

Registration decision: NZ Billiards and Snooker Association Incorporated

The facts

1. NZ Billiards and Snooker Association Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 15 January 1991.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 14 April 2008.
3. The Applicant's purposes are set out in clause 3 of the Constitution:

"OBJECTS

The objects of the Association are:

- 3.1 *To be the national organisation in New Zealand for the administration, management, promotion, development and control of the games of Billiards and Snooker.*
 - 3.2 *To represent New Zealand on the international Billiards & Snooker Federation and any other group the Board sees fit.*
 - 3.3 *To encourage interest, participation, and achievement in the games of Billiards and Snooker in New Zealand.*
 - 3.4 *To organise, promote and facilitate Billiards and Snooker competitions and events in New Zealand under such rules as the Board shall determine.*
 - 3.5 *To publicise and to enforce the code of laws of the International Billiards & Snooker Federation for the proper conduct of the games of Billiards and Snooker.*
 - 3.6 *To encourage and promote the games of Billiards and Snooker as sports to be played in accordance with the principles of fair play and free from performance enhancing drugs.*
 - 3.7 *To facilitate the participation of teams and individuals in the games of Billiards and Snooker internationally, and to make such rules as it determines are necessary for that purpose.*
 - 3.8 *To provide information and assistance, resources and opportunities for communication with and between members of the Association.*
 - 3.9 *To do all such things and activities as are necessary, incidental or conducive to the advancement of these objects."*
4. Clauses 19.3 to 19.5 of the Applicant's Constitution provide for the distribution of surplus assets in the event of winding up:

"19.3 Any surplus assets of the Association, after payment of all costs, debts, and liabilities and the debts and expenses of winding up, shall subject to any trust affecting the same be vested either in a substitute or successor organisation of the Association or distributed, gifted or transferred to some other organisation or organisations having objects similar to the objects in this Constitution.

19.4 The organisation or organisations in Rule 19.3 must prohibit the distribution of its or their income and property among its or their members to at least the same or a greater extent as is imposed on the Association under this Constitution and shall not be carried on for profit and shall have an approved tax exemption.

19.5 The organisation or organisations in Rules 19.3 and 19.4 shall be determined by the Members at an Annual General Meeting or Special General Meeting at or before the time of liquidation and if the Members are unable to decide the organisation or organisations shall be determined by the liquidator."

5. The Commission analysed the application for registration and on 6 January 2009, sent the Applicant a notice advising that its application may be declined on the basis that the purposes set out in clause 3 were not exclusively charitable. The Applicant was also advised that its winding up clauses were not sufficient to meet registration requirements.
6. On 13 July 2009, the Applicant's solicitors submitted proposed amendments to the objects (clause 3) and winding up clauses (clauses 19.3 to 19.5). The proposed objects clause provides:

"OBJECTS

The objects of the Association are:

- 3.1 *To assist in the mental and physical wellbeing and education of members and to provide community cohesiveness through participation in the game of Billiards and Snooker in New Zealand in accordance with the principles of fair play.*
- 3.2 *To be the national organisation in New Zealand, and representing New Zealand, for the administration, management, promotion, education, development and control of Billiards and Snooker including competitions.*
- 3.3 *To improve the conditions of life of the elderly, and with a mental or physical disability through the participation in the games of Billiards and Snooker in New Zealand.*
- 3.4 *To publicise and educate and enforce the code of laws of the International Billiards & Snooker Federation for the proper conduct of Billiards and Snooker.*
- 3.5 *To promote the advancement of mental and physical wellbeing of members and provide education and assistance, resources and opportunities for communication with and between members of the Association.*

3.6 *To do all such things and activities as are necessary, incidental or conducive to the advancement of these objects."*

7. The Commission considered that the proposed amendments to the winding up clauses would ensure that surplus assets would be distributed to charitable purposes in the event of winding up.
8. On 14 July 2009, the Commission advised the Applicant that the proposed amendments to the Applicant's purposes would not be sufficient to render its purposes exclusively charitable.
9. On 10 August 2009, the Applicant's solicitors responded by email submitting that "... Billiards and Snooker are sports and that both require physical activity. Our client instructs that through the playing of both Billiards and Snooker members health, fitness, education and physical well being is promoted." The Applicant's solicitors also provided evidence from the International Olympic Committee in support of the assertion that both Billiards and Snooker are sports.

The issues

10. 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

11. Under section 13(1)(b)(i) of the Act, to be registered as a charitable entity, a society or institution must be established and maintained for exclusively charitable purposes.
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.¹ This means that the purpose must be directed at benefitting the public or a sufficient section of the public.
13. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
14. 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 proposed activities of the entity, and any other information that the Commission considers relevant.

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

Charities Commission's analysis

Applicant's Current Rules

15. The Commission considers that the purposes set out in clauses 3.8 and 3.9 of the Applicant's current rules are ancillary. The remaining purposes set out in clauses 3.1 to 3.7 do not indicate an intention to relieve poverty or advance religion. These purposes have therefore been assessed in relation to the advancement of education and "any other matter beneficial to the community".

Advancing education

16. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced.
17. In *Re Dupree's Deed Trusts*,² the court held that promoting an annual chess tournament for boys and young men under 21 was a charitable purpose. In that case, evidence of the educational value of playing chess was presented including the fact that the encouragement of chess playing was for the benefit of young persons, the nature of the game encouraged the qualities of foresight, concentration, memory, ingenuity, and reasoning; and the fact that chess was taught in some schools as part of the curriculum.
18. The Commission does not consider that playing billiards and snooker will necessarily advance the knowledge or abilities of the participants, or teach necessary life skills. The Commission also notes that the Applicant's activities are not limited to young people. The Commission therefore considers that the purposes set out in clauses 3.1 to 3.7 of the Applicant's current rules can be distinguished from purposes such as those discussed in the *Re Dupree's Deed Trusts* case, and that the purposes are not aimed at advancing education.

Any other matter beneficial to the community

19. 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). 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

² [1945] Ch 16.

- 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.³
20. The Courts have held the promotion of public health to be charitable under “any other matter beneficial to the community”.
21. Participation in billiards and snooker is unlikely to involve cardiovascular activity and the Commission has been unable to find any evidence that the promotion of these games will necessarily advance health or promote healthy activity. While the Applicant’s solicitor has stated that the playing of both billiards and snooker promotes members’ health, fitness, education and physical wellbeing, she has not provided any evidence of such a benefit.
22. The Commission has considered the Applicant’s assertion that billiards and snooker are both sports, and the evidence provided that billiards has been recognised by the International Olympic Committee as a sport.
23. The Commission does not consider that recognition as an International Federation by the International Olympic Committee is sufficient to show that the sports of billiards and snooker are charitable. Courts have held that sporting entities are not prima facie charitable, for example in *Travis Trust v Charities Commission*⁴, Williams J states:

“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.”

24. The Commission considers that the discussion in the *Travis Trust* case reflects the legal position that sporting entities can have charitable purposes where their activities are to advance a charitable purpose such as education or public health.

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.

⁴ *High Court, Wellington, CIV-2008-485-1689 (3 December 2008).*

25. Based on consideration of the law and the Applicant's rules and activities, the Commission does not consider that the purposes set out in clauses 3.1 to 3.7 of the Applicant's current rules are charitable purposes in terms of "any other matter beneficial to the community".

Section 61A of the Charitable Trusts Act 1957

26. The Commission has also 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:*
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.*

27. The Courts have considered purposes such as providing facilities for sports⁵ and educational hobbies for young people⁶ to be charitable under this section.

28. Promoting the games of billiards and snooker could be considered to be a "facility" that is provided for "recreation or other leisure time occupation". While these facilities are capable of making life more enjoyable, the

⁵ *Guild v Inland Revenue Commissioners* [1992] 2 AC 310.

⁶ *Clarke v Hill and Granger* (High Court, Auckland, 2 February 2001, Priestley J, CP 68-SD99).

Commission does not consider that these facilities are provided in the interests of social welfare (as required under section 61A of the Charitable Trusts Act). That is, the Commission does not consider that the facilities are provided with a view to meeting a need of the community which as a matter of social ethics ought to be met, nor are they provided with the purpose of improving the condition of life for the persons for whom the facilities are primarily intended.

29. The Commission therefore considers that the purposes set out in clauses 3.1 to 3.7 of the Applicant's current rules do not meet the criteria set out in section 61A of the Charitable Trusts Act.

Conclusion

30. The Commission concludes that the purposes set out in clauses 3.1 to 3.7 of the Applicant's current rules are non-charitable purposes, which are not ancillary to any charitable purpose.
31. The Commission therefore 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.

Applicant's Proposed Rules

32. The Commission's decision is based on the Applicant's current rules, however, the Applicant has proposed amendments to those rules and requested a view on whether those amendments would cause the Applicant to meet the requirements for registration. Therefore, the Commission has provided comment as to whether the purposes set out in the Applicant's proposed rules, if implemented, would be charitable.
33. The Commission considers that that the purposes set out in clauses 3.5 and 3.6 of the Applicant's proposed rules are ancillary.
34. The purpose set out in proposed clause 3.3 is aimed at the elderly and those with a mental or physical disability. Therefore, if it is considered that participation in the games of billiards and snooker would provide relief for these people, this could amount to a charitable purpose under the relief of poverty.⁷
35. For similar reasons as discussed above (paragraph 16 to 25), the Commission considers that the purposes set out in proposed clauses 3.1, 3.2 and 3.4 would not advance education or qualify as any other matter beneficial to the community. In addition, for the reasons set out above (paragraphs 27 to 29) the Applicant's proposed rules would not be charitable in terms of the criteria set out in section 61A of the Charitable Trusts Act.

⁷

D V Bryant Trust Board v Hamilton City Council [1997] 3 NZLR 342.

36. The Commission therefore concludes that clauses 3.1, 3.2 and 3.4 of the Applicant's proposed rules would be non-charitable purposes, and would not be ancillary to any charitable purpose. On that basis, the Commission considers that the amendments, if made, would not cause the Applicant's purposes to be exclusively charitable.

Charities Commission's determination

37. 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

19/10/09

Date