

Registration Decision: Engage Trust

The facts

1. Engage Trust (the Applicant) applied to the Charities Commission for registration as a charitable entity under the *Charities Act 2005* (the Act) on 1 September 2010. The Applicant was incorporated as a board under the *Charitable Trusts Act 1957* on 25 August 2010.
2. The Applicant's objects are set out in clause 3.1 of its trust deed:
 - 3.1 *The object of the Settlor in establishing this Trust is to create a fund to be used exclusively for Charitable Purposes in New Zealand, including:*
 - (a) *Advancement of Religion;*
 - (b) *Providing resources to Christian churches, para-church organizations, trusts, networks and educational institutions and people affiliated to those churches, organizations, trusts, networks and educational institutions;*
 - (c) *Facilitating Christian churches, para-church organizations, trusts, networks and educational institutions to connect with and serve their communities and sports people and visitors to those communities both during and following the Rugby World Cup 2011;*
 - (d) *Facilitating the provision of social services to the community during and following the Rugby World Cup 2011;*
 - (e) *Other charitable purposes beneficial to the community.*
3. The Commission analysed the application for registration and on 13 September 2010 sent the Applicant a letter requesting further information regarding the activities of the Applicant carried out under clause 3.
4. The Applicant responded to the Commission's letter on 5 October 2010, stating that:

Because of the breadth of services that Engage is proposing we have categorized them as follows:

1. ***Helping to meet RWC and NZ Community needs***
 - i. *Volunteer Program – a coordinated 'push' through our networks to provide manpower to the RWC volunteer program – this is free of charge.*
 - ii. *Social Services – Minimise negative culture associated with big sporting events – all these have huge cost saving benefits to Councils, Ministry of Health, RWC 2011 Ltd, police and ultimately tax payer. Engage will administer support nationwide to minimise harm and negative culture through various services (examples of programs being discussed with Salvation Army and other organizations.)*

1. *Red Frogs – Making parties ‘safe’ and providing support to young people.*
 2. *Safety Patrol for safe passage home from pubs, clubs etc*
 3. *Nationwide 24 hour Pastoral / Counselling Contact Help Lines – pre / during & post RWC – drinking, gambling, domestic violence assist – complimenting the Life Lines, Quit lines etc. This is a phone line that will result in personal contact & visit if required (95 identifiable locations).*
- iii. *Support of the sports people and their families.*
1. *Free nationwide confidential chaplaincy service for all Rugby Teams, officials and their families as needed during their stay. Trained sports chaplains will be available to provide pastoral care to all players, officials and families regardless of religious background, working on similar models such as the Olympics, FIFA World Cup and previous Rugby World Cups.*
 2. *Screened and reliable free hosting of spouses / partners / families of minnow nations and other nations that struggle to afford accommodation costs in NZ during the World Cup. Providing a hospitable home, enjoying the World Cup, enjoying the beauty of NZ and local know-how.*
 3. *Church services for rugby players and their families.*
 4. *Providing places and including information on times of worship for rugby players, officials and families who are looking for access to such services whilst in NZ.*
- iv. *Support of non sports people and their families.*
1. *Church services for visitors to NZ*
 2. *Opening strategically placed Churches to the greater public during the World Cup to provide maps and directions, water, public conveniences, resting places, Christian counsel and prayer and much more.*
- v. *Community events*
1. *Safe - Big Screen Parties especially applicable for the non-hosting / non-playing centres.*
 2. *Business people events*
 3. *Touch / Ripper games and tournaments*
 4. *Appropriately printed materials and web based services.*
5. The Commission analysed the response and on 6 October 2010 sent the Applicant a notice that may lead to decline on the basis that purposes set out under clause 3 of the rules document do not constitute charitable purposes. This is because the purposes are broadly worded and do not restrict the Applicant to charitable purposes and information supplied by the Applicant on 5 October 2010 appears to indicate that the Applicant is undertaking non-charitable activities.

6. The Applicant's solicitor responded to the notice on 20 October 2010, stating:

1. *Our client has been created for charitable and not for profit purposes. Those charitable purposes are principally the promotion of religion and other purposes beneficial to the community.*

...

2. *Our client is not promoting business or economic development.*

3. *Our client is not providing sport or recreation services.*

...

5. *...Our client has provided details of some proposed activities but these were not intended to be an exhaustive list but to give a flavour of the not for profit/charitable purposes which our client is and intends to perform. These purposes include:*

(a) *'Promotion of the Christian Religion' which is an express purpose in the Trust Deed and which our client intends to fulfil through its coordination and facilitation of Christian Churches and Organisation (sic) up to and during the Rugby World Cup 2011.*

(b) *'Beneficial to the Community' by facilitating Christian Churches and Organisations and providing resources to those churches and organisations to assist them to serve in their communities.*

(c) *Facilitating Christian Churches and organisation (sic) to provide support services and networks in the community.*

These support services may extend to facilitating Salvation Army, Red Frogs and other support organisations in a coordinated manner in various Cities in New Zealand leading up to and during the Rugby World Cup 2011.

Our client has also offered to assist the Rugby World Cup organisers with their programme to source volunteers or provide hosting arrangements during the Rugby World Cup event.

The above is not intended to be an exhaustive list but all of the examples are without exception, not for profit and intended to be charitable.

The issues

7. The issue the Commission must consider is whether the Applicant meets all of the essential requirements for registration under the *Charities Act 2005* (the Act). In this case, the key issue for consideration is whether the Applicant is 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. In particular, the issue is:

(a) whether the Applicant's purposes fall within the definition of charitable purposes in section 5(1) of the Act;

(b) and whether the Applicant provides a public benefit.

The law on charitable purposes

8. Under section 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.
9. 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 benefiting the public or a sufficient section of the public.
10. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
11. In considering an application for registration, section 18(3)(a) of the Act requires the Commission to have regard to the entity's activities at the time the application was made, the entity's proposed activities, and any other information that the Commission considers relevant.

Charities Commission's analysis

12. The Commission does not consider that the Applicant's purposes in clause 3.1 indicate an intention to advance education. The Applicant's purposes have therefore been considered under relief of poverty, advancement of religion and "other matters beneficial to the community". Firstly, however, it is necessary to consider the effect of the introductory words to clause 3.1 and clauses 5.1(b) and (d) in the Applicant's deed.

Effect of clauses purporting to limit purposes

13. Clause 3.1 of the rules document states:

The object of the Settlor in establishing this Trust is to create a fund to be used exclusively for Charitable Purposes in New Zealand...

14. Clause 5.1(b) and (d) of the rules document state:

(b) *To apply and distribute the balance of the income of the Trust Fund for each Financial Year or such part as the Trustees think fit for Charitable Purposes in New Zealand, and if more than one Charitable Purpose is selected in such shares and proportions as the Trustees in their discretion may decide.*

...

(d) *To apply and distribute all or part of the capital of the Trust Fund for Charitable Purposes in New Zealand.*

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

15. In *M K Hunt Foundation Ltd v Commissioner of Inland Revenue*,² Hardie Boys J cited with approval the comments Lawrence LJ made in *Keren Kayemeth le Jisroel Ltd v Commissioners of Inland Revenue*.³ In that case, the statute there under consideration contained the phrase ‘for charitable purposes only’, and Lawrence LJ said in the Court of Appeal that “it is not enough that the purposes described in the memorandum should include charitable purposes. The memorandum must be confined to those purposes”.⁴ Hardie Boys J further wrote that:

*... in so holding, Lawrence L.J. makes it clear later in his judgment that he had in mind, not merely the phrase “charitable purposes only”, but also the cases which show that non-charitable objects will prevent recognition of the body in question as a charitable trust.*⁵

16. In *Commissioner of Inland Revenue v White*,⁶ the Court considered limitations in the constitution of the Clerkenwell Green Association. The court noted that the constitution showed a clear intention that this object was exclusively charitable but went on to say:

*The charitable intention, clear as it is, is not conclusive in establishing charitable status, however, because clause 2(b) limits the field in which the charitable intention is to be effectuated. If the objects specified in clause 2(b) are of such a nature that there is not charitable purpose which will assist their achievement, then there is no charitable purposes within the specified field and the Association would not be entitled to registration as a charity. In other words, the mere insertion of the word “charitable” in clause 2(b) is not by itself enough to establish that the objects of the Association are charitable.*⁷

17. Finally, in *Canterbury Development Corporation v Charities Commission*,⁸ Young J wrote “the mere fact that the constitution says that CDC’s objects are charitable does not make CDC charitable although such a declaration is relevant in assessing whether they are.”⁹ The judge went on to say, “...in the end, the objects and operation of the organisations either support a charitable purpose or they do not.”¹⁰ In that case, he concluded that they did not support a charitable purpose.

18. For these reasons, the Commission does not consider that the inclusion of the words "Charitable Purposes" in clause 3.1 and 5.1(b) and (d) provides conclusive evidence that the Applicant’s purposes are in fact exclusively charitable.

² [1961] NZLR 405, 407-498.

³ [1932] 2 KB 465.

⁴ [1931] 2 KB 465, 481.

⁵ [1961] NZLR 405, 408.

⁶ (1980) 55 TC 651.

⁷ (1980) 55 TC 651, 653.

⁸ HC WN CIV 2009-485-2133 [18 March 2010].

⁹ HC WN CIV 2009-485-2133 [18 March 2010], para 56.

¹⁰ HC WN CIV 2009-485-2133 [18 March 2010], para 56.

Relief of poverty

19. 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 it must provide relief.
20. The law interprets “poverty” broadly so a person does not have to be destitute to qualify as poor.¹¹ People who are in need, aged,¹² or who are suffering genuine financial hardship from a temporary or long-term change in their circumstances are likely to qualify for assistance. Generally, this will include anyone who does not have access to the normal things of life that most people take for granted.¹³ To provide “relief”, the people who would benefit should have an identifiable need arising from their condition that requires alleviating and these people should have difficulty in alleviating that need from their own resources.¹⁴
21. The Commission considers the provision of social services to the community described in the Applicant’s letter as “nationwide 24 hour pastoral/counselling contact help lines” may be a charitable activity under relief of poverty, as the beneficiaries of such services can be assumed to have an identifiable need that could not be relieved through their own resources. If the social services in clause 3.1(d) are limited to those that are aimed at relieving a need for people who are poor, in need, aged, or suffering genuine hardship, this purpose would be charitable under relief of poverty.
22. The purposes in clause 3.1(b)-(c) are not limited to or directed towards people who are in need of relief. In light of the above, the Commission does not consider that these purposes are charitable under relief of poverty.

Promotion of business and economic development

23. The Courts have held that purposes related to the promotion of business or economic development may be charitable if they are aimed at meeting specific community needs. However, in order for the promotion of business and economic development to be charitable it must be for public benefit and not for the benefit of private individuals.¹⁵

¹¹ *Re Bethel* (1971) 17 DLR (3d) 652 (Ont: CA); affirmed sub nom *Jones v Executive Officers of T Eaton & Co Ltd* (1973) 35 DLR (3d) 97 (SCC) referred to in *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342. See also *re Pettit* [1988] 2 NZLR 513.

¹² *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

¹³ *Inland Revenue Commissioners v Baddeley* [1955] AC 572; [1955] 1 All ER 525, applied in *re Pettit* [1988] 2 NZLR 513 and *Re Centrepont Community Growth Trust* [2000] 2 NZLR 325.

¹⁴ *Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney-General* [1983] Ch D 1 All ER 288. See also *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

¹⁵ See *Re Tennant* [1996] 2 NZLR 633; *Tasmanian Electronic Commerce Centre Pty Ltd v Federal Commissioner of Taxation* [2005] 59 ATR 10 (Australian Federal Court of Appeal) at pp 25-26; *Commissioners of Inland Revenue v. Oldham Training and Enterprise Council* [1996] STC 1218; *Travel Just v Canada (Revenue Agency)* 2006 FCA 343 [2007] 1 C.T.C 294, 2007 D.T.C. 5012 (Eng.) 354 N.R. 360; *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010].

24. The Applicant has stated in the response email of 5 October 2010 that an activity of the Applicant is to provide “business people events”.
25. The Applicant has not provided any evidence that the Applicant is meeting specific community needs through this activity. The Commission therefore concludes that this activity is not charitable under relief of poverty.

Advancement of religion

26. To advance religion, a purpose must:
 - be for the benefit of a religion; and
 - ensure a religious faith is passed on to others.
27. The relevant indicia of a religion was described by the High Court of Australia in *Church of New Faith v Commissioner of Pay-Roll Tax*.¹⁶

*The criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion. Those criteria may vary in their comparative importance, and there may be a different intensity of belief or acceptance of canons of conduct among religions or among the adherents to a religion. The tenets of a religion may give primacy to one particular belief or to one particular canon of conduct. Variations in emphasis may distinguish one religion from other religions, but they are irrelevant to the determination of an individual's or group's freedom to profess and exercise the religion of his, or their, choices.*¹⁷

28. To “advance” religion, the faith must be passed on to others by promoting it, spreading its message or taking positive steps to sustain and increase the religious belief.
29. Not all purposes that relate to religion will “advance religion”. In *Oxford Group v Inland Revenue Commissioners*,¹⁸ Cohen LJ states, “I think an institution could be connected with the advancement of religion without being itself an institution for the advancement of religion”.¹⁹
30. In addition, it has been held that “Christian purposes” are not confined to charitable purposes,²⁰ and in *Re Lawlor*,²¹ it was held that a gift to establish a Catholic daily newspaper was not charitable. In coming to this conclusion, Dixon J states:

¹⁶ (1983) 154 CLR 120, 126, which was accepted and applied in New Zealand in *Centrepont Community Growth Trust v Commissioner of Inland Revenue* [1985] 1 NZLR 673, 695-697 per Tompkins J.

¹⁷ (1983) 154 CLR 120, 126.

¹⁸ [1949] 2 All ER 537.

¹⁹ [1949] 2 All ER 537, 544

²⁰ *McCracken v Attorney General* [1995] 1 VR 67, 76 per Phillips J.

²¹ (1934) 51 CLR 1.

*In order to be charitable the purposes themselves must be religious; it is not enough that an activity or pursuit in itself secular is actuated or inspired by a religious motive or injunction; **the purpose must involve the spread or strengthening of spiritual teaching within a wide sense, the maintenance of the doctrines upon which it rests, the observances that promote and manifest it** ... whether defined widely or narrowly, the purposes must be directly and immediately religious. It is not enough that they arise out of or have a connection with a faith, church, or a denomination, or that they are considered to have a tendency beneficial to religion, or to a particular form of religion.²²*
[Emphasis added]

31. In its response letter of 5 October 2010, the Applicant stated that the Applicant would be providing chaplaincy services and church services. The Commission considers that these activities would qualify as charitable under advancement of religion. If the activities carried out under clause 3.1(a) are limited to those that “involve the spread or strengthening of spiritual teaching within a wide sense, the maintenance of the doctrines upon which it rests, the observances that promote and manifest it”, these would be charitable.
32. Clauses 3.1(b) and (c) state as purposes:
- (b) *Providing resources to Christian churches, para-church organizations, trusts, networks and educational institutions and people affiliated to those churches, organizations, trusts, networks and educational institutions;*
 - (c) *Facilitating Christian churches, para-church organizations, trusts, networks and educational institutions to connect with and serve their communities and sports people and visitors to those communities both during and following the Rugby World Cup 2011;*
33. The Commission considers that clauses 3.1(b) and 3.1(c) are broad enough to allow it to engage in activities that would not advance religion. The purposes outlined in clauses 3.1(b) and 3.1(c) are not limited to advancing a religious faith but are focused on undertaking activities that are vaguely stated and, in light of the Applicant’s responses, include non-charitable activities.
34. In his letter of 20 October 2010, the Applicant’s solicitor states that the purposes of the Applicant include:
- ‘Promotion of the Christian Religion’ which is an express purpose in the Trust Deed and which our client intends to fulfil through its coordination and facilitation of Christian churches and organisations up to and during the Rugby World Cup 2011.*
35. While the Applicant may be undertaking its purposes in a Christian context, the Commission does not consider that the purposes in clauses 3(b) and 3(c) are limited to those that involve “the spread or strengthening of spiritual teaching within a wide sense, the maintenance of the doctrines upon which it rests, or the observances that promote and manifest it”. The Commission therefore concludes that these purposes will not amount to the advancement of religion.

²² (1934) 51 CLR 1, 32.

Other matters beneficial to the community

36. In order for a purpose to qualify as “any other matter beneficial to the community”, the purpose must be beneficial to the community and must be within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth),²³ which 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.

37. In *Travis Trust v Charities Commission*,²⁴ Joseph Williams J noted that:

*... regard must be had to the particular words of the preamble and, it has now long been held, any cases in which purposes have been found to be within the spirit and intendment of the preamble by analogy.*²⁵

38. Furthermore, not all organisations which have purposes that benefit the community will be charitable. In *Williams Trustees v Inland Revenue Commissioners*,²⁶ Lord Simonds wrote:

*The second is that the classification of charity in its legal sense into four principal divisions by Lord Macnaughten in *Income Tax Commissioners v Pemsel* [1891] AC 531 at 583 must always be read subject to the qualification appearing in the judgement of Lindley LJ. in *In re Macduff* [1896] 2 Ch, 451 at 466: “**Now Sir Samuel Romilly did not mean, and I am certain Lord Macnaughten did not mean to say that every object of public general utility must necessarily be a charity. Some may be and some may not be.**” This observation has been expanded by Lord Cave L.C. in this House in these words: “**Lord Macnaughten did not mean that all trusts for purposes beneficial to the***

²³ *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.

²⁴ (2009) 24 NZTC 23,273.

²⁵ *Ibid* at para 20.

²⁶ [1947] AC 447, 455. (Applied by Kennedy J *In re Cumming* [1951] NZLR 498).

community are charitable, but that there were certain beneficial trusts which fell within that category: and accordingly to argue that because a trust is for a purposes beneficial to the community it is therefore a charitable trust is to turn round his sentence and to give it a different meaning. So here, it is not enough to say that the trust in question is for public purposes beneficial to the community or for the public welfare: you must also show it to be a charitable trust. See *Attorney-General v National Provincial & Union Bank of England* [1924] AC 262, 265.²⁷ [Emphasis added]

39. In its response email of 5 October 2010, the Applicant stated the following as activities of the Applicant:

1. *Red Frogs – Making parties ‘safe’ and providing support to young people.*
2. *Safety Patrol for safe passage home from pubs, clubs etc*

40. These activities could be considered to protect human life, and therefore could be considered charitable under “other matters beneficial to the community”.

Provision of volunteering

41. The first activity identified by the Applicant in its response email of 5 October 2010 is “to provide manpower to the RWC volunteer programme” and in its letter of 20 October 2010, the Applicant's solicitor states “Our client has also offered to assist the Rugby World Cup Organisers with their program to source volunteers or provide hosting arrangements during the Rugby World Cup event.”

42. Providing volunteer support to charitable entities to improve their efficiency would qualify as a charitable purpose. However, the Rugby World Cup 2011 is not a charitable entity. The Commission therefore concludes that this is not a charitable purpose.

Social activities

43. In *Royal Choral Society v Inland Revenue Commissioners*,²⁸ it was held that a society formed to promote music merely for the amusement of members is not charitable.

44. In *Inland Revenue Commissioners v Baddeley*,²⁹ the court held that providing amusement, entertainment or social activities for members of an entity are not primary purposes that will necessarily provide a public benefit.

45. Several years earlier, in *Williams Trustees v Inland Revenue Commissioners*,³⁰ the Court had held that a trust intending 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:

²⁷ [1947] AC 447, 455.

²⁸ [1943] 2 All ER 101, 106-107 per Lord Greene MR.

²⁹ [1955] AC 572, 600. See also *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380, 394-396.

³⁰ [1947] UKHL 1, 447.

*...while certain features of the Institute conformed to the idea of charity they were not so dominating, nor was the general character of the Institute such, as effectively to distinguish it from an ordinary social club.*³¹

46. Sporting or recreational activities may be charitable where they are advancing another charitable purpose such as the advancement of education or the promotion of health. Thus, in *Travis Trust v Charities Commission*,³² after looking at the case law on sports and leisure time activities, Joseph Williams J stated:

*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.*³³

47. The Applicant has stated in its response letter of 5 October 2010 that it will provide “Safe – Big Screen Parties especially applicable for the non-hosting/non-playing centres.”
48. In line with the case law above, the Commission considers that the social activities the Applicant undertakes 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, are not ancillary to a charitable purpose, and will not advance a deeper charitable purpose.

Promotion of health

49. The Applicant has stated in the response email of 5 October 2010 that an activity of the Applicant is to provide “Touch/Ripper games and tournaments.” These activities could be considered charitable under the fourth head as promotion of health, as these are healthy cardiovascular activities.
50. However, in his letter of 20 October 2010, the Applicant’s solicitor states “our client is not providing sport or recreation services.”

Applicant’s submissions

51. In his letter of 20 October 2010, the Applicant’s solicitor states that the Applicant “has been created for charitable and not for profit purposes”, that the Applicant’s details of proposed activities “were not intended to be an exhaustive list but to give a flavour of the not for profit/charitable purposes which our client is and intends to perform”, and that the solicitor’s descriptions are “not intended to be an exhaustive list but all of the examples are without exception, not for profit and intended to be charitable.”

³¹ [1947] UKHL 1, 460.

³² (2009) 24 NZTC 23,273.

³³ Ibid at 23,281, para 53.

52. The terms “charitable” and “not for profit” have discrete meanings at law. A purpose or activity that is “not for profit” is not necessarily charitable.

Conclusion

53. The Commission concludes that the Applicant does not have exclusively charitable purposes and the Applicant has not provided enough evidence to show that the non-charitable purposes are ancillary to the charitable purposes.

Section 61B of the *Charitable Trusts Act 1957*

54. 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. 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).³⁴

55. 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.*³⁵

56. The Commission has analysed the wording of the Applicant’s purposes, surrounding context, and its activities (as directed by section 18(3)(a) of the Charities Act). The Commission does not consider that these provide evidence of “a substantially charitable mind” with an intention to create a charitable trust, but which was not conveyed by the drafting. The Commission does not consider that the purposes and activities indicate an intention to create a substantially charitable trust.
57. On these bases, the Commission considers that the Applicant’s purposes are not substantially charitable and therefore section 61B of the Charitable Trusts Act cannot operate to validate the trust.

³⁴ *Re Beckbessinger* [1993] 2 NZLR 362, 373.

³⁵ *Re Beckbessinger* [1993] 2 NZLR 362, 376.

Commission's determination

58. The Commission concludes that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that the Applicant 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 *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



Trevor Garrett
Chief Executive

29 November 2010
Date