

Registration decision: Magog Motorcycle Club Incorporated

The facts

1. Magog Motorcycle Club Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 3 February 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 28 April 2008.
3. The Applicant's purposes are set out in clause 2 of its Rules:

"2. THE objects of the Society shall be: -

 - (a) *to promote the interests of motorcycle owners and riders.*
 - (b) *to educate Members in the safe and proper riding of motorcycles and generally to foster the principles of road safety.*
 - (c) *to organise and conduct motorcycle meetings, shows, rallies, competitions and races and generally to promote the sport of amateur motorcycling.*
 - (d) *to render assistance and give advice to Members concerning their use or purchase of motorcycles.*
 - (e) *to provide facilities for the repair, maintenance, restoration and preservation of motorcycles.*
 - (f) *to do all things as are incidental or conducive to the attainment of all or any of the aforesaid objects."*
4. Clause 34 of the Rules states:

"34. UPON the dissolution or winding up on the Society the surplus assets thereof (after payment of liabilities) shall be disposed of by payments transfer assignment or disposal thereof to any other incorporated society having substantially similar objects or to any charitable or community or welfare organisation which the majority of members by resolution shall determine PROVIDED THAT nothing in this Rule shall authorise the distribution to any Members or past Members of the Society of any part of such surplus assets as aforesaid."
5. The Commission analysed the application for registration and on 15 December 2008, sent the Applicant a notice that may lead to a decline on the basis that the purposes in clauses 2(a), (c), (d) and (e) were not exclusively charitable, and clause 34 did not restrict the distribution of surplus assets on winding up to charitable purposes.
6. On 26 June 2009, the Applicant responded making the following submissions:
 - The National Motorcycle Expo, which the Applicant has presented biennially since 1983, and other events presented over the years, provide benefits to an appreciable section of the public. Interactive

displays are included where people can ask questions about the motorcycles on display and therefore this advances education.

- Clause 2(a) does not refer to members – it is the members who promote the interests of other motorcycle owners and riders.
- Many people benefit from the National Motorcycle Expo, which is conducted under clause 2(c).
- The Applicant is willing to include a reference to "and other motorcyclists" in clause 2(d).
- Clause 2(e) does not refer to members and the Applicant's workshop facility is available to assist any motorcyclist at no charge.
- The Applicant is willing to amend clause 34.

7. The Commission considered the Applicant's response and on 20 July 2009, sent the Applicant a second notice that may lead to a decline on the basis that the Applicant's submissions and proposed amendments to clause 2 were not sufficient to show that the Applicant was established exclusively for charitable purposes. The Applicant was advised that the proposed change to the winding up clause (clause 34) would meet registration requirements.

8. On 30 September 2009, the Applicant responded to the second notice making the following submissions:

- The Applicant relieves poverty because it has:
 - made a \$3,000 donation to IHC New Plymouth
 - actively supported the Salvation Army with fundraisers during its events
 - supported inmates in prison, supported, housed and fed them upon release from prison, sought and gained employment for them and generally cared for the welfare of their families when they are incarcerated
 - supported friends and associates who have been consumed by alcoholism and drug abuse.
- The Applicant advances education because:
 - it employed a young apprentice builder to work alongside the hired foreman when building its clubroom facility in 1985. Other members who volunteered their services on this project were educated about the construction industry during the clubroom construction period and some moved into employment in that industry
 - in 1984, it was instrumental in forming and supporting a men's rugby and basketball team for local competitions
 - it operates an extensive workshop on-site and readily educates aspiring motorcyclists about owning, building and maintaining motorcycles.

- The Applicant advances religion because:
 - religion includes many different faiths and belief systems and there is no finite list of religious faiths
 - the Applicant is the religion of many of its members.
- The Applicant provides other matters beneficial to the community because:
 - its events have benefited the local business community "to the tune of twenty million dollars plus"
 - promoting motorcycling promotes public health.

The issues

9. 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 a society or institution 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.

The law on charitable purpose

10. Under section 13(1)(b) of the Act, a society or institution qualifies for registration if it is established and maintained exclusively for charitable purposes and is not carried on for the private pecuniary profit of any individual.
11. 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 benefitting the public or a sufficient section of the public.
12. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
13. In considering an application for registration, 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

14. The Commission considers that the Applicant's purpose set out in clause 2(f) is ancillary. The remaining purposes set out in clauses 2(a), (b), (c), (d) and (e) have been assessed in relation to the relief of poverty, the advancement of religion, the advancement of education, and any other matter beneficial to the community.

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

Relief of poverty

15. In order for a purpose to relieve poverty, it must be directed at people who are poor, in need, aged, or suffering genuine hardship and provide relief².
16. In its email of 30 September 2009, the Applicant submits that it relieves poverty because it has:
 - made a \$3,000 donation to IHC New Plymouth
 - actively supported the Salvation Army with fundraisers during its events
 - supported inmates in prison, supported, housed and fed them upon release from prison, sought and gained employment for them and generally cared for the welfare of their families when they are incarcerated
 - supported friends and associates who have been consumed by alcoholism and drug abuse.
17. The Commission considers that although the above activities may be charitable under the relief of poverty, they have not been undertaken in furtherance of any of the Applicant's stated purposes. Moreover, the Applicant's purposes stated in clauses 2(a), (b), (c), (d) and (e) do not indicate an intention to relieve poverty.

Advancement of education

18. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. In *Re Shaw (deceased)*³ the court held that "if the object be merely the increase of knowledge, that is not in itself a charitable object unless it be combined with teaching or education."
19. The Commission considers that educating members in the safe and proper riding of motorcycles and fostering the principles of road safety (clause 2(b)) is likely to be charitable under the advancement of education.
20. The purpose in clause 2(c) is "to organise and conduct motorcycle meetings, shows, rallies, competitions and races and generally to promote the sport of amateur motorcycling." While some educational activities could be undertaken under this clause, the focus appears to be on promoting the sport of amateur motorcycling. Therefore, the Commission does not consider that the purposes in this clause will necessarily be educational in nature.
21. The purpose in clause 2(d) is "to render assistance and give advice to Members concerning their use or purchase of motorcycles." The Commission does not consider that this clause limits the advice and assistance to that which is educational in nature.

² *Re Neal* [1966] 110 SJ 549; *Re Resch's Will Trusts* [1969] 1 AC 514 (PC); *Joseph Rowntree Memorial Trust Housing Association Ltd v Att-Gen* [1983] Ch 159, 174.

³ *In Re Shaw (deceased)* [1957] 1 WLR 729.

22. The Applicant submits, in its email of 30 September 2009, that it advances education because:
- it employed a young apprentice builder to work alongside the hired foreman when building its clubroom facility in 1985. Other members who volunteered their services on this project were educated about the construction industry during the clubroom construction period and some moved into employment in that industry
 - in 1984, it was instrumental in forming and supporting a men's rugby and basketball team for local competitions
 - it operates an extensive workshop on-site and readily educates aspiring motorcyclists about owning, building and maintaining motorcycles.
23. The Commission considers that although some of the above activities may have educational elements, they have not been undertaken in furtherance of the Applicant's stated purposes. Moreover, the Applicant's purposes stated in clauses 2(c) and (d) do not indicate an intention to advance education.

Advancement of religion

24. In order for a purpose to advance religion, it must be for the benefit of a religion and ensure a religious faith is passed on to others. The term "religion" includes many different faiths and belief systems. Generally, to be religious there will need to be:
- a belief in a supernatural being, thing, or principle, and
 - an acceptance of conduct in order to give effect to that belief.⁴
25. The Applicant submits that it advances religion because the motorcycle club is the religion of many of its members.
26. There is no evidence that members of the Applicant share a belief in a supernatural being, thing or principle or that they accept canons of conduct in order to give effect to that belief. Moreover, the Applicant's purposes do not indicate an intention to advance religion.

Other matters beneficial to the community

27. In order for a purpose to qualify as "any other matter beneficial to the community", (the fourth head) the purpose must be beneficial to the community and be within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth).⁵

⁴ *Church of the New Faith v Commissioner of Pay-roll Tax* (1983) 154 CLR 120; *Centrepoint Community Growth Trust v Commissioner of Inland Revenue* [1985] 1 NZLR 673 at 695-697.

⁵ *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*

28. The purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth) are:⁶

- 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.⁷

29. Courts have found the maintenance of public buildings and facilities⁸ and the promotion of health⁹ to be charitable under the fourth head. In *Travis Trust v Charities Commission*¹⁰ in relation to sports and leisure time activities, Joseph Williams J stated:

"The cases then seem to establish some workable first principles. The first, the class of charitable purposes does indeed evolve over time and the Courts (including those in New Zealand) have shown a willingness to develop new categories of charitable purpose and to develop or extend established ones. 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."

30. The Commission considers that the above case is authority for the proposition that sporting entities can be charitable if they are advancing

Accountants v Commissioner of Inland Revenue [1986] 1 NZLR 147, 157; *Re Tennant* [1996] 2 NZLR 633, 638.

⁶ *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.

⁷ *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

⁸ *Kjar v Mayor of Masterton* [1930] GLR 303; *Re Chapman* (High Court, Napier, CP89/87, 17 October 1989, Greig J); and *Guild v Inland Revenue Commissioners* [1992] 2 All ER 10 (HL).

⁹ *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297.

¹⁰ HC WN CIV-2008-485-1689 [3 December 2008].

another charitable purpose such as the advancement of education or the promotion of health.

31. The Applicant submits, in its email of 30 September 2009, that promoting motorcycling promotes public health. The Commission does not consider that the purpose of promoting the sport of amateur motorcycling in clause 2(d) will necessarily advance public health or promote healthy activity. Motorcycling does not appear to involve significant cardiovascular activity and motorcyclists are at a higher risk of injury or death than the drivers of other vehicles.¹¹
32. The Commission considers that providing facilities for the repair, maintenance, restoration and preservation of motorcycles in clause 2(e) could be considered analogous to providing public facilities.
33. The Applicant advises that since 1982 its events have benefited the local business community "to the tune of twenty million dollars plus". The Commission does not consider that providing financial benefits for local business owners is a stated purpose of the Applicant, or an activity which is undertaken in order to further the Applicant's stated charitable purposes, or a purpose which is likely to be charitable under "other matters beneficial to the community".

Section 61A of the Charitable Trusts Act 1957

34. The Commission has also considered whether the Applicant's purpose in clause 2(c) could be held to be charitable under section 61A of the Charitable Trusts Act 1957. Section 61A states:

61A Trusts for recreational and similar purposes

- (1) *Subject to the provisions of this section, it shall for all purposes be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare:*

Provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.

- (2) *The requirement of subsection (1) of this section that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless—*
 - (a) *The facilities are provided with the purpose of improving the conditions of life for the persons for whom the facilities are primarily intended; and*
 - (b) *Either—*

¹¹ In 1995, 2% of all registered vehicles in NZ were motorcycles, but 9% of reported injuries and 13% of all fatalities were in motorcycle riders ("Risk factors for motorcycles injury: the role of age, gender, experience, training and alcohol" 1997 University of Auckland PhD Theses). In addition, the New Zealand Travel Survey indicates that, on average, the risk of being involved in a fatal or injury crash is more than 18 times higher for a motorcyclists than for a car driver over the same distance travelled (2003-2007 data) (Ministry of Transport Crash Factsheet 2008).

- (i) *Those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity, disablement, poverty, race, occupation, or social or economic circumstances; or*
 - (ii) *The facilities are to be available to the members of the public at large or to the male or female members of the public at large.*
- (3) *Without restricting the generality of the foregoing provisions of this section it is hereby declared that, subject to the said requirement, subsection (1) of this section applies to the provision of facilities at public halls, community centres, and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.*
35. Promoting motorcycling could be considered a recreation or leisure time occupation. However, the Commission does not consider that this will meet a need of the community which as a matter of social ethics ought to be met, nor is it provided with the purpose of improving the conditions of life for the persons for whom the facilities are primarily intended. The Commission therefore considers that the purpose set out in clause 2(c) is not charitable under section 61A of the Charitable Trusts Act.

Public or private benefit?

36. In order for a purpose to be regarded as "beneficial to the community", the benefits must be to the community rather than to private individuals. Any private benefits arising from the Applicant's activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it. It will not be a public benefit if the private benefits are an end in themselves.¹² In addition, proof that public benefit will necessarily flow from each of the stated purposes is required, not merely a belief that it will or may occur.¹³
37. An association that exists mainly to advance the interests of, or otherwise benefit, its members cannot be said to be charitable¹⁴. In *Inland Revenue Commissioners v Yorkshire Agricultural Society*¹⁵, Atkin LJ stated:

"There can be no doubt that a society formed for the purpose merely of benefiting its own members, though it may be to the public advantage that its members should be benefited by being educated or having their aesthetic tastes improved or whatever the objects may be, would not be for a charitable purpose, and if it were a substantial part of the object that it should benefit its members I should think that it would not be established for a charitable purpose only. But, on the other hand, if the benefit given to its members is only given to them with a view to giving encouragement and carrying out the main purpose which is a charitable purpose, then I think

¹² *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* 69 TC 231; *Travel Just v Canada Revenue Agency* 2006 FCA 343 [2007] 1 CTC 294.

¹³ *Gilmour v Coats* (1949) AC 26; *Re Blyth* [1997] 2 Qd R 567, 582; *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

¹⁴ *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380.

¹⁵ *Inland Revenue Commissioners v Yorkshire Agricultural Society* [1928] 1 KB 611.

the mere fact that the members are benefited in the course of promoting the charitable purpose would not prevent the society being established for charitable purposes only"

38. The Applicant submits, in its letter of 26 June 2009, that it promotes the interests of other motorcycle owners and riders under clause 2(a).
39. While some benefits may be provided to the public, the Commission considers that the Applicant exists mainly to advance the interests of, or otherwise benefit, its members. Therefore, the Commission does not consider that the Applicant will provide sufficient public benefit.

Applicant's submissions

40. In its letter of 26 June 2009, the Applicant submits that it granted the catering rights for the 2009 National Motorcycle Expo to a local marching club so that it could fundraise and that this event was held at the local Roller Sports complex in order to support that organisation financially.
41. While assisting charitable entities can be a charitable purpose, the Commission does not consider that this is a stated purpose of the Applicant.

Conclusion

42. The Commission concludes that the Applicant's purposes in clause 2(b) and (e) are likely to be charitable, but that the purposes in clauses 2(a), (c) and (d) are non-charitable purposes which are not ancillary to any charitable purpose.

Charities Commission's determination

43. The Commission determines that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that the Applicant is not 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

15/12/09
Date