

Registration decision: The Otago Model Engineering Society Incorporated

The facts

1. The Otago Model Engineering Society Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 28 October 1943.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 16 October 2008.
3. The Applicant's purposes are set out in clause 2 of the Rules:
 - (a) *To conduct a social organisation or society for the purpose of bringing together persons interested in model-making.*
 - (b) *To encourage model-making generally by competitions, lectures, discussions, social functions, exhibitions, meetings and any other suitable and proper means.*
 - (c) *To purchase, take on lease or otherwise acquire any real or personal property and any rights or privileges either necessary or convenient for any of the purposes of the Society and to erect, maintain, improve or alter any buildings, premises or works as may be required.*
 - (d) *To sell, lease, exchange, mortgage, charge or otherwise deal with all or any part of the real or personal property of the Society.*
 - (e) *To borrow or raise money by the issue of debentures or upon mortgage or charge of any real or personal property of the Society or without giving security.*
 - (f) *To deal with the funds of the Society in furthering the Objects of the Society and to invest any funds not immediately required for such purpose.*
 - (g) *To subscribe to and become a member of any other Association, whether incorporated or not, whose objects are altogether or in part similar to those of the Society.*
 - (h) *To co-operate with other persons and bodies corporate for any of the foregoing objects."*
4. The Applicant's winding up clause (clause 15) provided:

"If upon the winding up or dissolution of the Society there remains after the satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to or distributed among the Members of the Society but shall be given or transferred to some other organisation or body having objects similar to the Objects of the Society, or to some other charitable organisation or purpose, within New Zealand."

5. The Commission analysed the application for registration and on 14 May 2009, sent the Applicant a notice advising that its application for registration might be declined on the basis that clause 15 does not restrict distribution of surplus assets on winding up to charitable purposes. The Commission also sought further information about the Applicant's activities undertaken pursuant to clause 2.
6. On 10 June 2009, the Applicant responded to the notice, advising that it had amended clause 15 at a General Meeting.
7. On 18 June 2009, the Applicant provided information about its activities carried out pursuant to clause 2:
 - The Applicant is a club that encourages the building of miniature locomotives and steam powered miniature traction engines. These are built as a hobby in either private members' or the club's workshop and are displayed working or hauling members and/or the public.
 - The club has a safety-fenced pond for members of the boat group to display and operate miniature water-borne craft.
 - Another section of the club builds and races tethered internal combustion high-speed cars.
 - Other members build machine and hand tools.
 - The club has rooms with an exhibition hall and workshop.
 - There is an annual week-long exhibition at the club grounds, and the grounds are also opened up to the public twice a month for train rides, and general model running during the warmer months.
8. The Commission analysed the further information provided by the Applicant and on 19 June 2009, sent the Applicant a second notice advising that its application may be declined on the basis that while some of its activities could advance education, the purposes in clause 2 are not exclusively charitable according to law. The Applicant was also advised that the proposed change to the winding up clause met registration requirements.
9. On 21 July 2009, the Applicant responded to the second notice, providing more information about the activities carried out pursuant to section 2:
 - The club is involved with the public and other charitable organisations, such as the Sara Cohen School for the Disabled and local kindergartens.
 - The club grounds are available to the public for picnics and other uses.
 - The club educates its members in the advancement of their hand and craft skills through the use of the club workshop and visits to other members' workshops, places of manufacturing and places of historical importance.
 - Junior members are taught the basics of hand skill before going into the trades and/or the professions.

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, as required by section 13(1)(b)(i) of the Act. In particular, whether the Applicant's purposes fall within the definition of charitable purpose in section 5(1) of the Act.

The law on charitable purpose

11. Under section 13(1)(b) of the Act, a society or institution qualifies for registration if it is established and maintained for exclusively charitable purposes and is not 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.¹ This means that the purpose must be directed at benefitting the public or a sufficient section of the public.
13. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
14. 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

15. The Commission considers that the Applicant's purposes set out in clauses 2(c) to (h) are powers.
16. The Commission considers that the remaining purposes set out in clauses 2(a) and (b) do not amount to the relief of poverty or the advancement of religion. These purposes have therefore been considered in relation to the advancement of education and "any other matter beneficial to the community".

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

Advancement of education

17. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced.
18. In *Re Shaw (deceased)*, the Court held that "if the object be merely the increase of knowledge, that is not in itself a charitable object unless it be combined with teaching or education."²
19. The Commission considers that some of the Applicant's activities, such as teaching junior members hand skills and arranging visits to manufacturers and places of historical importance, could advance education. However, the purposes set out in clauses 2(a) and (b) do not necessarily indicate an intention to advance education.

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 be within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth).³
21. The Applicant has stated that every year it opens its grounds to the students of the Sara Cohen School for the Disabled, and to the public for train rides, general model running, picnics and other uses. Therefore, some benefit may be provided to the community.
22. However, the Applicant's purposes set out in clauses 2(a) and (b), of conducting a social organisation to bring together people interested in model-making and encouraging model-making generally, do not appear to be within the spirit and intendment of any of the purposes set out in the Preamble to the Statute of Elizabeth.

Section 61A of the Charitable Trusts Act 1957

23. The Commission has considered whether the purposes set out in clauses 2(a) and (b) could be held to be charitable under section 61A of the Charitable Trusts Act 1957. Section 61A states:

61A Trusts for recreational and similar purposes

- (1) *Subject to the provisions of this section, it shall for all purposes be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time*

² *In Re Shaw (deceased)* [1957] 1 WLR 729, 737.

³ *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.

occupation, if the facilities are provided in the interests of social welfare:

Provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.

- (2) *The requirement of subsection (1) of this section that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless—*
- (a) *The facilities are provided with the purpose of improving the conditions of life for the persons for whom the facilities are primarily intended; and*
 - (b) *Either—*
 - (i) *Those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity, disablement, poverty, race, occupation, or social or economic circumstances; or*
 - (ii) *The facilities are to be available to the members of the public at large or to the male or female members of the public at large.*
- (3) *Without restricting the generality of the foregoing provisions of this section it is hereby declared that, subject to the said requirement, subsection (1) of this section applies to the provision of facilities at public halls, community centres, and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.*

24. In *Clarke v Hill and Granger*⁴ the High Court considered whether encouraging youth radio and providing club rooms for groups interested in radio was a charitable purpose. In that case, Priestley J held:

"Although amateur radio is clearly a hobby, participation in radio operation, radio transmission, the examination and construction of radio sets, and the study of the history of radio transmission as a form of technology and human development have a high educative value. Human history and societies (particularly technologically advanced western societies of which New Zealand is one), were transformed by the development around the start of the last Century of radio transmissions and broadcasts."

25. In applying section 61A of the Charitable Trusts Act, Priestley J held that amateur radio could be regarded as a recreational or leisure time occupation and:

"...the provision of club rooms for youth, scouts and school groups for amateur radio, particularly when coupled with radio's educative function, constitutes the provision of a 'facility' which will improve the conditions of life for such people and will satisfy a need which might not otherwise be available for young people generally."⁵

⁴ High Court, Auckland, 2 February 2001, Priestley J, CP 68-SD99, p5.

⁵ High Court, Auckland, 2 February 2001, Priestley J, CP 68-SD99, p6-7.

26. In *Guild v Inland Revenue Commissioners*⁶ the House of Lords held that providing sports facilities for the pupils of schools and universities was charitable by virtue of the United Kingdom equivalent of section 61A of the Charitable Trusts Act (section 1 of the Recreational Charities Act 1958). Lord Keith of Kinkel held that these facilities were provided with the object of improving the pupils' conditions of life:

"There cannot surely be any doubt that young persons as part of their education do need facilities for organised games and sports both by reason of their youth and by reason of their social and economic circumstances. They cannot provide such facilities for themselves but are dependant on what is provided for them."

27. The Commission considers that model-making may be a recreational and leisure time occupation. However, the Commission does not consider that the Applicant's purposes are meeting any particular need of the community which as a matter of social ethics ought to be met nor are they provided with the purpose of improving the condition of life for the persons for whom they are primarily intended.
28. The Commission notes that in addition to "junior members" (people between the ages of 15 and 18), the Applicant also makes provision for "social members", "full members", "country members", "life members" and "family members". These categories indicate that the majority of members are likely to be over the age of 18 and therefore the Applicant's purposes are less likely to be satisfying a particular need.

Public or private benefit?

29. 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.⁷ 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.⁸
30. In *Inland Revenue Commissioners v Yorkshire Agricultural Society*⁹, Lord Atkin said:

"There can be no doubt that a society formed for the purpose merely of benefiting its own members, though it may be to the public advantage that its members should be benefited by being educated or having their aesthetic tastes improved or whatever the object may be, would not be for a charitable purpose, and if it were a substantial part to the object that it should benefit its members I should think that it would not be established for a charitable purpose only."

⁶ [1992] 2 AC 310, 320.

⁷ *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.

⁸ *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.

⁹ [1928] 1 KB 611, 631.

31. The Commission considers that the purposes in clauses 2(a) and (b) appear to be established predominantly for the enjoyment and pleasure of the Applicant's members, and there is no evidence of sufficient public benefit for these purposes to be considered charitable.

Applicant's submissions

32. The Applicant, in its letter of 21 July 2009, submitted that it is "heavily involved with the public and other charitable organisations". While some of the Applicant's activities appear to be charitable, the purposes set out in clauses 2(a) and (b) are not exclusively charitable.

Charities Commission's determination

33. 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.

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


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Trevor Garrett
Chief Executive

21/9/09
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Date