

Deregistration decision: Matakana Information Centre Incorporated

The facts

Registration history

1. Matakana Information Centre Incorporated (the Society) was incorporated under the Incorporated Societies Act 1908 on 18 October 2005. The Society applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 28 June 2008.

2. The Society's mission statement is set out in clause 3 of its Constitution:

"We aim to provide information to the public about attractions, events, businesses and services in our local area. Our service is based on the values of integrity, honesty, and friendliness."

3. The Society's goals and objectives are set out in Appendix A of the Constitution:

"Objectives:

- *To serve our community to the best of our ability by obtaining and disseminating knowledge of local attractions, business and services in our local area*
- *To provide a service that benefits our fee paying customers*
- *To foster a sense of community in our local area by providing focus for local information*
- *To encourage employment in our local area by providing a location for local employment information*

Goals:

Long term:

- *To develop, maintain and make available to the public a high quality resource of information re: attractions, events, activities and business in the Matakana area (see definition of 'Matakana area')*
- *To develop the above as a financially self-supporting service*
- *To recruit, train and up-date volunteers to provide the service on an on-going basis*

Short term:

- *To develop systems for obtaining, displaying, updating and disseminating information to the public*
- *To develop procedures to enable volunteers to function confidentially, knowledgeably and independently at The Matakana Information Centre*
- *To obtain financial support from local businesses and community development grants"*

4. The Society was registered as a charitable entity on 18 November 2008 with registration backdated to 30 June 2008. In making the decision to approve registration, the Commission concluded that the Society advanced education by providing information to the public.
5. Some time after the Society's registration, the Commission was made aware of the court's decision in *Travel Just v Canada Revenue Agency*.¹ The Commission then undertook a review of registered entities which operated tourist information centres.
6. After a reassessment of the Society's purposes and the grounds for registration, the Commission reached a preliminary view that the Society's purposes were unlikely to amount to advancing education.
7. On 30 June 2009, the Commission sent the Society a notice of its intention to remove the Society from the register under section 33 of the Act, on the basis that "disseminating knowledge of local attractions, business and services" was not of sufficient educative value to be a charitable purpose.
8. On 30 July 2009, the Society responded to the notice making the following submissions:
 - *"Whilst we acknowledge that we are not established exclusively for charitable purposes we do provide specific benefit to the community and do not provide pecuniary profit to any private individual."*
 - *"We obtain and disseminate knowledge of local attractions and businesses to reward the organisations that support us."*
 - *"Our public display boards are available for non-profit organisations to use and include many community based activities which are displayed free of charge. These cover Welfare Organisations, Health Care, Refuge Centres, Religious Services, Wildlife Protection, Tree planting on Reserves etc. We also have an active interest in the Native Bird Rehabilitation service operated by one of our volunteers and on occasions injured birds are delivered to the Information desk for transference to the Rehabilitation Centre."*
 - *"As there is no CAB in the wider area, we direct/recommend enquirers to the appropriate body which can best take care of their immediate needs. There is no public phone, mobile phone service or cyber café in Matakana and the M.I.C. assists, on occasions, with telephone and email service free of charge."*
 - *"Furthermore, we organise 'Daffodil Day', provide volunteers for our area, sell tickets for charitable functions and for School fundraising activities."*

The issue

9. The Commission has considered whether or not the Society remains qualified for registration as a charitable entity, in terms of section 32(1)(a) of the Act. In this case, the key issue for consideration is whether the Society is a society or institution established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual, as required by section 13(1)(b) of the Act.

¹ 2006 FCA 343, [2007] 1 CTC 294, 2007 DTC 5012 (Eng) 354 NR 360.

10. As the Society made an objection to its proposed removal from the register, the Commission has also considered whether it is in the public interest to proceed with the removal of the Society from the register, as required by section 35 of the Act.

The law on charitable purposes and deregistration

11. The essential requirements for registration are set out in section 13(1)(b) of the Act. In the case of a society or an institution, the society or institution must be established and maintained exclusively for charitable purposes, and must not be carried on for the private pecuniary profit of any individual.
12. 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 to benefiting the public or a sufficient section of the public.
13. In relation to non-charitable purposes carried on by an entity, section 5(3) of the Act provides that any non-charitable purpose that is merely ancillary to a charitable purpose will not prevent an entity from qualifying for registration as a charitable entity.
14. Section 31 of the 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; and*
 - (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). ...*
15. Section 32(1)(a) of the Act provides that the Commission may remove an entity from the register if the entity is not, or is no longer, qualified for registration as a charitable entity.
16. When considering whether a registered entity continues to qualify for charitable status, the Commission must consider whether the entity continues to meet the essential requirements for registration set out in section 13 of the Act. Section 50(2) of the Act empowers the Commission, if it considers it reasonably necessary for the purposes of carrying out its functions and exercising its powers under the Act, to examine and enquire into matters in connection with charitable entities or persons, including:
 - (a) *the activities and proposed activities of the charitable entity or person;*
 - (b) *the nature, objects, and purposes of the charitable entity;*
 - (c) *the management and administration of the charitable entity;*

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

- (d) *the results and outcomes achieved by the charitable entity or person:*
- (e) *the value, condition, management, and application of the property and income belonging to the charitable entity or person."*

Charities Commission's analysis

17. In order to determine whether the Society is established and maintained for exclusively charitable purposes and is not carried on for the private pecuniary profit of any individual, the Commission has assessed the Society's stated purposes, information provided by the Society in its response to the section 33 notice of intention to remove the Society from the register, and the relevant case law.
18. The Commission considers that the Society's purposes, set out in the four bullet point objectives in Appendix A, do not indicate an intention to relieve poverty or advance religion. The purposes have therefore been considered in relation to the advancement of education and other matters beneficial to the community.

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. Education does not include advertisements for particular goods or services.
20. In *In Re Shaw (deceased)*, 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."³
21. In *In Re Collier (deceased)* Hammond J set out the test for determining whether the dissemination of information qualifies as charitable under the head of advancement of education in New Zealand:

*"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."*⁴
22. In *Travel Just v Canada Revenue Agency*⁵, the court held that it was doubtful that producing and disseminating materials providing travellers and tourists with information on socially and environmentally responsible tourism would qualify as either the publication of research, or as an educational purpose.

³ [1957] 1 WLR 729. (See also *Re Hopkins' Will Trusts* [1965] Ch 669, [1964] 3 All ER, [1964] 3 WLR 840; *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73, [1971] 3 All ER 1029, [1971] 3 WLR 853; *McGovern v Attorney-General* [1982] 1 Ch 321, 352).

⁴ [1998] 1 NZLR 81, 91-92.

⁵ 2006 FCA 343, [2007] 1 CTC 294, 2007 DTC 5012 (Eng) 354 NR 360.

23. Based on the reasoning in the cases cited above, the Commission considers that the Society's purpose of disseminating knowledge of local attractions and businesses to visitors does not amount to advancing education.

Other matters beneficial to the community

24. 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).⁶ The purposes set out in the Preamble are as follows:
- 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.
25. Some of the activities identified in the Society's letter of 30 July 2009, such as providing advice to the public about welfare organisations, health care, refuges, and religious services; providing phone and email services; and assisting in the sale of tickets to charitable and school events may be indicative of purposes that would be charitable under the fourth head of charity. The Commission notes, however, that the Society's purposes are not restricted to only those purposes that are charitable.
26. Therefore, while there may be some benefits to the community from the Society's purposes, the Commission considers that the purposes are not all within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act and are therefore not charitable under the fourth head of charity.

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.

Public or private benefit?

27. 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
28. In *Hadaway v Hadaway*⁹, the court held that assisting persons carrying on a particular trade or business or profession could not be charitable unless there was a condition that this assistance could only be made for a purpose which was itself charitable. In that case, any eventual benefit to the community was considered too remote.
29. In *Crystal Palace Trustees v Minister of Town and Country Planning*¹⁰, the court held that providing a large park and amenities for public education and recreation were charitable purposes because there was no intention to further the interests of individuals engaged in trade or industry or commerce.
30. More recently, in *Inland Revenue Commissioners v Oldham Training and Enterprise Council*¹¹, the court held that promoting the interests of individuals engaged in trade, commerce and enterprise and support services for, and advice to, new businesses disqualified the organisation from having charitable status. In the event that there would be any benefit to the public, this would be too remote.
31. Applying the above case law, the Commission considers that the Society's purposes will promote the interests of current and future business owners and commercial tourist operators in the Matakana area and that these benefits cannot be considered to be ancillary to main charitable purposes. In addition, the Commission considers that any benefits conferred on the remainder of the community by such purposes will be too remote.

Conclusion

32. The Commission concludes that the Society's purposes, set out in the four bullet point objectives in Appendix A, are non-charitable. Therefore, the Commission considers that there are grounds to remove the Society from the register on the basis that the Society does not meet the requirements for registration set out in section 13 of the Act.

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 [1955] 1 WLR 16 (PC).

¹⁰ [1951] 1 Ch 132.

¹¹ [1996] STC 1218.

Public interest

33. Under section 35 of the Act, where an objection is made to the proposed removal of an entity from the register, the Commission must not proceed with the removal unless it is satisfied that it is in the public interest to do so, and that –
- one or more of the grounds for removal have been satisfied; or
 - the objection has been withdrawn; or
 - any facts on which the objection is based are not, or are no longer, correct; or
 - the objection is frivolous or vexatious.
34. 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 which 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.
35. The Commission does not consider that there are any other public interest considerations that would provide grounds not to proceed with the removal of the Society from the register.

Charities Commission's determination

36. The Commission determines that the Society is not, or is no longer, qualified for registration as a charitable entity because it is not established and maintained for exclusively charitable purposes, and is capable of being carried on for the private pecuniary profit of individuals, contrary to section 13(1)(b) of the Act.
37. Under section 35(1) of the Act, the Commission is satisfied that it is in the public interest to proceed with the Society's removal from the register and that one ground for removal from the register has been satisfied, that is, the Society is not qualified for registration as a charitable entity.
38. 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 October 2009.

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

19/10/09
Date