

Registration decision: SEED Foundation Incorporated

The facts

1. SEED Foundation Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 22 December 2005 and was formed to spot, encourage, enhance and develop (SEED) exceptional tennis players in New Zealand. The Applicant applied for registration on 20 June 2007.
2. The Applicant's Constitution provides as follows:

"4 OBJECTS

4.1 General: The Foundation is formed to promote the following objects:

 - 4.1.1 Spot:** to independently, based in accordance with criteria agreed by the Committee, identify and select Exceptional Tennis Players;
 - 4.1.2 Encourage:** to demonstrate pathways for promising New Zealand tennis players to excel;
 - 4.1.3 Enhance:** to support Exceptional Tennis Players in meeting tennis-related costs such as, travel, tournament entry, nutrition, gear, support staff and other associated costs;
 - 4.1.4 Develop:** to develop Exceptional Tennis Players as positive role models for both New Zealand and tennis;
 - 4.1.5 Promote:** to promote the development and profile of Exceptional Tennis Players locally and internationally;
 - 4.1.6 Profile:** to raise the profile of tennis in New Zealand through the promotion of Exceptional Tennis Players with an aim to increase interest and participation in tennis at amateur levels;
 - 4.1.7 Awareness:** to facilitate public awareness of Exceptional Tennis Players and events in which they partake;
 - 4.1.8 Independent:** to ensure the Foundation operates and is perceived to operate independently, so that selection decisions are seen as being based only on agreed selection criteria and not subject to outside influence or individual or regional agendas: ..."
 3. The Commission analysed the Applicant's application for registration, and on 6 November 2007, sent the Applicant a notice that may lead to a decline for two reasons:

- (i) the Applicant's purposes did not meet the registration requirements in section 5(1) of the Charities Act 2005 (the Act); and
 - (ii) the Applicant's winding up provision did not meet the requirements of section 13(1)(b)(ii) of the Act.
4. The Applicant responded on 29 February 2008 stating that it had amended its winding up clause to conform to the requirements of the Act. Concerning the purposes, the Applicant explained that clauses 4.1.1 to 4.1.4 are merely ancillary to the main purpose, which is to develop amateur tennis in New Zealand.
5. The Commission sent the Applicant a second notice that may lead to a decline on 11 March 2008 on the basis that clauses 4.1.1 to 4.1.3 were not charitable and were not ancillary purposes.
6. The Applicant responded in a letter dated 6 May 2008 reiterating its arguments that clauses 4.1.1 to 4.1.4 were merely ancillary to its overall objective of promoting tennis as an amateur sport. The Applicant also proposed replacing clauses 4.1.1 to 4.1.4 with the following objective:

"Promotion of Tennis in New Zealand: To promote community participation in tennis as an amateur sport providing healthy recreation in New Zealand by developing role models for tennis and the wider New Zealand community."

The issues

7. The issues that the Commission has to consider are:
- (i) whether the Applicant is established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act; and
 - (ii) whether clauses 4.1.1 to 4.1.4 could be considered ancillary to a charitable purpose.

The law on charitable purpose

8. Section 5 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". In addition, any non-charitable purposes must be merely ancillary to a charitable purpose (section 5(3) of the Act).
9. Section 61A of the Charitable Trusts Act 1957 provides:

"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 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. ...”

The Commission's analysis

10. The Commission has set out its view on the charitable status of sport and recreation bodies in its Information Sheet entitled “Charitable Purpose and sport and recreation bodies”, published in November 2007.
11. Sport and recreation bodies can qualify for registration as charitable entities under the Act if their purposes are charitable in accordance with New Zealand law. This means that the purposes must be recognised through case law as being for the relief of poverty, advancement of religion, advancement of education or other matter beneficial to the community. In addition, the purposes must be available to the public or an appreciably important section of the public.
12. In assessing whether the Applicant's purposes benefit the community, the Commission has considered a number of factors, including:
 - whether membership is open to anyone who wishes to join, regardless of ability (although it is valid to have a restriction in membership numbers because of the facilities as long as the criteria to go on the waiting list is open to the general public or an appreciable section of the public);
 - whether the fees and costs of participation are affordable and do not limit the people who can participate only to the well-off;
 - whether more and less skilled participants are treated even-handedly and are able to reasonably access the facilities and equipment.

13. While the Commission recognises that the purpose of promoting participation in healthy activity can be charitable, that purpose must be available to the public or a sufficient section of the public, and must not be for private financial gain. The Commission considers that the Applicant's purposes and financial resources are directed primarily towards supporting exceptional tennis players, and that "more and less skilled participants" are not treated even-handedly.
14. As such, the Commission considers that the current objects of the Applicant are not exclusively charitable because they primarily promote exceptional tennis players and do not provide a benefit that is available to the public.
15. The Commission has also considered whether the Applicant's non-charitable purposes are merely ancillary to a charitable purpose, in terms of section 5(3) of the Act.
16. In its letter of 6 May 2008, the Applicant submitted that clauses 4.1.1 to 4.1.4 "simply identify the means or methodology by which SEED seeks to achieve its overall objective, developing elite New Zealanders into world class athletes and role models for all New Zealanders." As such, the Applicant was willing to amend its purpose clause to clarify this.
17. While the Applicant has indicated a willingness to amend its rules, it still appears that its activities (previously outlined in clauses 4.1.1 to 4.1.4) will remain the same. Taking into account the Applicant's activities, the Commission is of the view that even if the Applicant makes the proposed amendment to its stated purposes, the Applicant's purposes will not be exclusively charitable.
18. The Commission considers that the Applicant's activities outlined in clauses 4.1.1 to 4.1.4 are not merely ancillary to a charitable purpose.

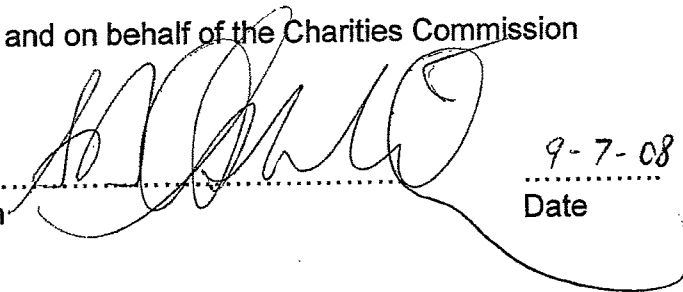
Charities Commission's determination

19. 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 Charities Act 2005.

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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Sid Ashton
Chair

A large, stylized handwritten signature in black ink, appearing to read 'S Ashton', is written over a horizontal dotted line. The signature is fluid and cursive, with a long horizontal stroke at the end.

9-7-08
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Date