

The Society for Promotion of Community Standards

Facts

The Applicant is a society incorporated under the Incorporated Societies Act 1908. The constitution of the Applicant indicates that its general purposes are to promote the moral welfare or improvement of society. Its activities include:

- Monitoring the role of various censorship agencies.
- Applying to relevant bodies for the review of decisions made by those bodies.
- Research on censorship related issues.
- Informing the public, through various media, of matters beneficial or detrimental to society.
- Publishing a regular newsletter to inform supporters of its activities.
- Giving free lectures to community groups on matters of concern to the Applicant.

The Applicant applied to the Charities Commission ("the Commission") for registration as a charitable entity on 26 February 2007 on the basis that the Applicant was established for purposes beneficial to the community.

The Commission analysed the Applicant's registration application and on 12 April 2007 sent the Applicant a letter advising that "... the documentation supplied by the [Applicant] does not provide sufficient information about its activities for [the Commission] to complete ... consideration of [the Applicant's] application in relation to charitable purpose."

On 17 April 2007 the Commission received a letter from the Applicant regarding the objects for which the Applicant was established and the Applicant's activities.

On 24 May 2007 the Commission sent the Applicant a 'Notice that may lead to decline of registration' because the "purposes of the Society for Promotion of Community Standards Inc. do not meet the registration requirements in section 5(1) of the Charities Act 2005".

On 12 June 2007 the Applicant sent the Commission a submission in support of its view that the Applicant is established for charitable purposes.

The issues

The issue that the Commission has to consider is whether the Applicant is established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Charities Act 2005 (the "Charities Act").

The law on charitable purpose

Section 5 of the Charities Act defines 'charitable purpose' as including every charitable purpose relating to:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; or
- any other matter beneficial to the community.

The Commission applies the common law test for charitable purpose to determine whether one or more of these purposes are present.

Under section 5(3) of the Charities Act to be established and maintained exclusively for charitable purposes all of an applicant's purposes must be charitable in nature, or the non-charitable purposes must be ancillary to a charitable purpose.

In the assessment of charitable purpose the law requires the Commission to consider:

- (a) the purposes of the Applicant described in its application;
 - (b) the purposes stated in the Applicant's constitution; and
 - (c) the activities of the Applicant.
- (section 18(3) of the Charities Act).

Commission's analysis

The Commission has considered the general purposes of the Applicant by considering each of the Applicant's objects, both individually and collectively¹.

The Applicant's purposes, as set out in the objects clause (clause 2) of its constitution dated 15 November 2002, are as follows:

- (a) To encourage self-respect and the dignity of the human person made in the image of God.
- (b) To promote recognition of the sanctity of human life and its preservation in all stages.
- (c) To promote the benefits of lasting marriage, strong family life and wholesome personal values as the foundation for stable communities.
- (d) To focus attention on the harmful nature and consequences of sexual promiscuity, obscenity, pornography and violence.
- (e) To uphold and press for the proper enforcement of applicable law and its amendment where the law is ineffective.
- (f) To support responsible freedom of expression which does not injure the public good by degrading, dehumanising or demeaning individuals or classes of people.

¹ National Anti-Vivisection [1948] AC 31

Objects 2(a) – (d) and (f)

The Commission is satisfied that the purposes contained in objects 2(a) – (d) and 2(f) are charitable under the fourth head of charity, as 'any other matter beneficial to the community', under the category of promoting the moral welfare or improvement of the community.

Object 2(e)

- (e) To uphold and press for the proper enforcement of applicable law and its amendment where the law is ineffective.

The intent of this object is for the Applicant to be involved in upholding and pressing for enforcement of applicable law, and pressing for the amendment of applicable law where the existing law is considered by the Applicant to be ineffective.

The Courts have held that an entity is a political entity if its principal purposes, or objects, is to seek to achieve its charitable purpose by:

- (1) seeking to change the law; or
- (2) advocating for the views of, or supporting, a political party; or
- (3) perpetual advocacy of a particular point of view.²

The Courts have further held that an entity that has a primary purpose (as opposed to an ancillary purpose) that is political is not charitable.

In the *Bowman* case the court said that "... a trust for the attainment of political objects has always been held invalid, not because it is illegal, for everyone is a 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...".

In *Re Hopkinson*³ the court held that "... it would be equally true to apply [the above statement in *Bowman*] to the advocating or promoting of the maintenance of the present law, because the court would have no means in that case of judging whether the absence of a change in the law would or would not be for the public benefit."

In the *Collier* case, the court also held that trusts for the perpetual advocacy of a particular point of view are prohibited from being charitable. The Applicant has acknowledged its involvement in perpetual advocacy of a particular point of view and has offered explanations on the benefits to the community of its advocacy.

² *Re Collier (Deceased)* [1998] 1 NZLR 81
Bowman and the Secular Society [1917] AC 406
McGovern and others v AG [1981] 3 All ER 493
Malloy v CIR [1977] 2 TRNZ 211,
In re Bushnell [1975] 1 WLR 1596,

³ *Re Hopkinson (deceased). Lloyds Bank Ltd. V Baker and others* [1949] 1 All ER 346

The *McGovern* case found that the court cannot judge public benefit in relation to political advocacy, therefore the Commission cannot judge the public benefit of the Applicant's perpetual advocacy.

The Commission, therefore considers that to "press for the proper enforcement of applicable law and its amendment where the law is ineffective" is not a charitable purpose.

Is object 2(e) ancillary?

The Applicant submits that object 2(e) is ancillary to the other stated charitable objects of the Applicant and, therefore, the Applicant is a charitable entity. The context and wording of subclause 2(e) do not make this clear. It is, therefore, necessary to examine the activities of the Applicant to determine whether they are consistent with the Applicant's expressed view that object 2(e) is merely ancillary to the others.

The applicant's activities

The assessment of the Applicant's activities from material supplied by the Applicant and by reference to its website indicates that the majority of the Applicant's activities are focussed on carrying out the non-charitable object contained in clause 2(e) of its constitution. These activities are therefore not charitable.

Accordingly, it is clear that the Applicant in its activities does not treat object 2(e) as ancillary to its other objects but rather as one of equal (and perhaps even greater) importance to its other expressed objects.

Charities Commission's determination

The finding of the Charities Commission is that the Applicant has failed to meet an essential requirement for registration in that the Applicant is not established and maintained exclusively for charitable purposes under section 13(1)(b)(ii) of the Charities Act 2005 due to the object in clause 2(e) of its constitution.

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


Sid Ashton - Chair

20/7/07
Date