

Registration decision: Marlborough Associated Modellers Society Incorporated

The facts

1. The Marlborough Associated Modellers Society Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 21 May 1970.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 10 June 2008.
3. The Applicant's purposes are set out in clause 2 of the Constitution:

"The objects of the Society shall be;

- (a) To promote, Co-ordinate and control in Marlborough for those persons engaged in the science or pastime of model engineering through the design, construction or working of models, scientific appliances and tools in its broadest sense. (Here in after referred to as the said promise")*
- (b) To encourage and foster the said pastime in all its aspects in Marlborough and elsewhere.*
- (c) To collect and supply information and advice on all or any matters pertaining to the said pastime generally.*
- (d) To promote and hold either alone or jointly with any other Association, club, company or persons, contests, carnivals, matches, competitions, exhibitions, trials, and accept, offer, give, or contribute towards prizes and awards to participants and others.*
- (e) To enter into any contract, agreement or any other arrangement with any Government or Local Authority or any club, Corporation, Society or persons which may seem to be conducive to the objects of the Society.*
- (f) To do all or any of the things hereby authorised alone or in conjunction with another or others and to do all such things as in the opinion of the Society as are incidental to or conducive to the attainment of the above objects."*

4. The Applicant's winding up clause (clause 17) provided:

"Upon the winding up of the Society the funds, if any remaining after paying all liabilities and expenses of winding up shall be handed to such educative or other objects of an engineering modelling or scientific nature which the members or Liquidator or other persons conducting the winding up may nominate and failing any such nomination shall be paid over to some body nominated by the court of competent jurisdiction."

5. The Commission analysed the application for registration and on 27 January 2009, sent the Applicant a notice advising that its application for registration might be declined on the basis that clause 17 does not restrict distribution of surplus assets on winding up to charitable purposes. The Commission also sought further information about the Applicant's activities undertaken pursuant to clause 2.
6. On 3 March 2009, the Applicant responded to the notice, indicating its intention to amend the winding up clause at an Annual General Meeting on 8 April 2009. The Applicant also provided further information about its activities carried out pursuant to clause 2:
 - The Applicant is a club for combined modelling activities of aircraft, boats and engineering (mainly live steam locomotives).
 - The aircraft section flies every Sunday morning and during the week by arrangement.
 - The boats and trains sections operate the first and third Sunday afternoons of the month.
 - At the annual 'Heritage Day' at Brayshaw Park, the Applicant demonstrates model yachts and boats on the boat pond and runs train rides on the two miniature railway tracks.
7. The Commission analysed the further information provided by the Applicant and on 19 March 2009, sent the Applicant a second notice advising that its application may be declined on the basis that the purposes in clause 2 are not exclusively charitable according to law and do not provide sufficient public benefit.
8. On 1 July 2009, the Applicant replied to the second notice stating that the winding up clause had been amended and accepted by the Registrar of Incorporated Societies. The Applicant did not provide any further information regarding its purposes, and asked what it would have to do in order to gain successful registration.
9. The Commission responded on 2 July 2009, reiterating that the Applicant's letter of 3 March 2009 did not provide any evidence of charitable purposes. The Commission also sought permission to download the amended winding up clause from the Companies Office register.
10. On 3 July 2009, the Applicant sent an email granting the Commission permission to download the amended winding up clause from the Companies Office register. The Applicant made no further submission regarding its purposes.
11. The Commission considers that the amended winding up clause meets registration requirements.

The issues

12. 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

13. Under section 13(1)(b) of the Act, a society or institution qualifies for registration if it is established and maintained for exclusively charitable purposes and is not carried on for the private pecuniary profit of any individual.
14. 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.
15. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
16. In considering an application for registration, section 18(3)(a) of the Act requires the Commission to have regard to:
 - (i) *the activities of the entity at the time at which the application was made; and*
 - (ii) *the proposed activities of the entity; and*
 - (iii) *any other information that it considers is relevant; ...*

Charities Commission's analysis

17. The Commission considers that the Applicant's purpose set out in clause 2(e) is a power and clause 2(f) is ancillary.
18. The Commission considers that the remaining purposes set out in clauses 2(a) to (d) do not amount to the relief of poverty or the advancement of religion. These purposes have therefore been considered in relation to the advancement of education and "any other matter beneficial to the community".

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

Advancement of education

19. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced.
20. In *Re Shaw (deceased)*² 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." The mere promotion of a particular hobby does not, therefore, constitute the advancement of education.
21. The Commission does not consider that promoting model engineering and the collection and supply of information relating to model engineering would necessarily amount to advancing education.

Other matters beneficial to the community

22. In order for a purpose to qualify as "any other matter beneficial to the community", the purpose must be beneficial to the community and be within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth).³
23. The Applicant has stated that it participates in an annual "Heritage Day" open day where it demonstrates model yachts and boats on the boat pond and runs train rides on two miniature railway tracks. The Commission has been unable to identify any other particular benefit for the community arising from the Applicant's purposes.
24. The Applicant's purposes do not appear to be within the spirit and intendment of any of the purposes set out in the Preamble to the Statute of Elizabeth.

Section 61A of the Charitable Trusts Act 1957

25. The Commission has considered whether the Applicant's purposes 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:*

² *In Re Shaw (deceased)* [1957] 1 WLR 729, 737.

³ *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.

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—*
 - (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.*

26. In *Clarke v Hill and Granger*⁴ the High Court considered whether encouraging youth radio and providing club rooms for groups interested in radio was a charitable purpose. In that case, Priestley J held:

"Although amateur radio is clearly a hobby, participation in radio operation, radio transmission, the examination and construction of radio sets, and the study of the history of radio transmission as a form of technology and human development have a high educative value. Human history and societies (particularly technologically advanced western societies of which New Zealand is one), were transformed by the development around the start of the last Century of radio transmissions and broadcasts."

27. In applying section 61A of the Charitable Trusts Act, Priestley J held that amateur radio could be regarded as a recreational or leisure time occupation and:

"...the provision of club rooms for youth, scouts and school groups for amateur radio, particularly when coupled with radio's educative function, constitutes the provision of a 'facility' which will improve the conditions of life for such people and will satisfy a need which might not otherwise be available for young people generally."⁵

⁴ High Court, Auckland, 2 February 2001, Priestley J, CP 68-SD99, p5.

⁵ High Court, Auckland, 2 February 2001, Priestley J, CP 68-SD99, p6-7.

28. In *Guild v Inland Revenue Commissioners*⁶ the House of Lords held that providing sports facilities for the pupils of schools and universities as charitable by virtue of the United Kingdom equivalent of section 61A of the Charitable Trusts Act (section 1 of the Recreational Charities Act 1958). Lord Keith of Kinkel held that these facilities were provided with the object of improving the pupils' conditions of life:

"There cannot surely be any doubt that young persons as part of their education do need facilities for organised games and sports both by reason of their youth and by reason of their social and economic circumstances. They cannot provide such facilities for themselves but are dependant on what is provided for them."

29. Engaging in model engineering could be considered a recreational and 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 it is primarily intended.

Public or private benefit?

30. The public benefit criterion necessarily requires that any private benefits arising from the Society'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.⁷ 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.⁸

31. In *Inland Revenue Commissioners v Yorkshire Agricultural Society*⁹, Lord Atkin said:

"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 object may be, would not be for a charitable purpose, and if it were a substantial part to the object that it should benefit its members I should think that it would not be established for a charitable purpose only."

32. The Commission therefore considers that the purposes set out in clauses 2(a) to (d) do not provide sufficient public benefit.

⁶ [1992] 2 AC 310, 320.

⁷ *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218; *Travel Just v Canada (Revenue Agency)* 2006 FCA 343 [2007] 1 CTC 294.

⁸ *Gilmour v Coats* (1949) AC 26; *Re Blyth* [1997] 2 Qd R 567, 582; *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

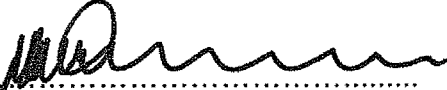
⁹ [1928] 1 KB 611, 631.

Charities Commission's determination

33. 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 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


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Trevor Garrett
Chief Executive

21/9/09
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Date