

Registration decision for The New Zealand Centre for Local Government Studies Trust

The facts

1. The New Zealand Centre for Local Government Studies Trust (the Applicant) applied to the Charities Commission for registration as a charitable entity under the *Charities Act 2005* (the Act) on 7 July 2010.
2. The Applicant's objects are set out in clause 4.1 of its constitution;
 - 4.1. *Purposes: The Trustees shall hold the Trust Fund upon trust to pay or apply in New Zealand the income and the capital of the Trust Fund in such amounts, at such times, and subject to such terms and conditions, as the Trustees may decide for the purposes of:*
 - 4.1.1. *The promotion of a heightened awareness and understanding of, and knowledge about, the general practice and performance of Local Government, and the related environmental and resource management issues within the community in New Zealand;*
 - 4.1.2. *Fostering the exchange of ideas, information and knowledge concerning the general practice and performance of Local Government and the related environmental and resource management issues among scholars, researchers, members of the professions and interested members of the public;*
 - 4.1.3. *The promotion of research into matters concerning the general practice and performance of Local Government and the environment and resource management in any way;*
 - 4.1.4. *The promotion of academic programmes in Local Government, urban economics, resource economics, public policy and environmental studies;*
 - 4.1.5. *The promotion of training and development programmes for professional practitioners focused, among other relevant matters, on the efficient and effective practise of Local Government, efficient use of natural resources, the costs and benefits of different options for the allocation or use of resource, the rights of property owners (and particularly the protection of those rights) and scientifically robust, research-based and rational decision-making processes;*
 - 4.1.6. *The promotion of economic analysis as a tool in the assessment of proposals by Local Government and for any proposals having an impact on the environment and resource allocation;*
 - 4.1.7. *The promotion of scientifically robust, research-based and rational decision making processes at all levels of Government and in matters concerning the environment and resource allocation;*
 - 4.1.8. *Such other charitable purposes as the Trustees may decide.*

- 4.2. *Means of achieving purposes: The Trustees may, in order to achieve the purposes of the Trust, in addition to all other powers vested in the Trustees undertake such activities and enterprises as may be necessary or desirable including:*
- 4.2.1. *Promote awareness of Local Government practice and performance and environmental awareness and understanding of environmental and resource allocation issues and education which promotes such awareness and understanding of both Local Government and environmental and resource allocation issues;*
 - 4.2.2. *Providing a resource for individuals and groups attempting to improve the implementation of the Local Government Act 2002, The Building Act 2004, and the Resource Management Act 1991;*
 - 4.2.3. *Providing a panel of experts to carry out research or prepare technical evidence for Central Government Select Committees, Local Government hearings Committees, and resource management hearing committees and environmental court and other court cases;*
 - 4.2.4. *Establishing and managing a web page to promote the effective distribution of information, press releases, reports and model planning documents from the NZCLGT and other sources;*
 - 4.2.5. *Organising and participating in lectures, seminars and training sessions;*
 - 4.2.6. *Providing scholarships;*
 - 4.2.7. *Publishing in any media, articles, books, research papers and other materials;*
 - 4.2.8. *Such other activities and enterprises to further the charitable purposes of the Trust as the Trustees may decide.*
3. The Commission analysed the application for registration and on 20 July 2010 sent the Applicant a letter requesting further information regarding the activities of the Applicant carried out under clause 4.
4. The Applicant responded to the Commission's letter on 22 July 2010, stating that:

... the Trust does not yet exist and so it is not possible to use current activities as a guide to what the Centre intends doing in the future.

It is probably most helpful then, to describe the background that have given rise to his application, because that does give a reasonable indication of its general purpose and some useful indication of the proposed focus of some of its particular research and education programmes. . . .

A group of farmers and other people associated with construction, infrastructure and general development in Rodney District and nearby councils have been attempting to keep Rodney out of the Auckland Council but have now decided that the Super City is going to happen and it is best to prepare for it and to cooperate with the Council in seeking to achieve the claimed benefits. Their natural instinct was to form a Society (which will probably be Incorporated shortly) to work with the new Council to ensure that their members' rural interests would be properly understood and represented under the new structure.

...

However, these groups have also recognized that such an organization would have to be well informed on matters of local body governance, community wellbeing, environmental management, and development economics, if they wanted their voice to be heard.

...

Consequently, the group . . . recognise they should form a Society to advocate their interest, but be able to draw on a separate research organization established and funded to carry out independent research. Such an organization should be a Charitable Trust registered for Education purposes.

...

The information and research generated by the Trust would be freely available to the general community and not be restricted to the proposed Rodney based group (which is still working on a name). The group decided to set up the Incorporated Society, and apply for the Charitable Trust in parallel, so as to have both organizations in place prior to the Local Government Elections in October.

...

The Centre's task will be to provide information for the Society to pass on to the Auckland Mayor and Councillors and of course will make the information generally available to the community by its proposed Web Page and email distributions. This structure means that the education activities of the Charitable Trust will be separate from the Advocacy role of the proposed Society.

5. The Commission analysed the response and on 4 August 2010 sent the Applicant a notice that may lead to decline on the basis that the Applicant did not meet the definition of "an entity" in section 13(1) of the *Charities Act 2005* because in its letter of 22 July 2010 the Applicant stated that "the Trust does not yet exist" and referred to "the **proposed** organisation" and "the **proposed** trustees". The notice also stated that the centre appeared to have been created to promote particular points of view for groups of people, which will not amount to advancing education.

6. The Applicant responded to the notice on 9 August 2010, stating that:

Over the next two days, I shall visit the proposed Trustees and get their witnessed signatures on the last page and initials on all pages. I shall then post them to the Commission.

...

The Trustees have no idea what "particular point of view" their research will uncover, and who will choose to make use of it.

...

The Trust will also supplement its educational purpose by delivering information that is "beneficial to the community".

...

The "education purpose" of the trust and its education function would assist in these "beneficial purposes" as follows:

- *promoting public health (by providing science-based standards for measuring and ranking soil contamination and air and water pollution and identifying effective means of environmental monitoring.)*

- *providing public works and services (by researching the most effective ways of providing on site waste water treatment, treatment of drinking water, and both providing and financing roads. Many communities are continuing to use expensive central large scale systems rather than the new generation of smaller decentralized systems which put the discharge water and nutrients to good use.)*
- *protecting the environment. (by identifying methods and rules that provide the right incentives so as to encourage and enable revegetation, afforestation, reforestation and conservation. Many District Plans have rules which unintentionally discourage such activity.)*
- *protecting human life (by researching and identifying effective methods of catchment management and flood control.)*

The aim of this research and education is precisely “to educate the public so they can choose for themselves, starting with neutral information, to support or oppose certain views.” Local Government in New Zealand is facing major reforms from many directions. Groups around the country are now seeking independent professional advice on these proposed reforms and the NZCLGS Trust is being established to help supply that advice as, when, and where, the needs arise.

7. The Applicant supplied a further submission on 25 August 2010, stating that:

This year alone I have personally been invited to present papers on urban development economics and related issues at four international conferences – one in Australia, one in the United States and two in India.

...

I could provide many examples of such reports and papers, prepared for other organizations, and delivered to both local and international conferences. However, the most relevant evidence is an extract from an email from a group of residents in Mangawhai. These were 55 households who were facing demands from their local council to pay up to \$30,000 each to make a forced connection to a sewage line. They sought my assistance as a researcher, expert in Local Government and Resource Management issues. My report demonstrated that the demands were unlawful. The group presented this report to the Council (without my involvement at all) and council apologized and withdrew the demands.

...

The Jack Boyd Drive residents’ report is absolutely typical of the kind of projects that the Centre for Local Government Studies will be undertaking, if present requests and enquiries are anything to go by.

As I have already advised, the Local Government and Environment Select Committee has asked me to provide a supplementary submission (by the 7th September) enlarging on the association between low-build rates in the construction sector and rising unemployment, especially among unskilled young males, drawing on both local and international experience.

...

The Centre has NOT been created to promote a particular point of view for a single group of people. People and groups are lined up, waiting to fund the Centre once it is registered, and numerous people groups and individuals are wanting the Centre to carry out research from one end of the country to the other.

8. One of the Applicant's trustees provided a further email on 21 September 2010 which stated that he had met with the Chief Planning Officer and the Manager responsible for the new Spatial Plan for the Auckland Council:

He advised me that he was very impressed by my research papers and published essays and asked my opinion on experience with overseas jurisdictions in several key areas.

Affordable housing was a key issue.

We met for two and a half hours and I explained that I was in the process of seeking registration of the NZ Centre for Local Government Studies with the charities commission and he wished me success.

We then discussed how I might be brought into the advisory 'loop'. He said my input (and the input of my colleagues around the world) was valued because of its independence.

He is already being bombarded by pressure groups and lobbyists who all make claims which seem to be opinion rather than evidence based.

He made it quite clear that he needs assistance in sorting out the wheat from the chaff.

I am keen to help because it is vitally important that the Auckland Council works.

The odds are against it but we can learn from the experience in Montreal (which voted to de-amalgamate after only two years) and from Toronto which seems to be heading in the same direction.

The issues

9. 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 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, 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

10. 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.

11. 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 benefiting the public or a sufficient section of the public.
12. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
13. In considering an application for registration, section 18(3)(a) of the Act requires the Commission to have regard to the entity's activities at the time the application was made, the entity's proposed activities, and any other information that the Commission considers relevant.

Charities Commission's analysis

14. The Commission does not consider that the Applicant's purposes in clause 4.1 indicate an intention to relieve poverty or advance religion. The Applicant's purposes have therefore been considered under advancement of education and "other matters beneficial to the community".

Advancement of education

15. In order to advance education a purpose must provide some form of education and ensure that learning is advanced. Education does not include advertisements for particular goods or services, promotion of a particular point of view, or the study of subjects that have no educational value.²
16. In *Re Shaw (deceased)*,³ the Court held that "there is no element of teaching or education combined with this [increase of public knowledge] nor does the propaganda element in the trusts tend to more than to persuade the public that the adoption of the new script would be "a good thing", and that, in my view, is not education".⁴
17. Similar results were arrived at in *Re Hopkins' Will Trusts*⁵ in which there was a bequest to the Francis Bacon Society Inc for the purposes of 'finding the Bacon-Shakespeare manuscripts'. Wilberforce J wrote that in order to qualify as educational research:

*Research must either be of educational value to the researcher or must be so directed as to lead to something which will pass into the store of educational material, or so as to improve the sum of communicable knowledge in an area which education may cover – education in this last context extending to the formation of literary taste and appreciation.*⁶

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

² *In re Shaw (deceased)* [1957] 1 WLR 729; as interpreted in *Re Hopkins' Will Trusts* [1965] 1 Ch 669. See also *Re Collier* [1998] 1 NZLR 81.

³ [1957] 1 WLR 729.

⁴ [1957] 1 WLR 729, 738.

⁵ [1965] 1 Ch 669.

⁶ [1965] Ch 669 at 680.

18. In *Re Elmore, deceased*,⁷ the testator's manuscripts were held to be literally of no merit or educational value. That decision followed *Re Pinion, Deceased*,⁸ in which case Harman LJ thought there to be "no useful object to be served in foisting upon the public this mass of junk" at issue in that case.
19. In New Zealand in *Re Collier (deceased)*,⁹ 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 a public benefit, in that it somehow assists with the training of the mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the work must reach some minimal standard. For instance, in Re Elmore [1968] VR 390 the testator's manuscripts were held to be literally of no merit or educational value.*¹⁰
20. Hammond J held that the bequest in question (for publication of a book) did not qualify as charitable under the test:
- In my view, the minimal threshold test is not met. There is no educative value, or public utility in the 'book'. Further, it is no more than an attempt to perpetuate a private view held by Mrs Collier.*¹¹
21. In *Vancouver Society of Immigrant and Visible Minority Women v MNR*,¹² Iacobucci J wrote:
- So long as information or training is provided in a structured manner and for a genuinely educational purpose – that is, to advance the knowledge and abilities of the recipients – and not solely to promote a particular point of view or political orientation, it may properly be viewed as falling within the advancement of education.*¹³
22. Courts have therefore held that in order for a trust to be charitable for the advancement of education, the information provided must not be limited to one side of complex issues. The test to decide whether the activity is political or genuinely educational is "one of degree of objectivity or neutrality surrounding the endeavour to influence, and assesses whether the political change is merely a by-product or is instead the principal purpose of the gift or institution".¹⁴

⁷ [1968] VR 390.

⁸ [1965] 1 Ch 85, 107.

⁹ [1998] 1 NZLR 81.

¹⁰ [1998] 1 NZLR 81, 91-92.

¹¹ [1998] 1 NZLR 81, 92.

¹² [1999] 169 DLR (4th) 34.

¹³ [1999] 169 DLR (4th) 34, 113.

¹⁴ *Re Bushnell (deceased) Lloyds Bank Ltd and others v Murray and others* [1975] 1 All ER 721 as applied by *Public Trustee v. Attorney-General* (1997) 42 NSWLR 600, 608.

23. A distinction must be made between propagating a view that can be characterised as political and the desire “to educate the public so that they could choose for themselves, starting with neutral information, to support or oppose certain views”.¹⁵ Therefore a disposition can be validly construed as being for educational purposes notwithstanding that, because of the educational programme, the law may be changed.¹⁶
24. The Commission considers that the stated purposes set out under clause 4.1 could be charitable under advancement of education if these purposes are undertaken in an objective and impartial manner. In order to determine whether this is the case, the Commission has assessed information provided by the Applicant about its background and proposed activities.
25. In its letter of 22 July 2010, the Applicant states:

*A group of farmers and other people associated with construction, infrastructure and general development in Rodney District and nearby councils have been attempting to keep Rodney out of the Auckland Council but have now decided that the Super City is going to happen and it is best to prepare for it and to cooperate with the Council in seeking to achieve the claimed benefits. Their natural instinct was to form a Society (which will probably be Incorporated shortly) to work with the new Council **to ensure that their members’ rural interests would be properly understood and represented under the new structure.***

...

*However, these groups have also recognized that such an organization would have to be well informed on matters of local body governance, community wellbeing, environmental management, and development economics, **if they wanted their voice to be heard.***

...

*Consequently, the group has taken advice and has read Mr Garrett’s own commentary in the news media, and **recognise they should form a Society to advocate their interest, but be able to draw on a separate research organization** established and funded to carry out independent research. Such an organization should be a Charitable Trust registered for Education purposes.*

...

The information and research generated by the Trust would be freely available to the general community and not be restricted to the proposed Rodney based group (which is still working on a name). The group decided to set up the Incorporated Society, and apply for the Charitable Trust in parallel, so as to have both organizations in place prior to the Local Government Elections in October.

...

***The Centre’s task will be to provide information for the Society to pass on to the Auckland Mayor and Councillors** and of course will make the information generally available to the community by its proposed Web Page and email distributions. This structure means that the education activities of the Charitable Trust will be separate from the Advocacy role of the proposed Society. [Emphasis added]*

¹⁵ *Re Bushnell (deceased)* [1975] 1 All ER 721, 729.

¹⁶ *In the Estate of Cole (deceased)* (1980) 25 SASR 489, 495.

26. On 9 August 2010 the Applicant stated:

Local Government in New Zealand is facing major reforms from many directions. Groups around the country are now seeking independent professional advice on these proposed reforms and the NZCLGS Trust is being established to help supply that advice as, when, and where, the needs arise.

27. In a letter of 25 August 2010, the Applicant referred to a submission that one of its trustees had made in May 2010 on behalf of a group of Mangawhai residents, who:

... sought my assistance as a researcher, expert in Local Government and Resource Management issues. My report demonstrated that the demands were unlawful. ...

"The ... residents' report is absolutely typical of the kind of projects that the Centre for Local Government Studies will be undertaking, if present requests and enquiries are anything to go by.

... People and groups are lined up, waiting to fund the Centre once it is registered, and numerous people groups and individuals are wanting the Centre to carry out research from one end of the country to the other.

28. In the Commission's view, the Applicant's submissions clearly indicate that its activities will extend much further than merely educating the public on local government in an impartial and objective way. Instead, they will include the advocacy of particular points of view in relation to local government and its functions, which are not neutral and objective.

Other matters beneficial to the community

29. 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)¹⁷, which are:

- 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

¹⁷ *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.

- 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.

30. In *Travis Trust v Charities Commission*,¹⁸ Joseph Williams J noted that:

*... regard must be had to the particular words of the preamble and, it has now long been held, any cases in which purposes have been found to be within the spirit and intendment of the preamble by analogy.*¹⁹

31. Furthermore, not all organisations which have purposes that benefit the community will be charitable. In *Williams Trustees v Inland Revenue Commissioners*,²⁰ Lord Simonds wrote:

The second is that the classification of charity in its legal sense into four principal divisions by Lord Macnaughten in Income Tax Commissioners v Pemsel [1891] A.C. 531 at 583 must always be read subject to the qualification appearing in the judgement of Lindley L.J. in In re Macduff [1896] 2 Ch, 451 at 466: “Now Sir Samuel Romilly did not mean, and I am certain Lord Macnaughten did not mean to say that every object of public general utility must necessarily be a charity. Some may be and some may not be.” This observation has been expanded by Lord Cave L.C. in this House in these words: “Lord Macnaghten did not mean that all trusts for purposes beneficial to the community are charitable, but that there were certain beneficial trusts which fell within that category: and accordingly to argue that because a trust is for a purposes beneficial to the community it is therefore a charitable trust is to turn round his sentence and to give it a different meaning. So here, it is not enough to say that the trust in question is for public purposes beneficial to the community or for the public welfare: you must also show it to be a charitable trust. See Attorney-General v National Provincial & Union Bank of England [1924] A.C. 262, 265.”²¹[Emphasis added]

32. The Applicant, in its response of 9 August 2010, stated:

The Trust will also supplement its educational purpose by delivering information that is “beneficial to the community”.

...

The “education purpose” of the trust and its education function would assist in these “beneficial purposes” as follows:

- *promoting public health (by providing science-based standards for measuring and ranking soil contamination and air and water pollution and identifying effective means of environmental monitoring.)*
- *providing public works and services (by researching the most effective ways of providing on site waste water treatment, treatment of drinking water, and both providing and financing roads. Many communities are*

¹⁸ (2009) 24 NZTC 23,273.

¹⁹ Ibid at para 20.

²⁰ [1947] AC 447, 455. (Applied by Kennedy J *In re Cumming* [1951] NZLR 498).

²¹ [1947] AC 447, 455.

continuing to use expensive central large scale systems rather than the new generation of smaller decentralized systems which put the discharge water and nutrients to good use.)

- *protecting the environment. (by identifying methods and rules that provide the right incentives so as to encourage and enable revegetation, afforestation, reforestation and conservation. Many District Plans have rules which unintentionally discourage such activity.)*
- *protecting human life (by researching and identifying effective methods of catchment management and flood control.)*

33. Promoting public health, providing public works and services, protecting the environment, and protecting human life are likely to be charitable purposes under “other matters beneficial to the community”. However, these are not stated purposes of the Applicant.

Political purposes

34. Political purposes have been defined as purposes directed at furthering the interests of any political party; or securing, or opposing, any change in the law or in the policy or decisions of central government, local authorities or other public bodies, whether in New Zealand or abroad.²²

35. The rule that political purposes cannot be charitable was set out by Lord Parker of Waddington in *Bowman v Secular Society*:²³

*... a trust for the attainment of political objects has always been held invalid, not because it is illegal, for everyone is at liberty to advocate or promote by any lawful means a change in the law, but because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift.*²⁴

36. In New Zealand, the *Bowman* case has been applied by the High Court in *Re Wilkinson (deceased)*,²⁵ when deciding the charitable status of the League of Nations Union of New Zealand, and in *Knowles v Commissioner of Stamp Duties*,²⁶ when deciding whether a temperance organisation was charitable.

37. The New Zealand Court of Appeal has also applied *Bowman* in *Molloy v Commissioner of Inland Revenue*²⁷ when considering whether a gift to the New Zealand Society for the Protection of the Unborn Child was tax deductible. In that case, Somers J held that a political purpose included both advocating and opposing any change in the law. He also noted that to preclude recognition as a valid charity the political object must be more than an ancillary purpose, it must be the main or a main object.

²² *Re Wilkinson* [1941] NZLR 1065, 1077.

²³ [1917] AC 406.

²⁴ [1917] AC 406, 442.

²⁵ [1941] NZLR 1065.

²⁶ [1945] NZLR 522.

²⁷ [1981] 1 NZLR 688.

38. In the United Kingdom, the *Bowman* case has been applied in *National Anti-Vivisection Society v Inland Revenue Commissioners*²⁸ and in *McGovern v Attorney-General*,²⁹ when the Court was considering the purposes of a trust established by Amnesty International. In the latter case, Slade J summarised his conclusions in relation to trusts for political purposes as:

- (1) *Even if it otherwise appears to fall within the spirit and intendment of the preamble to the Statute of Elizabeth, a trust for political purposes falling within the spirit of Lord Parker's pronouncement in Bowman's case can never be regarded as being for the public benefit in the manner in which the law regards as charitable.*
- (2) *Trusts for political purposes falling within the spirit of this pronouncement include, inter alia, trusts of which a direct and principal purpose is either:*
 - (i) *to further the interests of a particular political party; or*
 - (ii) *to procure changes in the laws of this country; or*
 - (iii) *to procure changes in the laws of a foreign country; or*
 - (iv) *to procure a reversal of government policy or of particular decisions of governmental authorities in this country; or*
 - (v) *to procure a reversal of government policy or of particular decisions of governmental authorities in a foreign country.*³⁰

39. Two reasons for the principle that the Court will not regard as charitable a trust which has a main object of procuring an alteration of the law were cited by Slade J:

*... first, the court will ordinarily have no sufficient means of judging as a matter of evidence whether the proposed change will or will not be for the public benefit. Secondly, even if the evidence suffices to enable it to form a prima facie opinion that a change in the law is desirable, it must still decide the case on the principle that the law is right as it stands, since to do otherwise would usurp the functions of the legislature.*³¹

40. The judge noted that the mere fact that political means were employed in furthering the non-political purposes of a trust would not necessarily render it non-charitable.

*If all the main objects of the trust are exclusively charitable, the mere fact that the trustees may have incidental powers to employ political means for their furtherance will not deprive them of their charitable status.*³²

41. In New Zealand in *Re Collier (deceased)*,³³ Hammond J upheld the principle that a trust with purposes of changing the law was not charitable, but also considered that a court could recognise an issue as worthy of debate even though the outcome of the debate could lead to a change in the law.

²⁸ [1948] AC 31.

²⁹ [1982] 1 Ch 321.

³⁰ [1982] 1 Ch 321, 340.

³¹ *Ibid* at 336-337.

³² *Ibid* at 343.

³³ [1998] 1 NZLR 81.

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

*I have considerable sympathy for that viewpoint which holds that a Court does not have to enter into the debate at all, hence the inability of the Court to resolve the merits is irrelevant [...] In this Court at least, there is no warrant to change these well established principles – which rest on decisions of the highest authority – even though admirable objectives too often fall foul of them.*³⁴

43. In *The Law and Practice Relating to Charities*, Hubert Picarda states:

*sustained efforts aimed at influencing policy-making process are similarly not charitable activities but are rather political*³⁵

44. In *Scarborough Community Legal Services v Her Majesty the Queen*,³⁶ a community based legal clinic had participated in a rally to protest against changes proposed by a provincial government to its Family Benefits programme and was involved in a committee whose activities were aimed at changing certain municipal by-laws. These activities were determined to be political and detracted from the clinic being held to be exclusively charitable.

45. In *Notre Dame de Grace Neighbourhood Association v Revenue Canada, Taxation Section*,³⁷ the tenants association failed to be registered as a charitable organisation because of its political activities. These included writing a letter to fight cutbacks in government funding and campaigns for the abolition of water tax and against the conversion of rental properties to condominiums.

46. Clause 4.2.3 of the Applicant's deed states that it will be providing "a panel of experts to carry out research or prepare technical evidence for Central Government Select Committees, Local Government hearings Committees, and resource management hearing committees and environmental court and other court cases".

47. In an email to the Commission on 23 July 2010 regarding this application, the Applicant stated:

I am currently advising the group seeking to register the above charity for education purposes. Naturally they want to avoid any challenges to their status on the basis of their being "political" rather than "educational". Much of this debate focuses on when advocacy becomes political activism. I am trying to establish the boundaries in my own mind, so I can provide appropriate advice.

I have attached a submission that I was personally invited to present to the Select Committee on Crown Research Institutes. The Chairman invited me to make this submission (because of my unique expertise and experience

³⁴ [1998] 1 NZLR 81, 90.

³⁵ Hubert Picarda, *The Law and Practice Relating to Charities*, 3rd edn (London: Butterworths, 1999) at 178.

³⁶ [1985] 1 CTC 98,85 DTC 5102 (FCA).

³⁷ [1988] 2 CTC 14,88 DTC 6279 (FCA).

in this area) on Friday in time for the Committee to receive it prior to the close-off date on the following Tuesday.

I believe this submission does not qualify as lobbying or political advocacy for the following reasons:

I was invited to make this contribution to the process.

The submission is based on knowledge, expertise and experience.

The submission is intended to provide useful background information which the Committee can use to make recommendations.

The information in the submission provides information related to the "five themes" but makes no specific recommendations for reform.

The submissions makes no recommendations to change the law.

The general recommendations (section 8) and the specific recommendations (section 9) are recommendations about policy and programmes rather than changes to the legal framework. [Emphasis added].

48. From the above, it appears that a main purpose of the Applicant is to assist various groups to influence policy making at a national and local government level. The Commission considers that this is a political purpose which is non-charitable.

Public benefit

49. 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.³⁸ 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.³⁹
50. In *Latimer v Commissioner of Inland Revenue*,⁴⁰ it was found that assisting Maori in the preparation, presentation and negotiation of claims before the Waitangi Tribunal was beneficial to the community. However, the research undertaken was high-quality historical research that was directed towards racial harmony, the beneficiaries were a significant section of New Zealand society, and the "majority of the members of the groups directly benefiting from the assistance would be at the lower end of the socio-economic scale". Blanchard J stated:

The evidence confirms that what is involved in the preparation of a case before the Waitangi Tribunal in relation to the land in question, and the intended product of the assistance to claimants is high quality historical research.

...

*The research funded by the trust is a means of finally determining the truth about **grievances long-held by a significant section of New Zealand society (on the figures given to us, up to ten per cent of the population) for the benefit of all members of New Zealand society.***⁴¹
[Emphasis added]

³⁸ *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.

³⁹ *Gilmour v Coats* (1949) AC 26; *Re Blyth* [1997] 2 Qd R 567 at 582; *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342 at 350.

⁴⁰ [2002] 3 NZLR 195 (CA).

⁴¹ [2002] 3 NZLR 195, 207.

51. He went on to state:

We have no doubt that in this case the public benefit which we have described is, in the context of New Zealand society at this time, of a charitable character. The assistance purpose of providing the Waitangi Tribunal with additional material which will help it produce more informed recommendations, leading in turn to the settlement of long-standing disputes between Maori and the Crown, is of that character. It is directed towards racial harmony in New Zealand for the general benefit of the community. That is not an object that can be regarded as political in nature and thus disqualified.⁴²

52. From information provided by the Applicant in its letters of 22 July, 9 August and 25 August 2010 and the purpose set out in clause 4.2.3, it appears that the Applicant will be assisting groups to influence policy-making at a national and local government level.

53. The Commission does not consider that this is analogous to the purposes set out in *Latimer*. This is because the Applicant is not restricted to assisting the resolution of “grievances long-held by a significant section of New Zealand society (... up to ten per cent of the population) for the benefit of all members of New Zealand society.”

54. The Commission therefore concludes that the Applicant’s purposes will not provide a benefit for a significant section of the public.

Applicant’s submission

55. In its email of 21 September 2010 the Applicant implies that one of its trustees may be invited to assist the Auckland Council “in sorting out the wheat from the chaff” in relation to claims made by pressure groups and lobbyists.

56. *Lysons and Another v Commissioner of Stamp Duties*⁴³ is authority for the proposition that a local body is likely to be charitable. The Commission, however, does not consider that any entity which assists a local body to execute its duties will necessarily be charitable by association. In addition, other information provided by the Applicant shows that one of its primary purposes is to act as an advocate in opposition to local government which is a non-charitable political purpose.

Conclusion

57. The Commission considers that the Applicant’s purposes in clause 4.1 are non-charitable for the reasons stated above.

⁴² [2002] 3 NZLR 195, 209.

⁴³ [1945] NZLR 738.

Section 61B of the *Charitable Trusts Act 1957*

58. 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. 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).⁴⁴
59. 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.*⁴⁵
60. The Commission has analysed the wording of the Applicant’s purposes, surrounding context, and its activities (as directed by section 18(3)(a) of the Charities Act). 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. The Commission does not consider that the purposes indicate an intention to create a substantially charitable trust.
61. On these bases, the Commission considers that the Applicant’s purposes are not substantially charitable and therefore section 61B of the Charitable Trusts Act cannot operate to validate the trust.

Commission’s determination

62. The Commission concludes 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 *Charities Act 2005*.

⁴⁴ *Re Beckbessinger* [1993] 2 NZLR 362, 373.

⁴⁵ *Re Beckbessinger* [1993] 2 NZLR 362, 376.

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

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Date