

## Registration decision: The Onehunga Enhancement Society Incorporated

### The facts

1. The Onehunga Enhancement Society Incorporated (the Applicant) was registered as an incorporated society under the Incorporated Societies Act 1908 on 21 June 2007. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 1 September 2007.
2. The Applicant's purpose is set out in clause 3 of its Rules:
  - “3. **Purpose of the Society**
  - 3.1 *The purpose of the Society is*
    - (a) *To represent the Onehunga community concerning Onehunga Bay, State Highway 20, public transportation, utilities and the betterment of the greater Onehunga environment;*
    - (b) *To do anything necessary, incidental or helpful to the above purpose.*
  - 3.2 *Pecuniary gain is not a purpose of the Society.”*
3. The Commission analysed the application and on 12 May 2008 sent the Applicant a letter advising that its application for registration might be declined because:
  - (a) the Applicant's purposes did not satisfy the charitable purpose requirements of the Act, as the Applicant's website and literature indicated that it had political purposes which were not ancillary to a charitable purpose; and
  - (b) the Applicant's winding up clause did not meet the requirements of section 13(1)(b)(ii) of the Act.
4. The Applicant responded in a letter dated 4 June 2008, advising that it was established to facilitate discussions between relevant parties to create an awareness of the obligation to preserve and compensate for damage done to the Onehunga area by the proposed widening of State Highway 20.
5. The Applicant stated that “political influence is not our purpose – our goal is to enhance the area for the local community ... for municipal betterment.” Political action is seen as a last resort, and “purely ancillary to our objective of preserving the environment for the betterment of the community.”

6. Further, the Applicant advised the Commission that it intended to amend its winding up clause to meet the requirements of the Act.
7. The Applicant also provided a copy of a letter from its solicitors dated 26 May 2008, which advised that the Applicant:

*"has the very narrow object of representing the Onehunga community on specific issues and the betterment of the greater Onehunga environment. On that basis we do not believe that the Society has any political purpose ... It is merely incidental that to achieve the best result for the Onehunga foreshore the Society must deal with the parties influencing that development, some of which are Government Departments."*

### **The issues**

8. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the Act. In this case, the key issues for consideration are:
  - (a) whether the Applicant is established and maintained exclusively for charitable purposes as required by section 13(1)(b)(i) of the Act; and
  - (b) if the Applicant has non-charitable purposes, whether those purposes are ancillary to a charitable purpose.

### **The law on charitable purposes**

9. Section 13(1)(b)(i) of the Act provides that to meet the essential requirements for registration, a society or institution must be established and maintained exclusively for charitable purposes.
10. Section 5(1) of the Act provides that "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". Section 5(3) of the Act provides that any non-charitable purpose must be merely ancillary to a charitable purpose.
11. Also, to be charitable at law, a purpose must be aimed at benefiting the public or a sufficient section of the public.
12. A primary purpose that is political is not considered to be charitable at law because the Courts have taken the view that it is not possible to judge whether a proposed change in the law will, or will not, provide a benefit to the public.<sup>1</sup> A political purpose includes a purpose to secure

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<sup>1</sup> *Knowles v Commissioner of Stamp Duties* [1945] NZLR 522; [1945] GLR 235 (CA). Also *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688; (1981) 5 TRNZ 1 (CA).

or oppose any change in the policy or decisions of local or central government.<sup>2</sup>

13. In considering an application for registration, section 18(3)(a) of the Act states that the Commission must 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.
14. The Commission must therefore have regard to the Applicant's activities in determining whether it has exclusively charitable purposes.

### **Charities Commission's analysis**

15. The purpose statement set out in clause 3.1 of the Applicant's Rules is worded in general terms. In order to determine whether it is exclusively charitable, the Commission has considered the Applicant's activities and other relevant information.
16. A Pamphlet provided by the Applicant, entitled "Onehunga, The Onehunga Enhancement Society" lists nine goals that are drafted in a manner suggestive of advocacy. For example:
  - Goal 1 states that the Government, Auckland Regional Council, Auckland City Council and Manakau City Council **must** repair the damage caused to the Onehunga area;
  - Goal 4 states that a utilities corridor **must** be included in the State Highway 20 project;
  - Goal 5 states that the replacement of the Mangere pedestrian bridge **must** be included in the State Highway 20 project;
  - Goal 9 seeks reconsideration of alternatives to the State Highway 20 plan.
17. The Applicant's website, <http://toesociety.org.nz>, contains a draft letter for public signature asking the Minister of Transport to intervene and defer all work on State Highway 20.
18. The Commission considers that the goals reproduced above, to advocate that government agencies must change their policies and undertake certain tasks, indicate political purposes. The Commission therefore concludes that the Applicant is not established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act.

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<sup>2</sup> *In re Wilkinson (dec'd)* [1941] NZLR 1065; [1941] GLR 533. Also *Bowman v Secular Society Ltd* [1917] AC 406; [1916-17] All ER 1.

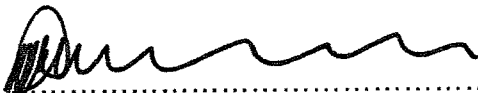
19. The Commission has considered whether the Applicant's political purpose can be considered ancillary to a charitable purpose, under section 5(3) of the Act. Based on the information provided, the Commission does not consider that the Applicant's political activities are ancillary or secondary to a charitable purpose.

### **Charities Commission's determination**

20. 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 exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. The Applicant's purposes include political purposes, which are not charitable and are not ancillary to a charitable purpose.

**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

5/8/08

Date