

Registration Decision for Wellington Irish Society Incorporated (WEL29775)

The facts

1. Wellington Irish Society Incorporated (the Applicant) was established as an incorporated society under the *Incorporated Societies Act 1908* on 21 November 1967. The Applicant applied for registration with the Charities Commission (the Commission) on 2 July 2008.
2. The Applicant's objects are set out in clause 3.1 of its constitution:

3. OBJECTS

3.1. The objects of the Society shall be:

- a) To keep warm and living in those of Irish birth and of Irish descent a love for and fidelity to Ireland;
- b) To provide a cordial meeting ground for those who love Ireland and who desire the preservation of her culture, customs and ideals;
- c) To foster a feeling of amity and good fellowship among the members of the Society;
- d) To enter into such relations with other associations and organisations as shall be deemed beneficial to the Society;
- e) To provide appropriate premises and facilities for the convenience and recreation of members of the Society and their families friends and visitors;
- f) To undertake and promote such recreational, cultural and other activities as the Society sees to be in the interests of its members.

3.2. The Society shall be non-political and non-sectarian.

3. The Commission analysed the application and on 7 November 2008 sent the Applicant a letter asking for further information in relation to objects set out in clauses 3.1(a), (b), (c) and (f).

4. As there was no response to this request, the Commission sent the Applicant a notice that may lead to decline on 6 October 2009. The basis for the notice was that the Applicant's purposes in clause 3.1 did not constitute charitable purposes.
5. The Applicant's solicitor responded on 27 January 2010, providing the President's report from the 2009 Annual General Meeting and a list of groups that use the clubrooms.

The issues

6. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the *Charities Act 2005*. In this case, the key issue for consideration is whether the purposes and activities of the Applicant are charitable, as required by section 13(1)(b) of the Act, and in particular, whether the Applicant's purposes fall within the definition of charitable purposes in section 5(1) of the Act.

The law on charitable purposes

7. Under section 13(1)(b) of the Charities Act, a society or institution must be established and maintained exclusively for charitable purposes.
8. 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 or 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 benefiting the public or a sufficient section of the public.
9. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
10. In considering an application, 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.*

Registration Team's analysis

11. The Commission considers that the purpose in clause 3.1(d) is ancillary. The remaining purposes in clauses 3.1(a), (b), (c), (e) and (f) do not indicate an intention to relieve poverty or advance education or religion. These purposes have therefore been considered in relation to "any other matter beneficial to the community" (the fourth head).

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

Other purposes beneficial to the community

12. 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).²
13. The purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth) are:
- relief of aged, impotent, and poor people
 - maintenance of sick and maimed soldiers and mariners
 - schools of learning
 - free schools and scholars in universities
 - repair of bridges, ports, havens, causeways, churches, sea banks, and highways
 - education and preferment of orphans
 - relief, stock or maintenance of houses of correction
 - marriage of poor maids
 - supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed
 - relief or redemption of prisoners or captives and
 - aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.³
14. The Applicant’s objects in clauses 3.1(a), (b), and (c) are:
- a) *To keep warm and living in those of Irish birth and of Irish descent a love for and fidelity to Ireland;*
 - b) *To provide a cordial meeting ground for those who love Ireland and who desire the preservation of her culture, customs and ideals;*
 - c) *To foster a feeling of amity and good fellowship among the members of the society;”*
15. In *Williams Trustees v Inland Revenue Commissioners*⁴, it was held that a trust to promote the moral, social, spiritual, and educational welfare of Welsh people in London by a variety of means, including the establishment of a social centre, lacked the requisite charitable character. Lord Normand held:

“while certain features of the Institute conformed to the idea of charity they were not so dominating, nor was the general character of the

² *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.

³ *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

⁴ [1947] AC 447.

*Institute such, as effectively to distinguish it from an ordinary social club.*⁵

16. More generally, courts have held that providing amusement, entertainment, or social activities for members of an entity are not primary purposes that provide a public benefit.⁶
17. The Commission considers that the purposes set out in clauses 3.1(a) to (c) are unlikely to be charitable, based on the above cases.
18. The Applicant's object in clause 3.1(e) is:

"e) To provide appropriate premises and facilities for the convenience and recreation of members of the Society and their families friends and visitors;"
19. In its response letter received 1 February 2010, the Applicant has supplied a list of groups that use the Applicant's facilities. The Commission considers that the purpose in clause 3.1(e) could be charitable if the facilities are provided for the benefit of the public.⁷
20. The Applicant's object in clause 3.1(f) is:

"f) To undertake and promote such recreational, cultural and other activities as the Society sees to be in the interests of its members."
21. Courts have held that recreational activities can only be charitable if they are advancing a charitable purpose, such as the advancement of education or the promotion of health. Thus, in *Travis Trust v Charities Commission*⁸, Joseph Williams J states:

In the area of sport and leisure, the general principle appears to be that sport, leisure and entertainment for its own sake is not charitable but that where these purposes are expressed to be and are in fact the means by which other valid charitable purposes will be achieved, they will be held to be charitable. The deeper purpose of the gift or trust can include not just any of the three original Pemsel heads but also any other purpose held by subsequent cases or in accordance with sound principle to be within the spirit and intendment of the Statute of Elizabeth.
22. The Commission considers that there is no evidence of a deeper charitable purpose in clause 3.1(f).

⁵ [1947] UKHL 1.

⁶ *Royal Choral Society v Commissioners of Inland Revenue* [1943] 2 All ER 101 applied in *Canterbury Orchestra v Smitham* [1978] 1 NZLR 787 (CA).

⁷ *Commissioner of Inland Revenue v Wellington Regional Stadium Trust* [2006] NZLR 617 and *Re Chapman* (High Court, Napier, CP89/87, 17 October 1989, Greig J).

⁸ (2009) 24 NZTC 23,273.

Conclusion

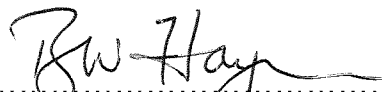
23. The Commission concludes that the Applicant's purposes in clauses 3.1(a), (b), (c), and (f) are not analogous to the spirit and intent of those purposes listed in the Preamble to the Statute of Elizabeth or analogous to charitable purposes as decided by the Courts.

Charities Commission's determination

24. 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 a society or institution 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


.....
Barry Hayman
Acting Chief Executive

13/04/10
.....
Date

