing Member to join as a Member, and subsequently whether or not to admit the Member to membership, and shall advise the applicant of its decision, and that decision shall be final.*

5.3 *Once admitted as a Member an Active Rowing Member's membership shall terminate at 1 May after the date of admission to the intent that Active Rowing Members shall be admitted on a season by season basis or until the Executive determines that the Member's membership should be terminated for any reason in its absolute discretion.*

5. The Applicant supplied a letter at the time of registration dated 31 August 2010, that stated:

We are one of the four Regional Performance Centres set up by Rowing NZ in conjunction with SPARC to form the final link in our developmental pathway that leads from school rowing and Junior international representation through our rowing club system and international under 21 and under 23 competition to create an attainable step to our National Elite squad. Our area of responsibility covers the provinces of Southland, Otago and Canterbury totalling 22 clubs and 41 schools.

Our emphasis is primarily on providing a level of support greater than that the club system can provide to those rowers with the potential and the will to represent New Zealand. The majority of our athletes are students and provision of coaching, equipment and logistical support at a level beyond their ability to fund is greatly appreciated. The efficacy of this system is already a matter of record through the increased performances by New Zealand age-group rowers in international competition. Additionally each RPC conducts specialist training year round for younger rowers in under 17 and under 18 squads, thus increasing the pool of aspirants for eventual selection in the RPC squad itself. Just as schools and clubs may qualify for charitable status we seek an equivalent role as we continue to develop our young athletes and provide the support they need as they follow our high performance developmental pathway.

We believe that our activities are beneficial to the greater community as we nurture excellence while at the same time provide role models that will influence and encourage their peers. SPARC endorsement has seen the placement of top line coaches at Otago University as well as at our Christchurch base. We rely on a wide volunteer base drawn from both our clubs and the families of our rowers to deliver this enhanced level of support. We ask for your considered endorsement of our charitable objectives.

6. The application was analysed and on 17 September 2010, the Commission sent the Applicant a notice that may lead to a decline on the basis that the beneficiaries of the Applicant are limited to elite rowing athletes and therefore the Applicant does not provide sufficient public benefit.
7. On 18 October 2010, the Applicant responded to the notice that may lead to a decline, and included a proposed rules amendment. The Applicant stated:

We seek your advice toward acceptance that an amendment be made to our constitution, specifically Clause 2.

2. Objects

2.1 The primary objects of the Society are to:

- [a] Provide a pathway toward excellence for the development of rowers, particularly in the South Island provinces of Southland, Otago and Canterbury.
- [b] Promote the sport of rowing.
- [c] Do any act or thing incidental or conducive to the attainment of any of the above objects.

2.2 Without detracting from the primary objects, the secondary objects of the Society are to:

- [a] Make regulations to advance any of the above objects.
- [b] Establish codes of behaviour applicable to Members.

*The above re-ordering of our objectives emphasizes the fact that the Regional Performance Centre structure is the only avenue by which the 40% of the national rowing adherents resident in the catchment area of RPC South [The Ratas] Inc. can seek national selection for international competition. By providing this pathway together with the considerable coaching, plant and equipment, financial & logistical support necessary to an aspiring athlete, RPC South [The Ratas] Inc. is already assisting numerous athletes who might not otherwise have the opportunity to rise to their true competitive height. Given the size of the catchment, 3 provinces, 19 rowing clubs and 41 secondary schools as well as 3 universities, the efforts of RPC South [the Ratas] are carrying out a stupendous task with full time/year round coaching including supportive developmental groups at both Otago University and Christchurch. The professional standards maintained and services provided at no cost to the beneficiaries must surely rank as a **Charitable Purpose**. No fewer than 23 of these rowers have represented New Zealand in the current year. You quote under Purposes “the deeper purpose is usually health or education”; without health/fitness none of these rowers would have achieved, 6 scholarships at Lincoln University are currently being contested, emphasising the educational needs & responsibilities. The available scholarships at Lincoln University will rise to ten in the following year.*

*We would point to our catchment area as an example of **Public Benefit**, 2000 young athletes have the opportunity to aspire to RPC support. These are not all Elite rowers but young people with a burning desire to emulate the deeds of the RPC Elite athletes, currently 12 included in the National squad.*

The issues

8. The issue the Commission must consider is whether the Applicant meets all of the essential requirements for registration under the *Charities Act 2005* (“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. In particular, the issues are:

- (a) whether the Applicant's purposes fall within the definition of charitable purposes in section 5(1) of the Act; and
- (b) whether the Applicant provides a public benefit.

The law on charitable purposes

- 9. Under section 13(1)(b) of the Act a society or institution must be established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual.
- 10. Section 5(1) of the Act states:

...charitable purpose includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.
- 11. In addition to being within one of the categories of charitable purpose, to be charitable at law, a purpose must also be for the public benefit.¹ This means that the purpose must be directed to benefit the public or a sufficient section of the public.
- 12. Section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not prevent qualification for registration if it is merely ancillary to a charitable purpose.
- 13. In considering an application, 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.*

The Charity Commission for England and Wales' approach to sport

- 14. In their guidance for charitable status and sport, the Charity Commission for England and Wales states:

Open membership

14. Open membership is essential if a club is to meet the requirement of public benefit that applies to all charities. A club that operates restrictions in its membership provisions (other than reasonable restrictions that are necessary to enable the club to operate effectively - see [paragraphs 15-17 below](#)) could not claim to be encouraging community participation.

¹ Accepted as common ground in *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195, para [32].

Legitimate restrictions on membership

15. As far as is reasonably practical, a CASC [community amateur sports club] will need to provide facilities for all who wish to play. That said, there are some circumstances in which certain restrictions on membership are reasonable and justified.

16. We accept that the facilities of some clubs are quite limited and that it is not always possible to accommodate everyone who wishes to become a member, on practical or health and safety grounds for example. In those circumstances, it is perfectly reasonable for a club to establish a waiting list for membership where they are oversubscribed, provided that the next available membership is offered to the person at the top of the waiting list (on a first come, first served basis) and not offered to someone lower down the list on the basis that they are a better player. ...

What sort of sports clubs could not be regarded as charitable?

35. Our decision to recognise the promotion of community participation in healthy recreation as a charitable purpose does not mean that all sports bodies can be charitable. Those bodies which have a restricted membership (other than for the reasons set out in [paragraphs 15 - 17](#) above), perhaps for social reasons or because they are concerned with professional or elite sport, for example, or which are not capable of improving physical health and fitness, would not be able to take advantage of our decision.²

The New Zealand Charities Commission's approach to sport and recreation bodies

15. In *Travis Trust v Charities Commission*, Joseph Williams J stated:

*In the area of sport and leisure, the general principle appears to be that sport, leisure and entertainment for its own sake is not charitable but that where these purposes are expressed to be and are in fact the means by which other valid charitable purposes will be achieved, they will be held to be charitable. The deeper purpose of the gift or trust can include not just any of the three original Pemsel heads but also any other purpose held by subsequent cases or in accordance with sound principle to be within the spirit and intendment of the Statute of Elizabeth.*³

16. The Commission considers that the above case is authority for the proposition that sporting entities can be charitable if they are advancing another charitable purpose. Examples of other charitable purposes that sporting entities may advance include:

- Providing community recreational facilities “in the interests of social welfare”;
- Relieving poverty;
- Advancing education; or
- Providing a purpose otherwise beneficial to the community, such as promoting health by providing opportunity for participation in amateur sports that involve the pursuit of physical fitness.

² <http://www.charity-commission.gov.uk/Publications/rr11.aspx>
³ (2009) 24 NZTC 23,273, 23,281.

17. In addition, in order to be charitable, a sporting entity must provide a public benefit. Factors that may count against this include where:
- there are unreasonable or unjustifiable restrictions placed on who may benefit from the activity;
 - prohibitive costs associated with the activity (including fees and equipment) will exclude the less well off;
 - there is an unreasonable risk of injury or harm associated with the activity which will outweigh any benefit to the public;
 - providing amusement, entertainment, or social activities for members is a primary purpose.

Charities Commission's analysis

18. The Commission has analysed the purposes set out in clause 2 of the Applicant's rules document, the Applicant's proposed rules change and the information supplied by the Applicant.
19. The Commission does not consider that the Applicant's purposes and the activities it undertakes indicate an intention to relieve poverty, advance education or advance religion. Accordingly, they have been assessed under "any other matter beneficial to the community".

Other matters beneficial to the community

20. 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):⁴
- 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.⁵

⁴ *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.

⁵ *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

21. Not all organisations that have purposes that benefit the community will be charitable. The purposes must benefit the community in a way that the law regards as charitable. 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.*⁶

22. Over the years, the courts have recognised many new charitable purposes that are substantially similar to those listed in the Statute of Elizabeth, acknowledging that what is accepted as a charitable purpose must change to reflect current social and economic circumstances. In particular, courts have found the promotion of public health to be charitable under this head where the benefit is available to a sufficient section of the public.⁷

23. In its letter of 31 August 2010 the Applicant states:

We believe our activities are beneficial to the greater community as we nurture excellence while at the same time provide role models that will influence and encourage their peers.

24. The Commission notes that while there may be some health benefits for members of the RPC squad, the Applicant has not provided any evidence of a wider public benefit. For the reasons set out below, the Commission does not consider that providing assistance to a limited number of elite performers in one particular sport can amount to the promotion of public health and therefore this is not a charitable purpose under "other matters beneficial to the community".

Public benefit

25. In order to be charitable, the benefits from an Applicant's purposes must be available to a sufficient section of the community. Any private benefits arising from the Applicant's purposes 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

⁶ 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.

⁷ *McGregor v Commissioner of Stamp Duties* [1942] NZLR 164; *Re Laidlaw Foundation* (1984) 13 DLR (4th) 491.

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 426; *Re Blyth* [1997] 2 Qd R 567, 582; *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

26. There are two aspects to the public benefit test, that is:
- there must be an identifiable benefit, assessed in the light of modern conditions and
 - the benefit must be to the general public or to a sufficient section of the public.¹⁰
27. In relation to the first aspect, the Commission considers that some benefits will result from the Applicant's purposes.
28. In relation to the second aspect, in *Travis Trust v Charities Commission*, Joseph Williams J stated:

An excellent exposition on the nature of community or public benefit can, with respect, be found in the decision of Bleby J in the South Australian Supreme Court case of Strathalbyn Show Jumping Club Inc. v Mayes.¹¹ In that case, the question was whether the members of two separate polo clubs and a polo grounds association were a sufficient section of the public.

...

[I]n the Strathalbyn case, Bleby J found that the rules of admission in each of the three polo clubs rendered them essentially private. He said:

*Although the membership rule of each of the three clubs are quite different, they have a common feature, namely, that admission to membership and exclusion from membership is vested in the relatively small Board of Directors or committee of management. It is not open to any member of the public who wishes to join. Such provisions are not surprising. They are common to great many sporting and other associations of persons who have a common interest. ... **It indicates, however, that those who may benefit from the provisions of the first limb of Trust Deed constitute a highly restricted class ... It is not a class which is open to members of the public or any significant section of it. The class of persons on whom the benefit is conferred is a group or groups of individuals who have a common interest in the playing of polo and who have been admitted to membership by the controlling body of the organisation.** Even if there were less stringent restrictions on or qualifications for membership, I doubt whether the class or beneficiaries would meet the necessary public interest test.¹²*

29. Hubert Picarda, in *The Law and Practice Relating to Charities*, states:

There is, as Viscount Simonds pointed out in IRC v Baddeley, a distinction

*'between a form of relief extended to the whole community yet, by its very nature, advantageous only to the few, **and a form of relief accorded to a selected few out of a larger number equally willing and able to take advantage of it**.'*¹³

¹⁰ See Tudor on Charities, 9th edition, London, Sweet & Maxwell, 2003, at 7.

¹¹ (2001) SASC 73.

¹² (2009) 24 NZTC 23,282, 23,281-2.

¹³ Hubert Picarda, *The Law and Practice Relating to Charities*, 3rd Ed., London, Butterworths, 1999 at 21.

30. Picarda also opines:

*A bridge which is available for all the public may undoubtedly be a charity and it is indifferent how many people use it. But confine its use to a selected number of persons, however numerous and important, it is then clearly not a charity.*¹⁴

31. Later he states:

*If membership is open to all persons (other than disorderly or other self-disqualifying persons) there should be held to be a sufficient public benefit.*¹⁵

32. In line with the references cited above, the Commission will consider whether there are unreasonable or unjustifiable restrictions placed on who may benefit from the activity in determining whether sport and recreation bodies provide a public benefit.

33. In its letter of 31 August 2010, the Applicant states:

*Our emphasis is primarily on providing a level of support greater than that the club system can **provide to those rowers with the potential and the will to represent New Zealand.***

34. The Commission considers that the provision of coaching, equipment and logistical support to rowers in the South Island who have the potential to represent New Zealand will provide benefits to only a limited group of elite athletes. The Commission also notes the stringent restrictions on admission of "Active Rowing Members" in clause 4.1(b) and clause 5 of the rules. The Commission concludes that participation in such a squad is restricted to a limited number of people based on their skill or ability and it will not be open to anyone who wishes to participate. Accordingly, the Commission does not consider that the benefits from the Applicant's purposes will not be available to a significant section of the public.

35. In line with the above case law, the Commission considers that the benefits resulting from the Applicant's purposes and activities will accrue to private individuals. Any benefits conferred on the community at large are too remote to give the purposes a charitable nature.

Applicant's submissions

36. In its letter of 18 October 2010, the Applicant states:

We would like to point to our catchment area as an example of public benefit; 2000 young athletes have the opportunity to aspire to RPC support. These are not all elite rowers but young people with a burning desire to emulate the deeds of the RPC athletes, currently 12 included in the national squad.

¹⁴ Ibid at 24.

¹⁵ Ibid, at 134.

37. The Commission does not consider that a statement that an Applicant has a catchment area of 2000 people provides evidence that a benefit is being provided to this number of people.

Conclusion

38. The Commission concludes that the Applicant's current and proposed purposes set out in clause 2 of its rules and its activities are non-charitable for the reasons stated above.

Charities Commission's determination

39. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that it is not established and maintained exclusively for charitable purposes, as required by section 13(1)(b) 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

29 November 2010
Date