

Registration decision: Citizens Commission of Human Rights Incorporated

The facts

1. Citizens Commission of Human Rights Incorporated (the Applicant) was established as an incorporated society on 9 November 1976.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the *Charities Act 2005* (the Act) on 26 May 2008.
3. The Applicant's original objects were set out in clause 2 of the constitution:

The objects of the society are:

- (a) *To remain charitable and do such acts particularised hereunder, namely:*
 - (i) *To guard against, publish and seek correction of any abuses and as guaranteed by the Universal Declaration of Human Rights of the United Nations; the Nuremburg Code; the Declaration of Human Rights for Mental Patients; and the Human Rights Act and codes of this government.*
 - (ii) *To encourage and assist effective, non damaging mental health programmes.*
 - (iii) *In furtherance thereof, to conduct educational programmes, to organise study groups and/or committees, to give lectures, to publish and circulate magazines, books and pamphlets and employ other media dealing with such activities.*
 - (iv) *To establish and promote the acceptance of ethical codes in any area where men have used their power or authority to enslave, harm or in any way seek to lessen the freedom of others.*
4. The Commission analysed the application for registration and on 25 November 2008, sent the Applicant a notice that may lead to decline on the basis that the winding up clause was not sufficient to meet the Commission's requirements. The Commission also requested further information regarding clauses 2(a)(i) and 2(a)(iv).
5. The Applicant responded to the notice via email on 11 February 2009, submitting that:

The Citizens Commission on Human Rights (CCHR) primarily works in the area of education and public awareness of mental health issues. This is not limited to people within institutions, but the wider community as a whole. We run exhibitions, education talks, do research and supply information.

With regards to advocacy, we work at a personal level with individuals and families who require education and support in this area or with a complaint they may have, we may assist them with this. With regards to lobbying for law change advocacy; there are times when CCHR would

undertake this, but again it is usually more from the point of view of education, for example informing MPs of issues concerning the mentally ill or parents of children who are diagnosed with a mental disease. CCHR does not have any political membership or engage in advocacy with a political party.

Rule 2(a)(i) merely seeks to keep the activity under the framework of the NZ and international human rights covenants.

Rule 2(a)(iv) hasn't been done in the whole time I have been with the charity from an establishment basis, though there have been codes such as the Health and Disability Commissioner's Patients Rights Code which has been promoted to the public.

6. The Commission analysed the information provided and on 20 February 2009, sent the Applicant a notice that may lead to decline on the basis that the winding up clause was still not sufficient to meet registration requirements; and that the Applicant's main purpose was to advocate for a particular point of view and was therefore not charitable.
7. The Applicant responded on 2 April 2009, advising that it would amend its constitution. On 30 October 2009, the Applicant supplied an amended constitution containing a winding up that is sufficient to meet registration requirements.
8. The Applicant's purposes are set out in clause 2(a) of the amended constitution:

The objects of the Society are:

- (a) *To remain charitable and do such acts to benefit the community, namely:*
 - (i) *To benefit individuals, families and the community by promoting human rights awareness, as guaranteed by the Universal Declaration of Human Rights of the United Nations.*
 - (ii) *To initiate, participate and encourage educational activities relating to human rights. And in so doing, to strengthen the human rights framework for the benefit of all particularly relating to mental health.*
 - (iii) *To advance and support human rights in partnership with other organisations and activities.*

9. The Commission analysed the amended constitution and on 2 November 2009, sent the Applicant a notice that may lead to decline on the basis that the Applicant's activities as demonstrated by its website¹ indicated that the primary purpose of the Applicant was perpetual advocacy of a particular point of view.

¹ www.cchr.org.nz

10. On 27 January 2010, the Applicant's barrister responded to the notice submitting:

- “[The Commission’s] definition of political purpose is neither within the case law that I have been able to find nor logically possible for the following reasons:
 1. Every single charitable organisation on your list has a purpose or point of view to educate people or to promote certain issues which are charitable ...
 2. Furthermore, Amnesty International regularly educates and lectures people as well as promotes human rights on its website deals with abuse of human rights abuses in various ways in various countries. According to you that would also be a political purpose. If you were to non-discriminately and proportionately apply your definition, it would mean that no single charitable organisation in New Zealand would be capable of being registered as a charitable organisation.”
- The Commission’s “view is selective i.e. that you have applied one criteria to CCHR and have applied other criteria to other charitable organisations. In this regard you are in my submission discriminating against CCHR for its imputed opinions regarding psychiatry.”
- “CCHR is not a political organisation devoted to destroying or in any way affecting the industry of psychiatry but simply an organisation pointing out abuses and assisting people to overcome abuses.”
- The Commission’s “intention to decline CCHR’s status as a charitable organisation ... breaches s. 14 of the Bill of Rights Act and also s. 19 of the Bill of Rights Act in that it is discriminating against CCHR and/or its founders, or organisers on the basis of their imputed opinions and on the basis of their religious views or ethical views and is also furthermore attempting to limit CCHR’s directors and other people’s freedom of speech ...”
- CCHR’s “primary aim is to assist those who have been the subject of abuse in psychiatric and mental institutes and its subsidiary purpose to that is to educate the general public on the various historical and current abuses perpetrated in psychiatric institutions and also to assist and to educate in the potential so that people are aware if they have to identify if they have been abused.”
- The Commission is “potentially in breach of s. 15 of the Bill of Rights Act i.e. the freedom of religion.”
- “...CCHR has been linked to the Church of Scientology in the press and although the Church of Scientology is the founder of CCHR, it appears that the Church in all organisations with which it has been involved has been regularly targeted by the press recently. These targeting of the Church of Scientology seem to coincide with your current decision to attempt to withhold charitable status from CCHR. That in itself appears to be discrimination on the grounds of religious views.”

The issues

11. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the Act. In this case the key issue for consideration is whether the Applicant is established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. In particular, whether the Applicant's purposes fall within the definition of charitable purpose in section 5(1) of the Act and provide a public benefit.

The law on charitable purposes

12. Under section 13(1)(b)(i) of the Act, a society or institution must be established and maintained exclusively for charitable purposes.
13. 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.² This means that the purpose must be directed at benefiting the public or a sufficient section of the public.
14. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
15. Also, in considering a registration application, section 18(3)(a) of the Act requires the Commission to have regard to the activities of the entity 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

16. The purposes in clause 2(a) of the amended constitution are not directed at the advancement of religion. The Commission has therefore considered whether these purposes are charitable under the relief of poverty, the advancement of education and "any other matter beneficial to the community."

Relief of poverty

17. To be charitable under the relief of poverty, a purpose must:
 - be directed at people who are poor, in need, aged or suffering genuine hardship, and
 - provide relief.

² See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.

18. "Poverty" is interpreted broadly in law and a person does not have to be destitute to qualify as "poor".³ People who are in need, aged, 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.⁴
19. 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.⁵
20. The purposes outlined in clause 2(a) do not indicate an intention to relieve poverty. However, the Applicant's barrister submits, in his letter of 27 January 2010, that the Applicant points out abuses and assists people to overcome abuses in the field of psychiatry. The Commission considers that this particular activity may provide relief for victims of abuse in the field of psychiatry and therefore may be charitable under the relief of poverty.

Advancement of education

21. 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
22. Education does not include advertisements for particular goods or services or the promotion of a particular point of view.⁷ In *Re Bushnell (deceased)* the court held that a distinction must be made between propagating a view that can be characterised as political and the desire "to educate the public so that they could choose for themselves, starting with neutral information, to support or oppose certain views".⁸

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

⁴ *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.

⁵ *Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney-General* [1983] Ch 159; [1983] 1 All ER 288. See also *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

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).

⁷ *In re Shaw (deceased)* [1957] 1 WLR 729; *Re Hopkins' Will Trusts* [1964] 3 All ER 46. See also *Re Collier* [1998] 1 NZLR 81 and *Re Bushnell (Deceased)* [1975] 1 All ER 721, 729.

⁸ *Re Bushnell (deceased)* [1975] 1 All ER 721, 729.

23. In *Re Collier (deceased)*⁹, Hammond J set out the test for determining whether a purpose will be charitable under the advancement of education:

*"It must first confer a 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."* [Emphasis Added]

24. Moreover, in *Positive Action Against Pornography v Minister of National Revenue*¹⁰ the appellant's purpose was to "develop and distribute educational material concerning the issue of pornography". The appellant did this through the production of an information kit, which it distributed to the public. The Canadian Federal Court of Appeal held that the appellant was not charitable because "there is simply the presentation to the public of selected items of information and opinion on the subject of pornography. That, in my view, cannot be regarded as educational in the sense understood by this branch of the law."¹¹

25. The Commission notes that the purpose outlined in clause 2(a)(ii) is stated to be charitable under the advancement of education as it relates to "educational activities relating to human rights". However, it appears from the information provided by the Applicant and the content of its website, that the Applicant attempts to achieve this purpose through the provision of information relating to the negative impact of psychiatric drugs and other psychiatric practices. The Applicant's website states:

The Citizens Commission on Human Rights (CCHR) is a non-profit mental health organisation, operating in hundreds of offices in 34 countries. CCHR has long sought to restore basic unalienable human rights to the field of mental health, including, but not limited to, full informed consent regarding the medical legitimacy of psychiatric diagnosis, the risks of psychiatric treatments, the right to all available medical alternatives, and the right to refuse any treatment considered harmful.

CCHR was co-founded in 1969 by the Church of Scientology and Professor of Psychiatry Emeritus Dr. Thomas Szasz at a time when patients were being warehoused in institutions and stripped of all constitutional, civil and human rights.

CCHR functions as a mental health watchdog, working alongside many medical professionals including doctors, scientists, nurses and those few psychiatrists who have taken a stance against the biological/drug model of "disease" that is continually promoted by the psychiatric/pharmaceutical industry as a way to sell drugs. It is a non political, non-religious, non-profit organization dedicated solely to the broad education and eradication of mental health abuse and empowering the victims of such abuse. CCHR's Board of Advisers, called Commissioners, include doctors, scientists,

⁹ [1998] 1 NZLR 81, 91.

¹⁰ (1988) 49 DLR (4th) 74.

¹¹ 1988) 49 DLR (4th) 74, 80.

psychologists, lawyers, legislators, educators, business professionals, artists and civil and human rights representatives.

People frequently ask us if we are of the opinion that no one should ever take psychiatric drugs, but we do not deal with opinions. CCHR is dedicated to providing information about a multi-billion dollar psycho/pharmaceutical industry does not want people to see or know. The real question therefore is, do people have a right to know all the information about psychiatric drugs? Including:

- A) the known risks of the drugs and/or treatment from unbiased, non-conflicted medical review;
- B) the medical validity of the diagnosis for which drugs are being prescribed;
- C) all non-drug options (essentially informed consent) and;
- D) the right to refuse any treatment they consider harmful.

CCHR has worked for more than 40 years (more than 30 years in NZ) for full informed consent in the field of mental health, and the right to all the information regarding psychiatric diagnoses and treatment, not just the information coming from those with a vested interest in keeping them in the dark.

It is in this spirit that we present you with videos, news, medical experts and information designed to arm you with facts.

As a non-profit organization, it is through public donations that we are able to continue our educational campaigns.¹²

26. The Commission considers that the information provided by the Applicant in relation to psychiatry and psychiatric drugs is not neutral or objective. The information provided on the Applicant's website outlines the negative impacts of psychiatric drugs but does not refer to any positive impacts or benefits from taking these drugs. Moreover, while the website purports to refer to research supporting this view, it does not refer to any research that indicates psychiatric drugs are beneficial to people with psychiatric disorders. Accordingly, the Commission considers that the information provided by the Applicant amounts to "propaganda or cause under the guise of education" and therefore is not charitable under the advancement of education.

Other matters beneficial to the community

27. In order for a purpose to qualify as "any other matter beneficial to the community", the purpose must be beneficial to the community and within the spirit and intent of the purposes set out in the Preamble to the *Charitable Uses Act 1601* (the Statute of Elizabeth), namely:
- relief of aged, impotent, and poor people
 - maintenance of sick and maimed soldiers and mariners
 - schools of learning

¹²

<http://www.cchr.org.nz/Default.aspx?tabid=93> last accessed on 1 April 2010.

- 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.¹³

28. In *Travis Trust v Charities Commission*, 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.”¹⁴

Protection of human life and social rehabilitation

29. Courts have held purposes for the protection of human life to be similar to the intent of the Statute of Elizabeth, especially “the repair of sea banks”. Thus, in *Re Twigger*,¹⁵ Tipping J held that associations such as women’s refuges, rape crisis groups, pregnancy support groups, and battered women’s support groups were charitable without having to establish that the beneficiaries in question are poor or impotent, though this may in fact also be the case.
30. In *Centrepoin Community Growth Trust v Commissioner of Inland Revenue*, the New Zealand High Court held that treatment by psychological healing for people with emotional and psychological disturbances was beneficial to the community and therefore charitable under the fourth head.¹⁶
31. The Applicant’s purposes outlined in clause 2(a) do not indicate an intention to protect life or assist social rehabilitation. However, the Applicant’s barrister, in his letter of 27 January 2010, states that the Applicant assists victims of psychiatric abuse.

¹³ *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.

¹⁴ CIV-2008-485-1689, High Court, Wellington, 3 December 2008 (Joseph Williams J.) at para. 20.

¹⁵ [1989] 3 NZLR 329, 339.

¹⁶ *Centrepoin Community Growth Trust v CIR* [1985] 1 NZLR 673, 698.

32. The Commission considers that groups established to support victims of psychiatric abuse are similar to the groups mentioned in *Re Twigger*.¹⁷ Accordingly, the Commission considers that some of the Applicant's activities may promote the protection of human life, for example, by preventing the suicide of victims of abuse under the mental health system, and may promote social rehabilitation through the provision of support for victims of psychiatric abuse.

Human Rights

33. Since the enactment of section 2(2)(h) of the *Charities Act 2006 (UK)* "the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity" has been a separate charitable purpose in England and Wales.
34. In New Zealand, however, there is no statutory basis for the promotion of human rights to be charitable and therefore this must be determined by analogy with other purposes that have been held to be charitable.
35. The promotion of human rights often involves engagement in the political process. As a consequence of this, Courts have held some entities with such purposes to be charitable while other entities have been held to be non-charitable because their attempts to secure legislative reform were regarded as primary purposes.
36. According to *The Law and Practice Relating to Charities*:¹⁸

"The most conservative approach has been adopted in Massachusetts where in two cases trusts to promote the cause of women's rights have been interpreted as being directed to the securing of legislative reform, and so have been held non-charitable. In other states the courts have treated trusts for securing equal rights under the law for women as being trusts having the primary purpose of removing discrimination, with legislation as one of the means to that end, and have held such trusts charitable. The predicament of other minorities has excited sympathy and trusts 'to promote, aid and protect citizens of the United State of African descent, in the enjoyment of their civil rights' and to promote legislation to secure justice for the American Indian have been upheld. The earliest case of this kind was Jackson v Phillips where a gift to be used to 'create a public sentiment that will put an end to negro slavery in this country' was upheld. Neither legislation nor political action was specified as a means of achieving the end, which Gray J found to be within the spirit and intendment of the preamble to the Statute of Elizabeth I, being analogous to the relief or redemption of prisoners or captives. On the other hand in Marshall v Comr of Inland Revenue a trust to safeguard existing civil liberties and to advance them by promoting legislation was held not to be charitable."

¹⁷

[1989] 3 NZLR 329

¹⁸

1999, 3rd edition, Butterworths, London, Dublin & Edinburgh, pp 179-180.

37. In a recent decision, *Victorian Women Lawyers Association Inc v Commissioner of Taxation*¹⁹, the Federal Court of Australia held that an association whose main purpose was to remove barriers and increase opportunities for participation by, and advancement of, women in the legal profession in Victoria was charitable:

"Having regard to the social norms reflected in the Sex Discrimination Act, cognate State legislation and Australia's membership of the Convention for the Elimination of all Forms of Discrimination Against Women, that objective was a purpose 'beneficial to the community'. It was also within the spirit and intendment of the Statute of Elizabeth."

38. While the Association's objects included "to work towards the reform of the law", the court held that this object was not a significant element of the Association's purposes such as to affect its characterisation.
39. The Commission considers that promoting compliance with existing human rights standards in any country will not amount to advocating or opposing a change in the law or government policy and therefore this will not be a political activity. However, where abuses of human rights are permitted by the domestic laws of a particular country, the Commission considers that any pressure on that government to amend its laws or to ratify an international human rights standard would amount to a political activity. It is noted that New Zealand has the New Zealand Bill of Rights Act 1990 that aims to affirm, protect and promote human rights and fundamental freedoms in New Zealand and affirms New Zealand's commitment to the International Covenant on Civil and Political Rights.
40. In light of the above, the Commission considers that the purposes outlined in clauses 2(a)(i) and 2(a)(iii), namely promoting human rights awareness and advancing and supporting human rights, may be charitable under "any other matter beneficial to the community" provided the Applicant is not primarily achieving these purposes through political means.

Political purpose?

41. The rule that political purposes cannot be charitable was set out by Lord Parker of Waddington in *Bowman v Secular Society*.²⁰

"... 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."

¹⁹ [2008] FCA 983 (27 June 2008).

²⁰ [1917] AC 406.

42. In *Re Collier*²¹, the Court held that there were three types of political trusts namely:
- (i) trusts to change the law
 - (ii) trusts to support a political party
 - (iii) trusts for the perpetual advocacy of a particular point of view or "propaganda" trusts.
43. Accordingly, propagating a point of view or swaying public opinion on controversial social issues are considered to be "political" activities and therefore not charitable even when they are not combined with agitating for a change in legislation or government policy.²² Thus, in *Positive Action Against Pornography v Minister of National Revenue*²³ the Canadian Federal Court of Appeal held that the appellant whose purpose was to "develop and distribute educational material concerning the issue of pornography" was not charitable under "any other matter beneficial to the community". The appellant's primary purposes or activities were not neutral, went "well beyond being beneficial to the community in a legal sense" and were "political in the sense understood by this branch of the law".
44. In *Human Life International in Canada Inc v Minister of National Revenue*²⁴, the Canadian Federal Court of Appeal stated "the existing jurisprudence ... generally supports the proposition that activities primarily designed to sway public opinion on social issues are not charitable activities"²⁵ and went on to state:

"The same rationale leads me to conclude that this kind of advocacy of opinions on various important social issues can never be determined by a court to be for a purpose beneficial to the community. Courts should not be called upon to make such decisions as it involves granting or denying legitimacy to what are essentially political views: namely what are the proper forms of conduct, though not mandated by present law, to be urged on other members of the community

*...
It must always be kept in mind that the fourth category of charitable activities ... is those "for other purposes beneficial to the community, not falling under any of the preceding heads". Thus the mere dissemination of opinions that are not found to be for the advancement of education or religion ... must be justified under the fourth category if at all as having some beneficial value that can be ascertained by the Minister and by this Court of appeal. But how can we judge which are the views beneficial to*

²¹ [1998] 1 NZLR 81, 89.

²² See also *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688; *Positive Action Against Pornography v Minister of National Revenue* (1988) 49 DKR (4th) 74; *Re Bushnell (deceased)* [1975] 1 Akk ER 721; *Public Trustee v Attorney-General* (1997) 42 NSWLR 600; *Re Wilkinson (deceased)* [1941] NZLR 1065; *Re Hopkinson (deceased)* [1949] 1 All ER 346; *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31; *Re Cripps (deceased)* [1941] Tas SR 19; *Knowles v Commissioner of Stamp Duties* [1945] NZLR 522.

²³ (1988) 49 DLR (4th) 74.

²⁴ [1998] 3 FC 202 (CA).

²⁵ [1998] 3 FC 202 (CA), 215-216.

*society whose distribution merits the name of charity? ... Any determination by this Court as to whether the propagation of such views is beneficial to the community and thus worthy of temporal support through tax exemption would be essentially a political determination and is not appropriate for a court to make.*²⁶

45. In order to determine whether a purpose is propagating a political point of view the Courts have held that you need to look at "the degree of objectivity surrounding the endeavour to influence, particularly where the trust relies on an educational end, and whether political change is merely the by-product or is instead the principal purpose."²⁷
46. The Commission considers that the information provided by the Applicant is not objective or neutral in character. Moreover, it appears that this information is aimed primarily at swaying public opinion relating to the use of psychiatric drugs. Therefore, the Commission concludes that the Applicant's activities are political.
47. Consequently, the Commission considers that the Applicant's purposes outlined in clauses 2(a)(i) and 2(a)(iii) are being promoted primarily through political means and therefore, these are not charitable purposes.

Conclusion

48. Section 13(1)(b)(i) of the Act clearly establishes that a society or institution only qualifies for registration as a charitable entity if it "is established and maintained exclusively for charitable purposes". As indicated in *Re Peterborough Royal Foxhound Show Society v Inland Revenue Commissioner*²⁸ and in *Molloy v Commissioner of Inland Revenue*,²⁹ the presence of but one main purpose that is not charitable prevents the entity from being registered as a charity.
49. The Commission considers that to the extent that the Applicant's activities assist victims of psychiatric abuse, they may be charitable under the relief of poverty and "any other matter beneficial to the community" as being for the protection of human life. However, the Commission concludes that the Applicant's activities indicate that its main purpose is the provision of information on the negative impacts of psychiatric drugs and psychiatric practices. The Commission is of the view that this purpose is not undertaken in an objective or neutral manner. Accordingly, the Commission concludes that the Applicant has not been established and maintained for exclusively charitable purposes.

²⁶ [1998] 3 FC 202 (CA), 217-218.

²⁷ *Public Trustee v Attorney-General* (1997) 42 NSWLR 600 at 608 per Santow J

²⁸ [1936] 2 KB 497, 501.

²⁹ [1981] 1 NZLR 688, 691.

Applicant's submissions

50. In his letter of 27 January 2010, the Applicant's barrister referred to two specific entities that are registered with the Commission. He also submitted that "every single charitable organisation on [the Commission's] list has a purpose or point of view to educate people or to promote certain issues which are charitable" and that the Commission has registered numerous organisations having views regarding various matters.
51. The Commission takes a case-by-case approach to each application for registration as a charitable entity. The Commission considers the specific wording of each Applicant's rules document and has regard to the current and future activities of each applicant as required by section 18(3)(a) of the Act. The fact that other entities have been registered by the Commission has no bearing on the Applicant's eligibility for registration.
52. The Applicant's barrister has submitted that declining the Applicant's application for registration as a charitable entity breaches sections 14 and 19 of the *New Zealand Bill of Rights Act 1990* and potentially breaches section 15 of the *New Zealand Bill of Rights Act 1990*:

14 Freedom of expression

Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

15 Manifestation of religion and belief

Every person has the right to manifest that person's religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private.

19 Freedom from discrimination

(1) *Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.*

(2) *Measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination that is unlawful by virtue of Part 2 of the Human Rights Act 1993 do not constitute discrimination.*

53. The Commission does not consider that its determination of charitable status according to the criteria set out in the Charities Act and relevant case law amounts to a breach of any section of the *New Zealand Bill of Rights Act*. The Commission notes that in *Re Collier*³⁰, Hammond J specifically considered the effect of the *New Zealand Bill of Rights Act* and concluded that this did not prevent the court from considering political purposes to be non-charitable.

³⁰

[1998] 1 NZLR 81, 90.

54. The Applicant's barrister has also submitted that the Commission is "discriminating against CCHR and/or its founders, or organisers on the basis of their imputed opinions and on the basis of their religious views of ethical views". He notes that the Applicant has been linked to the Church of Scientology in the press and the Commission's decision to withhold charitable status from the Applicant has coincided with targeting of the Church in the media.
55. The Commission's decision is based on its assessment of the Applicant's specific purposes and activities against the essential requirements set out in the Charities Act and relevant case law. It is not based on the views held by people associated with the Applicant.

Charities Commission's determination

56. 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


Trevor Garrett
Chief Executive

21/5/10
Date