

Deregistration decision: National Council of Women of New Zealand Incorporated

The facts

1. National Council of Women of New Zealand Incorporated (the Society) was incorporated under the Incorporated Societies Act 1908 on 25 September 1959.
2. The Society was registered as a charitable entity under the Charities Act 2005 (the Act) by the Charities Commission (the Commission) on 4 June 2009, with registration backdated to 30 June 2008.
3. The Society's purposes are set out in Rule II of its constitution:

Rule II

Purpose:

1. *To serve women, the family and the community at the local, national and international level.*
 2. *To research the needs of women and the family.*
 3. *To engage in education for women, that advances the betterment of women, the family and the community*
 4. *To collect and redistribute information of service to the community*
 5. *To form a link with the National Councils of Women of other countries through the International Council of Women.*
4. Prior to registration, the Society advised the Commission that it did not have a primary purpose of seeking to secure or oppose any change in the law or in the policy or decisions of central or local government, and provided a written undertaking to this effect. The Society was registered on that basis, but was identified for subsequent investigation.
 5. The Commission commenced an investigation into the Society following the receipt of the Society's annual return and financial report for the year ending 31 March 2009. The investigation focussed on the 12-month period from 1 April 2008 to 31 March 2009, being the financial period covered by the annual return and financial report filed by the Society.
 6. On 16 April 2010, the Commission sent the Society a notice of intention to remove the Society from the register on the basis that the Society did not appear to be established and maintained exclusively for charitable purposes, and therefore was no longer qualified for registration as a charitable entity. The Society was advised that the Commission considered that the Society's purposes outlined in Rule II of its constitution were not exclusively charitable and amounted to political advocacy, which could not be considered ancillary.

7. On 28 April 2010, the Society responded to the notice requesting a meeting with the Commission. The Society stated that:

“...this issue was raised by the Charities Commission in April – May 2008.

The issue was resolved because changes to the rules of the NCWNZ Constitution were made to the satisfaction of the Charities Commission.”

8. The Commission responded on 29 April 2010, advising that the Society had been registered on the basis of amendments to the Society’s purposes and a written undertaking that it did not have a primary purpose of seeking to secure or oppose any change in the law or in the policy or decisions of central or local government. Following the receipt of the Society’s first annual return, the Commission had cause to review the Society’s activities to ensure that it continued to qualify for registration. The result of that review was the notice dated 16 April 2010.
9. On 14 May 2010, members of the Monitoring and Investigations Team met with representatives of the Society.
10. On 19 May 2010, the Society responded to the notice dated 16 April 2010 with the following submissions:
- The Society’s main purpose is as stated in the Constitution, to work for the betterment of women, children and families. This is achieved by advancing education in specialist fields and by sharing information with the Society’s membership and the public.
 - The Society advances education “by operating a highly functional internal consultation system, our research which is then presented as submissions, or oral presentations, or in study format. Our methodology supports our work for betterment, and this work does include alleviating poverty, and a multitude of areas, which are of other benefit to the community.”
 - The two cases cited in the Commission’s notice regarding political advocacy are from other jurisdictions, and are therefore persuasive only and not binding on the Commission.
 - Advocacy, whether representational or political, is a tool. It is not a purpose. The Society’s website is a support vehicle that enables the holding and displaying of educational tools. The Society’s publications, including *The Circular*, are also support vehicles.
 - The Society’s advocacy work is an ancillary tool, and/or is peripheral to the organisations purpose.
 - The Society’s major thrust is the advancement of women, children and their families in New Zealand, advocating for change with parliamentarians is not a purpose of the organisation, but rather a consequence of that major purpose.
 - The Society’s recent engagement in the Social Assistance (Future Focus) Bill could technically be classified as political advocacy. “However, from our perspective and that of the Government’s, we provided representational advocacy, which was ancillary to our overall purpose that being the betterment of women, children and families; the alleviation of poverty.”
 - “No sitting Government would wish to see deregistration of an organisation which has such a long-standing; 114 years, trusted and integral relationship with the Community, during its terms of office. Moreover, the very work the Commission has called into question, is what government specifically contracts

and funds this organisation for; submissions, engagement in the public participatory process, as an agent for civil society.”

- The Society relieves poverty through direct donations carried out each year
 - The Society has “since its beginning engaged in internal consultation with its members. What is said at the national level is representative of our membership. ...this separates us from other organisations as any advocacy, whether engaging with government or taking on private enterprises, our advocacy is representational, whilst also ancillary.”
 - The decision of the Charities Commission will have serious implications for the Society that are not in the ‘public interest’. “We submit that the public and members of NCWNZ will be very concerned by such a decision, which we contend is an affront to democracy and the public participatory process.”
11. On 22 June 2010, the Registration and Monitoring Committee considered the proposed deregistration of the Society and recommended to the Board that the Society be removed from the Register.
 12. On 23 June 2010, the Commission received a further submission from the Society. The Board has considered this additional information and concluded that it does not alter its analysis or conclusions, which are set out below.
 13. On 9 July 2010, the Commission received further submissions from the Society. The Monitoring and Investigation Team completed an analysis on this information and made a second recommendation to the Board that the Society be removed from the register.

The issues

14. The Commission has considered whether the Society remains qualified for registration as a charitable entity, in terms of section 32(1)(a) of the Act. In order to remain qualified for registration, the Society must meet all of the essential requirements for registration under the Act. In this case, the key issue for consideration is whether the Society is established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. In particular:
 - (a) Are all of the Society’s purposes charitable?
 - (b) If any of the Society’s purposes are non-charitable, are those purposes ancillary to a charitable purpose?

The law on the deregistration of charitable entities

15. Under section 13(1)(b)(i) of the Charities Act, a society or institution must be established and maintained exclusively for charitable purposes.
16. 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.

17. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
18. Section 5(4) of the Act states a non-charitable purpose is ancillary to a charitable purpose of the trust, society or institution if the non-charitable purpose is:
 - (a) *ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society or institution; and*
 - (b) *not an independent purpose of the trust, society, or institution.*
19. Section 31 of the Charities Act provides:
 - (1) *An entity is deregistered as a charitable entity if it is removed from the register*
 - (2) *An entity is removed from the register if the Commission registers a notice in the register that –*
 - (a) *states that the entity is removed from the register;*
 - (b) *states the date on which the removal is effective*
 - (3) *The entity ceases to be a charitable entity on the date referred to in subsection 2(b).*
20. Section 32(1)(a) of the Act provides that an entity may be removed from the register if it is not, or is no longer, qualified for registration as a charitable entity.
21. Section 33 of the Act requires the Commission to give notice of its intention to remove an entity from the register.
22. Under section 35(1)(a) of the Act, if an objection to 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

23. In order to assess whether the Society is established and maintained exclusively for charitable purposes, the Commission has considered the Society's rules, information provided in the Society's financial statements, information provided by the Society including Canadian and United Kingdom based material, and information available on the Society's website.²

¹ See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.
² <http://www.ncwnz.org.nz/> (last accessed 18 June 2010).

24. Pursuant to section 50(2) of the Act, the Commission may examine the activities and proposed activities of the charitable entity, the nature, objects, and purposes of the charitable entity, and the results and outcomes achieved by the charitable entity. The Commission has considered these matters in determining whether the Society remains qualified to be registered.
25. Further, case law provides that where an entity's constitution does not indicate with clarity its main object(s), the objects are to be assessed in tandem with the entity's activities.³ As purposes 1 to 4 in Rule II are broadly worded, the Commission considers that the Society's activities must be taken into consideration. The Commission considers purpose 5 to be ancillary to the preceding purposes.
26. The Society has stated in its submissions that its purposes are charitable under the relief of poverty, the advancement of education, the advancement of religion, and other matters beneficial to the community. The Commission has therefore considered whether the Society is charitable under these four heads of charity.

Relief of poverty

27. 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 be capable of providing relief.
28. The Society submitted, in its letter of 19 May 2010, that it relieves poverty because it:

“... actively promoted donations from the membership to the Project Five-O Fund via the International Council of Women. This Fund ... was to help women in poor economic circumstances in developing countries by training them to acquire the necessary income-generating skills to alleviate poverty and improve their status.

NCWNZ has also regularly sponsored Pacific-based National Council's of Women, such as Vanuatu to meet the costs of ICW membership affiliation.

...

Funds are also raised through the NCWNZ National Meetings' these have been directed to the National Consultative Committee for Disarmament (2009), the hosting Branch's local Women's Refuge (2008), and various other local charitable organisations.

The NCWNZ branches also engage in their own local fundraising activities.

At the national level, NCWNZ coordinated coffee meetings at the local NCW Branches in 2009 for raising funds for the Fair Trade Organisation.”

³

Inland Revenue Commissioners v Yorkshire Agricultural Society [1928] 1 KB 611, 633.

29. The Commission considers providing support for organisations such as women's refuges may amount to assisting people who are in need, and therefore, these activities could be charitable under the relief of poverty. However, the Society also appears to be financially assisting other organisations, such as the National Consultative Committee for Disarmament, which appears to have political purposes and this would not amount to relief of poverty.
30. The Society submitted, in its letter of 19 May 2010, that it relieves poverty:
- “By ensuring that the needs and rights of women are represented and remain a community and government priority. Inequality are the root cause of poverty; therefore in order to relieve poverty, it is necessary to ensure that women are represented and active in all aspects of the society.”*
31. In the Australia case of *Commissioner of Taxation v Aid/Watch Incorporated*,⁴ it was found that monitoring and research of the Government's 'Australian Aid program' was not exclusively charitable. In the judgement it was stated;
- “The “natural and probable consequence” of Aid/Watch’s activities is an effect on public opinion and then on government opinion. Relief of poverty, however, is not either a natural and probable consequence precisely because governments have to take into account factors that institutions such as Aid/Watch do not need to consider...It is for this reason that, irrespective of whether in other circumstances courts maybe able to judge public benefit, in this case no such determination can be made.”*⁵
32. The Commission does not consider that the 'natural and probable consequence' of 'ensuring the needs and rights of women are represented, and remain a community and government priority' would be the relief of poverty; therefore, the relationship is too remote.

Advancement of education

33. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. The modern concept of "education" covers formal education, training and research in specific areas of study and expertise. It can also include less formal education in the development of individual capabilities, competencies, skills and understanding, as long as there is a balanced and systematic process of instruction, training, and practice.⁶ In order to advance education, learning must be passed on to others.

⁴ (2009) FCAFC 128.

⁵ (2009) FCAFC 128 at 47.

⁶ *Re Mariette* [1915] 2 Ch 284. (See also *Chesterman v Federal Commissioner of Taxation* (1923) 32 CLR 362; *Lloyd v Federal Commissioner of Taxation* (1955) 93 CLR 645; *Chartered Insurance Institute v London Corporation* [1957] 1 WLR 867; *Flynn v Mamarika* (1996) 130 FLR 218).

34. Education does not include advertisements for particular goods or services or promotion of a particular point of view.⁷ If research is being conducted, it must be carried out in an objective and impartial way and the useful results made available, or accessible to the public.

35. In New Zealand in the case of *Re Collier (deceased)*⁸, Hammond J set out the test for determining whether the dissemination of information qualified as charitable under the head of advancement of education:

“It must first confer public benefit, in that it somehow assists with the training of the mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the work must reach some minimal standard. For instance, in Re Elmore [1968] VR 390 the testator’s manuscripts were held to be literally of no merit or educational value.”

36. The Commission considers that the following activities of the Society may amount to advancing education:

- some sections of ‘The Circular’ newsletter
- training days for standing committees
- research on the status of women for the United Nations Convention on the Elimination of Discrimination Against Women report
- educational seminars provided at national meetings.

37. In the Society’s letter on 9 July 2010, the society stated:

“The broad purpose ‘to serve women, the family and the community at the local, national and international level’ is a charitable purpose that is achieved through research, discussion and action”

“NCWNZ provides valuable information and tools relating to the needs of women and disseminates this knowledge through various channels, locally nationally and internationally.”

38. However, submissions from individuals provided by the Society on 9 July 2010 indicate that the research and discussion are a preliminary tool for political action:

- *“Through receipt of NCWNZ monthly circular the CWLNZ meetings are able to discuss and give ‘feedback; to various circular items, remits, submissions and information...in this way our local CWLNZ individuals and collective views are made known and in turn submitted to NCWNZ National Office and incorporated into submissions.” (letter one)*
- *NCWNZ involves itself in national affairs to advance the wellbeing of women in mind without any party bias. Gathers information from its very varied catchments so that it can make well-grounded submissions on bills before parliament (letter two)*

⁷ *In re Shaw (deceased)* [1957] 1 WLR 729; as interpreted in *Re Hopkins’ Will Trusts* [1964] 3 All ER 46. See also *Re Collier* [1998] 1 NZLR 81.

⁸ [1998] 1 NZLR 81, 91-92.

- *Collecting facts at a local level for use at a national level to better inform policy decisions at a national level – this enables NCW to present all sides of any issue and they are displayed for what they are without fear or favour (letter three)*
- *Through the NCWNZ Board & the collation of information from all branches supplying submissions to them regarding various subjects which are discussed by our politicians, I believe it is imperative that the work of NCWNZ is able to continue to protect the rights not only of women but families also (letter four)*

39. In the Australian case of *Commissioner of Taxation v Aid/Watch Incorporated*,⁹ the judge states:

“The activities described in Aid/Watch’s constitution include ‘monitoring, research and campaigning.’ It is clear that neither ‘monitoring’ nor ‘researching’ alone would allow Aid/Watch to fulfil its stated objects of “ensuring” that aid is delivered in the way outlined in its constitution. It is ‘campaigning’ (as well as other activities) that materially enable Aid/Watch to exercise influence over public opinion and ultimately delivery of Australian Aid. These activities are informed by, and made more effective because of, the information available to Aid/Watch obtained through its researching and monitoring. Researching and monitoring however are preliminary to Aid/Watch’s primary goal of influencing policy.”

40. The Commission considers the ‘research’ and ‘discussion’ would not allow the Society to fulfil its stated objects to “to serve women the family and the community at the local, national and international level”,’ but instead are preliminary to the Society’s primary goal of influencing policy. The ‘research’ and ‘discussion’ cannot be considered an educational purpose of the Society.

Advancement of religion

41. To advance religion, a purpose must be for the benefit of a religion; and ensure a religious faith is passed on to others.

42. In its letter on 19 May 2010, the Society stated:

“As a non-sectarian organisation, NCWNZ does not promote any particular religion over another. However, it does promote opportunities for spirit reflection, such as via the National Meeting’s Interfaith session. ...

NCWNZ also regularly communicates via the Circular about religious diversity, material supplied by the Human Rights Commission. It also dispatches information via email regarding opportunities for engaging in multi-faith public services.”

43. The Commission considers that these activities do not ensure that a religious faith is passed on to others; therefore, this does not amount to the advancement of religion. However, these activities may be charitable under “other matters beneficial to the community” because they are likely to promote relationships between religious denominations.

⁹ (2009) FCAFC 128 at 36.

Other matters beneficial to the community

44. 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)¹⁰ namely:
- 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.
45. In *Travis Trust v Charities Commission*,¹¹ William J notes that
- “...regard must be had to the particular word 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.”*
46. The Society has stated that, *“our methodology supports the work for betterment, and this work does include alleviating poverty, and a multitude of areas which are of other benefit to the community.”* However, the Society has not provided any further evidence that supports this statement. Therefore, the Commission has insufficient evidence to conclude that the Society’s purposes are analogous to the spirit and intendment of the purposes set out in the Preamble to the Statute of Elizabeth.

Political purposes

47. Political purposes have been defined as purposes directed at furthering the interests of any political party; or securing or opposing any change in the

¹⁰ *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.

¹¹ CIV-2008-485-1689, High Court, Wellington, 3 December 2008 at para 20.

law or in the policy or decisions of central government, local authorities or other public bodies, whether in New Zealand or abroad.¹²

48. The rule that political purposes cannot be charitable was set out by Lord Parker of Waddington in *Bowman v Secular Society*.¹³

“... a trust for the attainment of political objects has always been held invalid, not because it is illegal, for everyone is at 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, and therefore cannot say that a gift to secure the change is a charitable gift.”

49. In New Zealand, the *Bowman* case has been applied by the Supreme Court in *Re Wilkinson (deceased)*,¹⁴ when deciding the charitable status of the League of Nations Union of New Zealand, and in *Knowles v Commissioner of Stamp Duties*,¹⁵ when deciding whether a temperance organisation was charitable.

50. In 1981, the New Zealand Court of Appeal applied *Bowman* in *Molloy v Commissioner of Inland Revenue*¹⁶ when considering whether a gift to the New Zealand Society for the Protection of the Unborn Child was tax deductible. In his decision, Somers J held that a political purpose included both advocating and opposing any change in the law. He also noted that to preclude recognition as a valid charity the political object must be more than an ancillary purpose, it must be the main or a main object.

51. In the United Kingdom the *Bowman* case has been applied in *National Anti-Vivisection Society v Inland Revenue Commissioners*¹⁷, and in *McGovern v Attorney-General*¹⁸ when the Court was considering the purposes of a trust established by Amnesty International. In the latter case, Slade J summarised his conclusions in relation to trusts for political purposes as:

“(1) *Even if it otherwise appears to fall within the spirit and intendment of the preamble to the Statute of Elizabeth, a trust for political purposes falling within the spirit of Lord Parker’s pronouncement in Bowman’s case can never be regarded as being for the public benefit in the manner in which the law regards as charitable.*

(2) *Trusts for political purposes falling within the spirit of this pronouncement include, inter alia, trusts of which a direct and principal purpose is either:*

(i) *to further the interests of a particular political party; or*

(ii) *to procure changes in the laws of this country; or*

(iii) *to procure changes in the laws of a foreign country; or*

(iv) *to procure a reversal of government policy or of particular decisions of governmental authorities in this country; or*

¹² *Re Wilkinson* [1941] NZLR 1065, 1077.

¹³ [1917] AC 406.

¹⁴ [1941] NZLR 1065.

¹⁵ [1945] NZLR 522.

¹⁶ [1981] 1 NZLR 688.

¹⁷ [1948] AC 31.

¹⁸ [1982] 1 Ch 321.

(v) to procure a reversal of government policy or of particular decisions of governmental authorities in a foreign country.”¹⁹

52. Two reasons for the principle that the Court will not regard as charitable a trust which has a main object of procuring an alteration of the law were cited by Slade J:

“... first, the court will ordinarily have no sufficient means of judging as a matter of evidence whether the proposed change will or will not be for the public benefit. Secondly, even if the evidence suffices to enable it to form a prima facie opinion that a change in the law is desirable, it must still decide the case on the principle that the law is right as it stands, since to do otherwise would usurp the functions of the legislature.”²⁰

53. The Judge noted that the mere fact that political means were employed in furthering the non-political purposes of a trust would not necessarily render it non-charitable. “If all the main objects of the trust are exclusively charitable, the mere fact that the trustees may have incidental powers to employ political means for their furtherance will not deprive them of their charitable status.”²¹

54. Since *McGovern* was decided, there has been some divergence of views between the leading authorities in what will constitute a political purpose. According to *The Law and Practice Relating to Charities*²² a principle purpose of educating the public in one particular set of political principles or of seeking to sway public opinion on controversial social issues will be a political purpose and therefore will not be able to be considered charitable.

55. Alternatively, *Tudor on Charities*²³ suggests that a strong case can be made that advocating for a change in the law and encouraging debate is analogous with educating the public in forms of government and encouraging political awareness. It could therefore be charitable as long as the public benefit test is still satisfied. The author suggests that a neutral stance could be taken in relation to political purposes in the same way that it is taken between religions.

56. The author of *Tudor* notes that more recent Commonwealth decisions do not appear to have upheld the principles cited in *McGovern* with absolute certainty. For example, when considering a trust to remove racial discrimination and advance the interests of Aborigines and Torres Strait Islanders, the Supreme Court of Australia in *Public Trustee v Attorney-General of New South Wales*²⁴ considered that a purpose directed to changing the law in a direction that the law was already going, particularly if reinforced by treaty obligations, should be charitable.

¹⁹ [1982] 1 Ch 321, 340.

²⁰ [1982] 1 Ch 321, 336-7.

²¹ [1982] 1 Ch 321, 343.

²² 1999, 3rd edition, Butterworths, London, Dublin & Edinburgh, p 189.

²³ 2003, 9th edition, Sweet & Maxwell, London, p 68.

²⁴ (1997) 42 NSWLR 600.

57. In *Public Trustee v Attorney-General of New South Wales* Santow J noted:

“The cases on charities also involve some confusion between means and ends when it comes to their persuasive activities. There is a range of activity from direct lobbying of the government, to education of the public on particular issues, in the interests of contributing to a climate conducive to political change. The line between an object directed at legitimate educative activity compared to illegitimate political agitation is a blurred one, involving at the margin matters of tone and style. ...

*Persuasion directed to political change is part and parcel of a democratic society in which ideas and agendas compete for attention and allegiance. Much will depend on the circumstances including whether an object to promote political change is so pervasive and predominant as to preclude its severance from other charitable objects or subordinate them to a political end. It is also possible that **activities** directed at political change may demonstrate an effective abandonment of indubitably charitable objects.”²⁵*

58. In New Zealand in *Re Collier (deceased)*²⁶ Hammond J considered that there are three different categories of political trust that have been impugned in the case law. The first category is *“that charitable trusts to change the law itself are invalid”*. The second category, trusts to support a political party, is rejected because *“it is thought undesirable for the advantages of charity to be conferred on trusts which overtly secure a certain line of political administration and policy”*. The third category of prohibited political trust is that for the perpetual advocacy of a particular point of view or ‘propaganda’ trust. This is because the Court has no means of judging whether or not a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift.

59. Hammond J criticised these decisions, especially in light of section 13 (freedom of thought, conscience and religion) and section 14 (freedom of expression) of the *New Zealand Bill of Rights Act 1990*. Nevertheless he wrote:

“... I have considerable sympathy for that viewpoint which holds that a Court does not have to enter into the debate at all; hence the inability of the Court to resolve the merits is irrelevant. ... In this Court at least, there is no warrant to change these well established principles – which rest on decisions of the highest authority – even though admirable objectives too often fall foul of them.”²⁷

²⁵ (1997) 42 NSWLR 600, 621.

²⁶ [1998] 1 NZLR 81.

²⁷ *Re Collier (deceased)* [1998] 1 NZLR 81, 90.

60. In Australia in *Attorney General for NSW v The NSW Henry George Foundation Ltd*²⁸ Young CJ referred to the tests proposed by Professor LA Sheridan in an article entitled “*The political muddle – A Charitable View?*”²⁹ which have been summarised as:

“(1) A trust which objectively cannot promote the public benefit cannot be charitable
(2) a trust to promote legislation in the interests of members of a group such as a professional association is not charitable
(3) a trust for the promotion or defeat of unselfish legislation which is controversial is not charitable
(4) a trust to study and prepare comments on legislative bills is charitable
(5) a trust to promote legislation improving the law is charitable. Judges can tell what would improve the law and what would not”³⁰

However, Young CJ clearly stated that, “as a single judge” he could not go this far.³¹

61. In *Victorian Women Lawyer’s Association Inc v Commissioner of Taxation*³², the court made the following obiter comments about political purposes:

“The High Court’s formulation suggests that a trust may survive in Australia as charitable where the object is to introduce new law consistent with the way the law is tending. In his paper in the Australian Bar Review, Santow J also observed that the trust which has an undoubtedly charitable object does not lose its charitable status simply because it also has an object of changing the law or reversing policy (at 248) “the question is always whether that political object precludes the trust satisfying the public benefit requirement.”

62. In *Public Trustees v Attorney General*,³³ Santow J stated that seeking the amendment of the law according to law is not a “political” purpose, but a legitimate one if the main purpose is a charitable one even if the means seem “political”.

63. In considering the purposes of an entity, the main purpose of that entity must be found. It is the purpose in question that must be political; the mere fact that political means are employed in furthering charitable objects does not necessarily render the gift or institution non-charitable. The dissenting judges in *Vancouver Society of Immigration and Visible Minority Women v MNR*,³⁴ summarised the law as follows: “(a) an organisation must be constituted exclusively for charitable purposes; and (b) its activities must be substantially connected to and in furtherance of, those purposes.”

²⁸ [2002] NSWSC 1128.

²⁹ Sheridan, LA (1997) *The political muddle – A Charitable View?* 19 Malaya Law Review 42.

³⁰ [2002] NSWSC 1128 at para 65.

³¹ [2002] NSWSC 1128 at para 65.

³² [2008] FCA 983, paragraph 128 (Federal Court of Australia).

³³ (1997) 42 NSWLR 600, 618.

³⁴ [1999] 1 SCR 10 at para 56.

64. On the Society's website³⁵ it indicates that:

"Resolutions are adopted by NCWNZ at national meetings and go on to form the policies for the work of the Council. ...

The Latest Resolutions

Assessing Individuals for Benefits

2009

That NCWNZ requests the Government to assess all people as Individuals when they apply for an unemployment, sickness or invalids benefit, irrespective of their marital or family status.

Signage for School Buses

2009

That NCWNZ requests that all school buses, while conveying children to and from school display distinctive and active signage, including the maximum speed at which a vehicle may pass a stationary school bus.

Allowance for Jurors

2009

That NCWNZ requests that the Minister of Justice increase the basic allowance paid to jurors.

Adult Community Education (ACE)

2009

That NCWNZ urges the Government to reinstate full funding to all Adult and Community Education (ACE) programmes."

65. Under submissions³⁶ the Society states:

*"The National Council of Women of New Zealand (NCWNZ) is able, through its communication network, **to speak on almost all matters on which public comment is sought**. Where views are not unanimous, differing opinions are included. Statements and submissions made by NCWNZ are based on resolutions (decisions made at National Meetings), as well as the opinions collected from the membership by the Standing Committees. [emphasis added]*

Submissions are prepared in reaction to:

- proposed changes to legislation, and*
- consultation documents from government departments, local authorities and other bodies*

Latest Submissions

- S10.14 Proposal to ban tobacco displays in New Zealand*
- S10.13 The Development of a Natural Health Products Bill*
- S10.12 Food Labelling Law and Policy Review*
- S10.11.1 Social Assistance Future Focus Bill*
- S10.11 Social Assistance Future Focus Bill*
- S10.10 Mining on Conservation Land*
- S10.08 Review of the Misuse of Drugs Act 1975*
- S10.09 School Children in Paid Employment*
- S10.07 Review of Retirement Income Policies 2010*

³⁵ <http://www.ncwnz.org.nz/resolutions/> (last accessed 18 June 2010).

³⁶ <http://www.ncwnz.org.nz/submissions-2/> (last accessed 18 June 2010).

- S10.06 *A Focus on Victims of Crime*
- S10.05 *Education (Freedom of Association) Amendment Bill*
- S10.04 *Child and Family Protection Bill*
- S10.03 *Review of Special Education*
- S10.02 *Fair Trading Soliciting on Behalf of Charities Amendment Bill*
- S10.01 *Income Splitting ...”*

66. By Law 7 of the constitution states:

- “(a) Remits may be put forward by the Board of Management, Branches, Nationally Organised Societies and New Zealand Standing Committees for the consideration of Conference or the National Executive.*
- (b) Remits shall be forwarded to the Board of Management at least 5 months before the date of the meeting, and sent out to Branches and Nationally Organised Societies at least 3 months before the meeting*
- (c) Remits shall be selected, edited and/or co-ordinated by the Board of Management.”*

67. If remits are approved at the National meeting they become resolutions and form the policy of the Society. The proposed remits for the 2010 National meeting are:³⁷

- Raising the liquor consuming and purchasing age to 20 years old: That NCWNZ change its policy to increase the minimum age to 20 years of age that persons may legally consume liquor on, or purchase liquor from, licensed premises.
- Early intervention programmes: NCWNZ supports intensive, early intervention programmes designed to improve the life changes of children born into families with a history of serious multiple problems over several generations.
- Care for under-65 year olds with a disability: That NCWNZ request the Government to provide appropriate social and medical accommodation for people under 65 years of age, with a disability, needing rest home grade care.
- Climate change: That NCWNZ urge the Government to develop initiatives to prepare New Zealand for the increasing effects of climate change.
- Decline of oil production: That NCWNZ urge the Government to develop initiatives to prepare New Zealand for the increasing effects of the decline of oil production.
- Child support payments made by self-employed fathers: That NCWNZ supports the amendment of the Child Support Amendment Act, so that self-employed, non-custodial parents are assessed on all entities capable of producing income or capital gain, to which they have any access for their share of child support payments.

68. By Law 9 of the constitution states:

“The duties of the Board of Management shall be:

- (a) Promoting the objects of the Council*
- (b) Implementing the decisions of Conference and the National Executive*
- (c) Making submissions and representations*

³⁷ <http://www.ncwnz.org.nz/assets/Uploads/NCWNZ-National-Conference-2010-Remits.pdf> (last accessed 18 June 2010).

- (d) *Supervising the work of the Parliamentary Watch Committee and the Standing Committees.”*

69. By Law 11 of the constitution states:

- (a) *The Parliamentary Watch Committee shall study pending legislation and Council policy with a view to supplying immediate information to the Board of Management and through it to Branches, National Organised Societies, National Members and Standing Committees.”*

70. Appendix 13 of the information provided by the Society states:

“The Standing Committees are the powerhouse of the organisation. Members of the committee have an interest in, and in some cases, the expertise in, the particular subject matter of the committee. ...

The quality of the work (and consequently our capacity to influence policy in New Zealand) is highly dependant on the work of our Standing Committees. ...

By Law 12

- (a) *The duties of the Standing Committees shall be:*
- (i) *Studying questions raised by Branches and/or Nationally Organised Societies, suggesting remits arising from such study or proposing other action*
 - (ii) *Providing background material for remits accepted by the Board of Management*
 - (iii) *Studying proposed legislation in their field*
 - (iv) *Drafting submissions to Parliamentary Committees, Commissions, etc.*
 - (v) *Preparing informative material for circulation to Branches and Nationally Organised Societies and providing them with background material on matters concern to the Council*
 - (vi) *Suggesting follow-up to Council for action*
 - (vii) *Responding to requests from the conveners of ICW Standing Committees.”*

71. Appendix 13 page 15 states:

“PARLIAMENTARY WATCH COMMITTEE

During the year, PWC researched 93 items for the standing committees (43 items of legislation and 50 discussion documents). ... The Committee members are rostered on a weekly basis to identify the resolutions and previous submissions relevant to the proposed new legislation and discussion document. ...

From these, 27 submissions on legislation were checked to ensure their consistency with NCWNZ policy and that the comments relate accurately to the intention of the Bill, and 13 oral presentations were made before Select Committee hearings.”

72. Appendix 13 page 10 sets out the topics list for the standing committees:

Consumer Affairs

Including advertising, biotechnology, broadcasting standards, business ethics, consumer protection, costs of services, energy, food safety, media watch, telecommunications etc

Economics

Including ACC, asset testing, benefits, feminisation of poverty, family finance/household income, financial services, insurance, inflation, investments, matrimonial property, pensions, privatisation, rural developments, superannuation, taxation etc

Education

Including absenteeism, curricula, early childhood education, funding, health education, monitoring and testing, occupational training, teacher training, tertiary education etc

Employment

Including ACC, access to employment, occupational safety and health, employment equity, parental leave, unemployment, women's employment opportunities, youth training and employment etc

Environment

Including afforestation, climate, conservation, energy, hazardous substances, marine life, national parks and other reserves, public transport, pollution, resource management, town planning, water etc

Family Affairs

Including adoption, care of the aged, child abuse, child development, children in need of care, domestic violence, rights of the child, youth issues etc

Health

Including abortion, ACC, accident prevention, care of the aged, child health, community care, conditions of employment in the health sector, contraception, dental care, medical research, mental health etc

Justice & Law Reform

Crime - including child abuse, domestic violence, gangs, guns, juvenile crime, paedophilia, pornography, sex crimes, victims

Courts - including appointment of judges, conduct of courts, court officials, evidence of children, juries, legal aid

Penalties and punishments - including community sentencing, length of sentences, parole, periodic detention, prisons

Public Issues

Including biculturalism, driver education and licensing, ethics, legislative processes, election costs, election processes, local government, multiculturalism, parliament, privacy, Treaty of Waitangi etc

Social Issues

Including alcohol, disabled persons, drug abuse, gaming, housing, migrants, refugees, road safety, social policies of government, unpaid work, voluntary work

73. In its letter of 19 May 2010, the Society states:

“Standing Committee members have until recently, always provided their input directly to the Standing Committee Conveners. The Board of Management has now through Executive policy changed this, so that a copy of all input is made available to National Office. This ensures all opinions can be sighted by the PWC Committee, which is necessary for the oral presentations on submissions against legislation.”

74. The letters of support provided by the Society on 9 July 2010 indicate that a main purpose of the Society is to change the law and influence policy:

- *NCWNZ is viewed by [name withheld] as the primary lobby group which focuses on women, children, and family at a national (governmental) and international (via international memberships) level. NCWNZ provides a unified voice for women, the family and the community by taking the information and presenting it to government (letter one)*
- *NCW serve women in NZ by being an advocate for them at every level of the community. They lobby government on fairer policies for women and our families, they advocate for equality in every aspect of women’s lives (letter two)*
- *NCWNZ is an advocate and the voice of women (letter three)*
- *We have an honourable and respected reputation for advocating for women, children and the needy in our society (letter four)*
- *By its collective nature, NCWNZ is a strong advocate for groups who otherwise find it difficult to be heard in the corridors of power (letter five)*
- *After consultation with its membership NCW highlights injustices and anomalies and suggest policy changes to remedy these injustices and anomalies in NZ society, both at regional or national level (letter four)*
- *Women are able to have their views and those of their partners, friends and families heard, discussed and perhaps incorporated into policy at its highest level (letter six)*

75. The Commission acknowledges that where a Society carries out political advocacy in order to further a charitable purpose, this would be considered ancillary to that charitable purpose, for example, where a Society set up to provide child health care makes presentations to legislative or government committees in order to assist children and families in need.

76. The Society submits that it is involved in political advocacy, but that this is a tool as a means of furthering or supporting its primary purpose of promoting progress for women and not a purpose of the Society.

77. However, information provided on the Society’s website and in its submissions indicates that the Society is ‘urging’ and lobbying the government to change the laws on a wide range of issues that are not restricted to furthering particular charitable purposes, and is not ancillary to any charitable purpose or activity. The Commission is of the view that the object of the society, ‘to promote political change is so pervasive and predominant as to preclude its severance from other charitable objects.’³⁸

³⁸ *Public Trustee v Attorney-General of New South Wales* (1997) 42 NSWLR 600, 621.

78. The Commission therefore considers that a main purpose of the Society is to advocate for changes in the law or the policy or decisions of central government. This purpose is not ancillary to a charitable purpose, and according to the case law cited above, cannot be considered to provide public benefit.

Applicant's submissions

79. In its letter of 23 June 2010, the Society provided an article entitled 'Charitable Purpose, Advocacy and Income Tax Act'³⁹ for consideration. The article's analysis of Canadian charity law in relation to political advocacy is consistent with the Commission's view as to the equivalent law in New Zealand.

80. On page six of the article the author states:

"An organisation that spends its entire resources lobbying government to spend more on relief of poverty, for example, through public advocacy may not be considered a charity – even though the organization may be able to do more to relieve poverty through public advocacy, than a soup kitchen that offers relief directly to the poor."

81. While the article concludes that existing Canadian policy creates uncertainty and confusion among charities that wish to partake in political advocacy it clearly indicates that non ancillary political activity is not charitable.⁴⁰

82. In its letter of 9 July 2010, the Society provided UK Charity Commission guidance titled 'CC9 Speaking Out - Guidance on Campaigning and Political Activity by Charities'⁴¹ for consideration. The guidance sets out the UK's position in relation to political advocacy and campaigning, and appears to be consistent with the Commission's view as to the equivalent law in New Zealand. The following paragraph reflects the UK Charity's Commission position:

*[D3] The Charity Commission would accept the application if it was clear that securing a change in Government policy **was not the continued and sole activity of the charity**, but part of a wider range of activities aimed at furthering its charitable purpose* [Emphasis added]

[D7] Legislation going through Parliament: A charity can support or oppose passage of Parliamentary Bill, or Welsh Assembly Proposed Measure (similar to Parliamentary Bill), if this can reasonable expect to support the delivery of its charitable purpose...A charity may also supply a member of either House relevant information or briefing about the implications of Parliamentary Bill, for use in debate

³⁹ Kitching, A, *Charitable Purpose, Advocacy and the Income Tax Act*, Law and Governing Division, 2006.

⁴⁰ Kitching, A, *Charitable Purpose, Advocacy and the Income Tax Act*, Law and Governing Division, 2006. page 7.

⁴¹ Charity Commission, CC9 - Speaking Out - Guidance on Campaigning and Political Activity by Charities, 2008.

Promoting New Legislation: On the same basis a charity can also promote the need for a particular piece of legislation. Subject to their purposes, charities may be able to persuade government to introduce or adopt legislation.

*[D8] A charity may choose to focus most, or all, of its resources on political activity for a period. **The key issue for charity trustees is the need to ensure that this activity is not, and does not become, the reason for the charity's existence.** For any charity, political activity can only be a means of supporting or contributing to the achievements of any charitable purpose. **It cannot be a charitable purpose in its own right, or the only means by which the charity pursues its objects.** [Emphasis added]*

*There could be a particular situation where a situation where a charity may lawfully apply most, or even all of its resources to political activity, in support of its charitable purpose. **These situations must apply only for a period of the overall life of the charity.** [Emphasis added]*

*[D9] A charity can seek to influence government or other public bodies, providing it is in support of their charitable purpose. **However trustees must take care to avoid an approach which is purely focused on political activity as this could call into question the propriety of their actions, or ultimately their charitable status.**" [Emphasis added]*

83. The Society's activities, submissions by the Society's members, and the tagline of the Society being 'Women influencing policy' indicates that political advocacy is a continuing activity and the main reason for the Society's existence. Therefore, the Commission's position is consistent with that taken by the UK Charity Commission.

Conclusion

84. Some of the activities undertaken by the Society under Rule II purposes 1 to 4 may be charitable, but the Society also has a main purpose of advocating for changes in the law or the policy or decisions of central government, which is not charitable. The Commission therefore concludes that the Society does not have exclusively charitable purposes.

Public interest

85. In its letter of 19 May 2010 the Society states "*NCWNZ encourages the Charities Commission to maintain this organisations charitable status until the proposed review of the Commission is completed next year.*"
86. Section 10(1)(a) of the 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 Society, which seeks funds from the public.
87. Accordingly, the Commission considers that it is in the public interest to remove the Society from the register as this will maintain public trust and confidence in the charitable sector.

Charities Commission's determination

88. The Commission has determined that the Society is not qualified for registration as a charitable entity because it is not established and maintained exclusively for charitable purposes as required by section 13(1)(b)(i) of the Charities Act.
89. Under section 35(1) of the Act, the Commission is satisfied that it is in the public interest to remove the Society from the register and one ground for removal from the register has been satisfied, that is, the Society is not qualified for registration as a charitable entity.
90. The decision of the Commission is therefore to remove the Society from the Register, pursuant to section 31 of the Act, with effect from 19 August 2010.

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

Signed for and on behalf of the Charities Commission

.....
Trevor Garrett
Chief Executive

.....
Date