

Deregistration decision: Liberty Trust

The facts

1. Liberty Trust (the Trust) was established on 25 July 1990. The Trust was registered as a charitable entity under the Charities Act 2005 (the Act) by the Charities Commission on 8 October 2007.
2. The Trust's purposes are set out in clause 1 and 2 of its governing rules:

1. *TO use and employ the trust property and the income therefrom for any of the following objects within New Zealand:*

- (a) *For the undertaking of social welfare and outreach Christian ministries of the Whakatane Baptist church and Whakatane Christian Fellowship church or any other churches as may be determined from time to time (hereinafter called "The participating churches").*
- (b) *For the demonstration of Christian care for the social, physical, emotional and spiritual needs of the community.*
- (c) *To assist those in financial need and to bring relief from financial pressures.*
- (d) *For the presentation of the Gospel, of the Kingdom of God to the community through demonstrations of Christian compassion and care.*
- (e) *For the establishment of whatever centres, programmes and facilities that may be necessary to achieve the aforesaid objects.*
- (f) *For such other charitable purposes as the Board shall determine.*

2. *FOR the objects aforesaid:*

- (a) *TO construct, maintain, acquire and alter or lease any homes, houses, halls, schools, offices and other buildings and to provide the same with such necessary and proper fixtures, furniture, equipment and appliances as shall be deemed expedient for the furthering of the objects of the Board.*
- (b) *TO purchase, take or lease or in exchange or otherwise acquire any real or personal property, or any interest therein which may be requisite for the purpose of or conveniently used in connection with any of the objects of the Board and to sell, lease, give in exchange or dispose of any real or personal property or any interest therein. In case the Board shall take or hold any property which may be subject to any trust the Board shall only deal with the same in such manner as allowed by law having regard to such trusts.*
- (c) *TO organise and conduct religious services, public meetings, missionary meetings, exhibitions and lectures.*
- (d) *TO publish or contribute to the publication of any periodical, journal or magazine and to print and circulate books, papers, pamphlets and information in the interest of the Board generally and to provide and circulate any annual or other report of the Board and its proceedings and work.*
- (e) *TO accept or refuse donations, subscriptions, legacies, conveyances and endowments either of money or of property or whatever kind or*

nature whatsoever and either absolutely or conditionally or in trust to apply the same or the income therefore for any of the objects of the Board or for any special object connected therewith.

- (f) *To assist people to alleviate financial difficulties or pressure by the provision of budgeting advice or such other assistance as the Board shall from time to time determine.*

3. In October 2008, the Securities Commission of New Zealand referred a complaint from an investor in the Trust to the Charities Commission (the Commission). As the Commission considered that the matter concerned administrative and management issues, the complaint was transferred to Crown Law.

4. In August 2009, Crown Law contacted the Commission to express concerns about the charitable status of the Trust. The concerns related to loans given to donors and the merging of a non-registered charitable organisation (Liberty Trust Auckland) into the Trust. On the basis of this information, the Commission reviewed the charitable status of the Trust.

5. According to the Trust's website¹ (See Frequently Asked Questions (FAQ):

- *The Trust was offering 7 year interest free loans to donors who had donated over a period of 5 to 12 years, at up to 5 times the amount that was donated.*
- *Donors to the scheme were eligible for tax credits from Inland Revenue for donations made to the Trust.*
- *Anyone was eligible to join the scheme, and this included children, students, singles, couples, parents, grandparents, whanau, churches, church workers etc.*
- *5% of the contributors donations was used to cover administration costs while the rest was used to lend and re-lend to other participants in the scheme.*
- *The loan to donors was facilitated through an associate non charitable entity called Ark Resources Limited.*

6. On 2 September 2009, the Commission sent the Trust a letter under section 50 of the Act requesting information about the Trust's activities, including its lending activities, and about the Trust's relationship with Liberty Trust Auckland.

7. The Trust responded to the letter on the 17 September 2009. The Trust submitted that its lending activity advanced its charitable purpose, as follows:

"Liberty's lending ... promotes the objectives set out in Liberty's Trust Deed. In particular it enhances the social welfare and outreach ministries of our participating churches, it demonstrates Christian care for the social, physical, emotional & spiritual needs of the community, it assists those in financial need and brings relief from financial pressures, and it presents the gospel of the Kingdom of God to the community through demonstrations of Christian compassion and care."

¹

8. In relation to loans provided to donors, the Trust explained that the Trust has advanced loan funds secured by a debenture and general security agreement to Ark Resources Limited to assist Ark Resources to offer interest-free loans. The interest rate applied to the debentures was 0.545% in 2008 and 0.23% in 2009. This was in accordance with clause 2.2 of the "Deed of Debenture" which provides:

The lender may from time to time by written notice to the borrower nominate a rate of interest as the interest rate for the purposes of this debenture.

9. In 2007, Liberty Trust Auckland was subsumed into the Trust at the request of the Liberty Trust Auckland trustees. The Trust advised that:

Liberty Trust Auckland was merged into Liberty Trust in 2007 at the request of the Liberty Trust Auckland trustees. There had been some specific examples of confusion in the public and the media due to the similarities of the two organisations and the two organisations did not wish to compete for space in the same publications and events. In addition, several of the Liberty Trust Auckland trustees had recently stepped down due to personal circumstances ... Rather than appoint new trustees it was considered by the remaining Liberty Trust Auckland trustees that the charitable objectives of Liberty Trust Auckland could be better and more effectively continued, expanded, governed and administrated by merging into the larger nationwide organisation of Liberty Trust.

10. In addition to the Trust's lending activities, the Trust advised that its other activities include:

- Teaching Biblical principles relating to finance at public meetings and seminars, speaking and displaying at Christian conferences and meetings throughout New Zealand
- Providing teaching articles on Biblical financial principles free of charge through newsletters
- Providing low-cost & free-of-charge publications which teach the Bible's financial principles
- Providing the website which contains over 3,000 pages of Bible teachings and testimonies
- Providing teaching on Biblical financial principles free of charge through videos & DVDs
- Providing an 0800 number and an e-mail address which the public can utilise to learn more about the Bible's financial principles
- Providing free-of-charge loans to people who are struggling with credit card debt and other high interest debt.
- Supporting other New Zealand charities and the social welfare and outreach ministries of participating churches.

11. The Trust also advised that it has made donations to several charities (\$8,688.89 in 2009) where the funds were used to:

- teach Christian values and principles in New Zealand schools
- demonstrate God's love in Christ by serving the needy in New Zealand
- provide equipment to Churches and Missionaries.

- assist Churches in missions to poverty-stricken areas, in foreign lands
- promote stable and loving relationships within families
- provide medical ministry and evangelism, in New Zealand and the South Pacific.

12. A review of the Trust's financial statements highlighted the following:

- For the year ended 31 March 2009, the investments in Ark Resource's debentures was \$5,932,961 (indicative of the level of funds transferred to the company to fund the loan scheme) out of a total asset base of \$5,998,261, that is 98.91% of the total asset base. A summary of the balance sheet is as follows:

Liabilities	Amount (\$)	Assets	Amount (\$)
Equity	5,398,394	Net Working Capital	64,572
Term Liability	599,867	Fixed Assets	728
		Debentures in Ark Resources	5,932,961
Total	5,998,261		5,998,261

- Of the Trust's total equity of \$5,398,394 in the above accounts, \$1,161,202 represents equity received from Liberty Trust Auckland as a result of the merger.
13. On 6 October 2009, the Commission sent the Trust a "Notice of Intention to Remove from the Register" under section 33 of the Act. This was issued on the basis that one of the main activities (ie the lending activity) of the Trust was not in line with the stated purpose of the Trust as set out in clause 1 and 2 of the Rules, and that not all of its purposes were charitable.
14. On 3 December 2009, the Trust's solicitor responded to the notice, and included a memorandum prepared by the Trust. Key points set out in the memorandum were:
1. *The activities of Liberty Trust are all charitable and in line with the stated purpose of the entity as set out in clause 1 to 2 of the Trust Deed.*
 2. *The activities of Ark Resources Limited are ancillary to the activities of Liberty Trust.*
 3. *The main beneficiaries of Liberty Trust and Ark Resources Limited are underprivileged members of the public.*
 4. *Liberty Trust and Ark Resources Limited provide assistance to people of all religious beliefs, without partiality.*
 5. *The activities of Liberty Trust and Ark Resources are not dependant on 'new people joining'. There is no requirement to enlist new donors, as no member of the Trust obtains any private pecuniary gain.*

15. The Commission was also advised that the benefits passed on by the Trust and Ark Resources are not dependant upon the recruitment of new donors or contributors.
16. The Commission analysed the Trust's response and on 17 and 18 December 2009, requested further information about items in the Trust's financial accounts ("Provision for rebates" and "Rebates offered") and a copy of the Actuary's report.
17. The Trust responded by email on 22 December, advising that:

In September 2004 the trustees resolved to offer a rebate of half the contributions made to Liberty Trust from 1 July 2004 in order to encourage people to continue donating to Liberty Trust and to assist Ark Resources Ltd mortgage holders to repay their loan sooner. This was explained by individual letter to each contributor and in our newsletter <http://www.libertytrust.org.nz/newsletters/lt%2021.pdf>.

'At the 10 year anniversary of each person's Liberty Trust commencement each person may elect to credit half of their contributions added to the Trust since 1 July 2004 to either:
 - A new Liberty Trust membership as contributions, or
 - Ark Resources Ltd as part-payment of any loan offered.
 The remainder of their contributions to the Trust will be retained as a donation to the Trust.'

18. The Trust also provided a copy of the Actuary's report, which stated:

Conclusion

I believe that the mortgage plan offered by Liberty Trust and Ark Resources is robust.

Critical to this opinion is my understanding that donors do not have a contractual right to be offered a mortgage on the completion of 10 years of donations, but will only be offered a mortgage at the discretion of Ark Resources and based largely on whether there are sufficient funds. ...

My investigations have shown that:

- *the ability to be able to allocate donors a mortgage immediately they apply for one depends to a large extent on the amount of donation that are made by future cohorts, as set out in the following table (assumes all donors apply for a mortgage immediately on completion of 10 years of donations:*

Regular Growth in donations by future cohorts	Able to offer mortgages to donors on completing 10 years of donations
20% pa or greater	All in first year
5% pa to 20% pa	All with first 2 years
Less than 5%	Some in third or later years

19. Cohorts was defined in the report to be cash flows on a year-by-year basis.²
20. Commission staff met with representatives of the Trust on 20 January 2010. A final submission made by the Trust's solicitor in a letter dated 3 February 2010 re-iterated the comments made in the Trust's meeting with the Commission. The letter accompanied a memorandum that included statistics and analysis that was used to explain why the Trust believed it had charitable purposes. The Trust stated that:

... By lending without borrowing, by lending to those in need, by never charging interest, and by enabling people to become free from debt we demonstrate that the commands of the Holy Bible are valid and workable and bring liberty to those who follow them. These activities, combined with our teaching activities, can be shown to advance religion in New Zealand.

21. The Trust also provided 26 testimonies of people who had benefited from a loan provided by the Trust. These included people who received loans even though they had only partially completed their donations and people who were provided with loans because other people had forfeited their right to a loan in favour of them.
22. Statistics sent by the Trust in an email on 5 February 2010, confirmed that over 20 years (1990 to 2009) 57 people were offered loans totalling \$2,752,572 as result of others forfeiting their right to a loan, 40.44% of which was to re-finance an existing mortgage. In the same period, the total amount of loans transacted by the Trust was \$18 million.

Issues

23. The Commission must consider whether the Trust is not, or is no longer, qualified for registration as a charitable entity under section 31(1)(a) of the Act. In this case, the key issue for consideration is whether the Trust is 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, whether all of the Trust's purposes fall within the definition of charitable purpose in section 5(1) of the Act and, if there are any non-charitable purposes, whether these are ancillary to a charitable purpose.

Law on charitable purpose and deregistration

24. Section 13 of the Act sets out the essential requirements for registration. Under 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.
25. 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

² Refer Actuarial Assessment of Robustness for Liberty Trust and Ark Resources Limited Interest-free Mortgages, section 4.1, para 3.

must be for the public benefit.³ This means that the purpose must be directed to benefiting the public or a sufficient section of the public.

26. In relation to non-charitable purposes carried on by an entity, section 5(3) of the Act provides that any non-charitable purpose that is merely ancillary to a charitable purpose will not prevent an entity from qualifying for charitable status.
27. Section 32(1)(a) of the Act provides that the Commission may remove an entity from the register if the entity is not, or is no longer, qualified for registration as a charitable entity.
28. When considering whether a registered charitable entity continues to qualify for charitable status, section 50(2) of the Act empowers the Commission to examine and enquire into matters including:
 - (a) *the activities and proposed activities of the charitable Trust or person;*
 - (b) *the nature, objects, and purposes of the charitable Trust;*
 - (c) *the management and administration of the charitable Trust;*
 - (d) *the results and outcomes achieved by the charitable Trust or person;*
 - (e) *the value, condition, management, and application of the property and income belonging to the charitable Trust or person.*
29. Under section 35(1) of the Act, if an objection to the removal of an entity from the register is received, the Commission must not proceed with the removal unless it is satisfied that it is in the public interest to proceed with the removal and at least one ground for removal has been satisfied.

Charities Commission's analysis

30. The Trust's purposes as set out in clauses 1 and 2 of its rules have been considered in relation to relief of poverty, advancement of religion and advancement of education.

Relief of poverty

31. To be charitable under the relief of poverty, a purpose must:
 - Be directed at people who are poor, in need, aged or suffering genuine hardship, and
 - Provide relief.⁴
32. "Poverty" is interpreted broadly in law, and a person does not have to be destitute to qualify as "poor". People who are in need, or who are suffering genuine financial hardship from a temporary or long term reduction in their circumstances, are likely to qualify as "poor".⁵

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

⁴ *Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney-General* [1983] 1 Ch 159 at 171.

⁵ *D V Bryant trust Board v Hamilton City Council* [1997] 3 NZLR 342 at 349 per Hammond, affirmed [1999] 1 NZLR 41.

33. In *Inland Revenue Commissioners v Baddeley*⁶ it was held that in contemporary developed countries, poverty could be equated to lack of affordable accommodation.
34. However, Gino Dal Pont has written that "a gift expressed simply to be for the relief of a class of persons, a class that of itself contains no evident connotation of poverty does not carry the inference that it was intended to relieve against poverty".⁷ In *Re Pettit*,⁸ Chilwell J held that a bequest for the general purposes of the Doctors' Widows Fund did not evidence "the presence of a clear intention exclusively to make provision for the relief of poverty in the sense of the relief of some necessity or quasi-necessity".⁹
35. In its submissions, the Trust has conceded that some of the participants in the scheme own their own home. For others who do not own a house, the expectation is to own a house sometime in the future which will be financed through an interest free mortgage.
36. The participants who will benefit from the scheme by being eligible to have an interest free mortgage are those who have made donations into the scheme. People who have not donated money into the scheme can only benefit from it if one of the participant donors has declined an offer to receive an interest free mortgage in favour of a non-participant person.
37. Any participant into the scheme is entitled to an interest free mortgage after contributing into the scheme for ten years. As indicated in the analysis conducted in the Actuary's report, if a participant is not offered a loan in the first year of eligibility, then s/he will receive such an offer in the second or third year of eligibility. There is no indication that the person has to be poor or in need in order to be eligible to an interest free mortgage. The scheme applies to the rich as well as to the poor, so long as the individual has donated into the scheme continuously for a period of 10 years.
38. While a small proportion of the interest free loans have benefited individuals who are poor, the Commission considers that the benefits from the Trust are not limited to people who are poor. In fact, clauses in the trust deed and the information provided by the Trust do not disclose any evidence of a clear intention to exclusively make provision for the relief of poverty by relieving a need.
39. The Commission therefore considers that the Trust's purposes in clauses 1 and 2 do not amount to relief of poverty.

⁶ [1955] 1 All ER 525, applied in *Re Pettit* [1988] 2 NZLR 513, and *Re Centrepoint Community Growth Trust* [2000] 2 NZLR 325.

⁷ *Charity Law in Australia and New Zealand*, Oxford, Oxford University Press, 2000 at 117 citing *Fe Foster* [1939] 1 Ch 22 at 25 per Bennett J.

⁸ [1988] 2 NZLR 513.

⁹ [1988] 2 NZLR 513 at 542.

Advancement of religion

40. In order for a purpose to be charitable under advancement of religion, it must have the following elements:
- i. There must be a belief in a supernatural being, thing or principle; and
 - ii. An acceptance of conduct in order to give effect to that belief; and
 - iii. The promotion of religion, the spreading of its message ever wider, and the taking of some positive steps to sustain and increase religious belief; and
 - iv. Benefit the community or a section of the community. The Courts will generally assume this unless it is proved to the contrary.¹⁰
41. Clauses 1(a), (b), (d) and clause 2(c) of the Trust's rules provide that one of the purposes of the entity is to promote the Christian faith, through means such as religious services, public meetings, missionary meetings, exhibitions and lectures.
42. The Trust has stated that its activities involve promotion of the biblical financial principles through a range of activities including organising public meetings and seminars, publishing newsletters, and distributing videos and DVDs. The Trust has also advised that "one of our priorities is to assist those in financial need and bringing relief from financial pressures and also to demonstrate Christian care for the social, physical, emotional & spiritual needs of the New Zealand Community."¹¹
43. However, the Trust has also advised that "The assistance is provided to people of all religious beliefs, without partiality." The teachings take place largely in public places, where the emphasis is not on propagating the Christian doctrine but on educating people on the biblical financial principles relating to saving, wise spending and charitable giving.
44. In *Re Lawlor*,¹² a gift to establish a Catholic daily newspaper was not considered charitable. In that case, the Court made a distinction between "advancement of religion" and "conducive to religion". Accordingly, Dixon J stated:

The Character of the Journal contemplated by the testator is indicated only by the phrase 'a Catholic daily newspaper'. There are no expressions referring to the purposes of religion. It is only such expressions that should be presumptively construed as charitable. The reference to religious objects must be contained, if at all, in the word 'catholic'. But that word embraces much more than the 'purposes of religion' even in the ordinary unrestricted sense of those words ... The conduct of a newspaper may be considered conducive to religion or a

¹⁰ *Church of New Faith v Commissioner of Pay-Roll Tax* (1983) 154 CLR 120 at 126, which was accepted and applied in *Centrepoin Community Growth Trust v Commissioner of Inland Revenue* [1985] 1 NZLR 673 at 695 per Tomkins J.

¹¹ Letter from the Trust to the Commission dated 17 September 2009.

¹² (1934) 51 CLR 1.

*form of religion, but no more. Indeed, it is an activity which cannot be confined even within the wide description of conducive to religion.*¹³

45. On that basis, the Commission considers that teaching financial principles derived from the Bible are, at best, conducive to religion, as opposed to advancing religion.

Advancement of education

46. In order for a purpose to be charitable under advancement of education, it must provide for the improvement of a useful branch of human knowledge and its public dissemination.¹⁴
47. The Commission considers that educating people from all walks of life and all religions about how to manage their debts and become debt free would amount to advancing education, however, this is not a stated purpose of the Trust.

Is there a public benefit?

48. The public benefit criterion necessarily requires that any private benefits arising from the Trust'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.¹⁵
49. Courts have held that mutual benefit arrangements are not charitable. In *Re Hobourn Aero Components Limited's Air Raid Distress Fund*,¹⁶ the Court held that a scheme whereby members put money into a fund from which they could get payments when in need was not charitable. This is because the mutual benefit arrangements "stamp the whole transaction as one having a personal character, money put up by a number of people, not for the general benefit, but for their own individual benefit".¹⁷
50. Information provided by the Trust and information on the Trust's website, indicate that most beneficiaries of the Trust are the persons who donate to the trust. The benefits arise from the right to an interest free loan in proportion to the amounts donated. Hence, people who donate more can receive a larger benefit (that is, a bigger loan amount). The benefit is therefore connected to trust membership.
51. The Commission considers that the scheme promoted by the Trust is similar to a mutual fund or cooperative scheme for the benefit of members. As such organisations have been held to be not charitable, the Commission concludes that there is insufficient public benefit for the Trust's purposes to be charitable.

¹³ *Re Lawlor* (1934) 51 CLR 1 at 36.

¹⁴ *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73 at 102 per Buckley LJ.

¹⁵ *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.

¹⁶ *Re Hobourn Aero Components Limited's Air Raid Distress Fund* [1946] 1 Ch 194; see also *Re Harris Scarfe Ltd* [1935] SASR 433.

¹⁷ *Re Hobourn Aero Components Limited's Air Raid Distress Fund* [1946] 1 Ch 194.

Charitable donations

52. The Trust has indicated that it makes donations to other charities in order to:
- teach Christian values and principles in New Zealand schools
 - demonstrate God's love in Christ by serving the needy in New Zealand
 - provide equipment to churches and missionaries
 - assist churches in missions to poverty-stricken areas, in foreign lands.
 - promote stable and loving relationships within families.
 - provide medical ministry and evangelism, in New Zealand and the South Pacific.
53. The Commission considers that these donations may advance religion or be otherwise charitable, but they are ancillary to the Trust's main purpose discussed above, which is not exclusively charitable.

Conclusion

54. The Commission considers that while the Trust may undertake some charitable activities, its main purpose is to provide private benefits for its members, which is not a charitable purpose.

Section 61B of the Charitable Trusts Act 1957

55. 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.
56. 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).¹⁸
57. 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.*¹⁹

¹⁸ *Re Beckbessinger* [1993] 2 NZLR 362 373.

¹⁹ *Re Beckbessinger* [1993] 2 NZLR 362 at 376.

58. The Commission considers that section 61B cannot operate to “save” the Trust because the non-charitable purposes of the Trust are not reflected in its trust deed.

Public Interest

59. Section 10(1)(a) of the Charities Act obliges the Commission to promote public trust and confidence in the charitable sector. The Commission considers that public trust and confidence in registered charitable entities would not be maintained if entities that did not meet the essential requirements for registration remained on the register. This is particularly relevant for entities such as the Trust, which seeks funds from the public.

Charities Commission’s determination

60. The Commission determines that the Trust is not, or is no longer, qualified for registration as a charitable entity because it 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 Act.
61. Under section 35(1) of the Act, the Commission is satisfied that it is in the public interest to proceed with the Trust’s removal from the register and that one ground for removal from the register has been satisfied, that is, the Trust is not qualified for registration as a charitable entity.
62. The decision of the Commission is therefore to remove the Trust from the Register, pursuant to section 31 of the Act, with effect from 15 April 2010.

For the above reasons, the Commission determines to deregister the Trust as a charitable entity by removing the Trust from the Register.

Signed for and on behalf of the Charities Commission



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Trevor Garrett
Chief Executive

15 April 2010

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Date