

Registration Decision: N.Z. Border Canary Breeders Society Incorporated

The facts

1. N.Z. Border Canary Breeders Society Incorporated ("the Applicant") was incorporated under the *Incorporated Societies Act 1908* on 19 November 1997.
2. The Applicant applied to the Charities Commission for registration as a charitable entity on 30 January 2010.
3. The Applicant's purposes are stated in clause 4 of their constitution:

Objects

- (a) *To advance education of the keeping, breeding and exhibiting of Border Canaries, with the ultimate aim of producing a good bird*
 - (b) *To promote the distribution of reliable information amongst members and the public on the latest methods of keeping, breeding and exhibiting of Border Canaries and other matters affecting this branch of aviculture*
 - (c) *To assist clubs to stage exhibitions/shows for the purpose of educating and advancing the public's understanding and appreciation of this branch of aviculture*
 - (d) *Suppression of fraud and dishonourable practices therein*
 - (e) *To invest monies of the Society in such manner as from time to time be determined by the Executive Committee*
 - (f) *To sell, lease, exchange, mortgage or otherwise deal with all or any of the real and personal property of the Society as from time to time be determined by the Executive Committee.*
4. On 4 February 2010, the Commission sent a letter to the Applicant requesting further information about its activities.
5. The Applicant responded by letter dated 28 February 2010 stating:

"The Society produces at least 2 newsletters a year which are available for the public and members. . . .

The last newsletter (December 2009) contained information on infertility, egg binding in hens at breeding time, the importance of good nutrition, what function minerals and vitamins that need to be available for the health of birds, the nutritional value of different seeds and function for healthy birds. . . .

The Society has a Committee member who is collecting information on dead in the shell which will contribute to a Nottingham University School of Veterinary Study. . . .

The Society assists regional shows to operate through the sponsorship of part of the Border Section. . . .

Society members, after a number of years, are able to train and qualify as Border Canary Judges. The society is responsible for the training and certification of these Border Canary judges. After a further period of 3 years judging and training, the Society is responsible for the certification of some of these judges to qualify to be a National Show Judge.

Each regional show uses a Border Judge to judge the Border section. Society Judges are available after judging to assist members of the public and society members at the show with information and advice. The shows, after judging, are open for the public to attend and view the birds exhibited. Many members of the public attend these shows and take the opportunity to seek help.

In the past (and intend to do so again in the future) the Society has conducted Seminars at a regional show in the North Island and the South Island for Judges, Society members and any one else who wants to attend regarding the Border Canary. At all formal meetings of the NZBCBS, part of the meeting is for conveying/discussing new information on topics of current interest.

Members are frequently approached by members of the public. . . .

These activities:

- (a) advance education of the keeping, breeding and exhibiting of Border Canaries, with the ultimate aim of producing a good bird*
- (b) promote the distribution of reliable information amongst members and the public on the latest methods of keeping, breeding and exhibiting of Border Canaries and other matters affecting this branch of aviculture*
- (c) assist clubs to stage exhibitions/shows for the purposes of educating and advancing the public's understanding and appreciation of this branch of aviculture.*

Our services provide public benefit, provide education, training and research.

Our activities promote the 'advances in education' through the development of individual capabilities, competencies, skills and understanding.

The information and research is available to anyone who needs them and chooses to take advantage of them."

6. The Commission considered the information provided and on 9 March 2010 sent the Applicant a notice that may lead to a decline on the basis that assisting clubs to stage exhibitions/shows was not a charitable purpose.

7. The Applicant responded by letter dated 21 March 2010 stating:

*"With the focus on education and good bird keeping practice (promotion of humane and generous behaviour and discouragement of cruelty) we believe the NZ Border Canary Breeders Society is not analogous to the case law quoted i.e. the NZ Border Canary Breeders Society activities and objectives (the focus on education and good bird keeping practice) **are significantly different** from the activities and objectives from the breeding and showing of foxhounds and pigeons at the time these cases went to court.*

The Charities Commission we believe have misinterpreted Rule 4c.

...

The assistance to clubs (these are Community Organisations throughout New Zealand) to stage exhibitions/shows is the mechanism for the NZ Border Canary Breeders Society to assist clubs (Community Organisations) to stage exhibitions/shows so that the public can attend to obtain reliable information (education) and advance the understanding of this branch of aviculture.

This is the NZ Border Canary Breeders Society method of engaging the public at a regional community level to:

- provide reliable information (education) and advance the understanding of this branch of aviculture at the exhibition/show.*
- assist the provision of community recreation and leisure activities throughout New Zealand where these are in the interests of social welfare. A wide range of age groups are involved and interested in bird keeping.*
- promote the protection of birds through promoting humane and generous behaviour and discouraging cruelty.*

In other words we believe that we are assisting Community Organisations to hold exhibitions/shows to engage with Regional Communities to further the aims of the advancement of education and promote humane and generous behaviour and to assist the provision of community recreation and leisure activities. . . .

Further we believe that the Charities Commission has not been consistent in its processing of Charitable Status for organisations: . .

. . At least two other bird societies/avicultural clubs, that I am aware of, have activities analogous to the NZ Border Canary Breeders Society and have had their application for Charitable Status approved."

The issue

8. The issue that the Commission has to consider is whether the Applicant is a society or institution established and maintained exclusively for charitable purposes, as required by section 13(1)(b) of the *Charities Act 2005* (the Act). In particular, whether all of the Applicant's purposes fall within the definition of charitable purpose in section 5(1) of the Act, and if

there are any non-charitable purposes, whether these are ancillary to a charitable purpose.

The law on charitable purpose

9. Under section 13(1)(b) of the Act a 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.
10. 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 benefiting the public or a sufficient section of the public.
11. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
12. 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; ...”*

Commission’s analysis

13. The Commission considers that clauses 4(d) to (f) are powers. The purposes set out in the remaining clauses 4(a) to (c) do not show an intention to relieve poverty or advance religion. Accordingly, the Commission has considered these purposes under the advancement of education, and “any other matter beneficial to the community”.

Advancement of education

14. 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 also includes less formal education in the development of individual capabilities, competencies, skills and understanding. Education does not include the study of subjects that have no educational value.²

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

² In *re Shaw* (deceased) [1957] 1 WLR 729; as interpreted in *Re Hopkins’ Will Trusts* [1964] 3 All ER 46. See also *Re Collier* [1998] 1 NZLR 81.

15. *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, deceased [1968] VR 390 the testator's manuscripts were held to be literally of no merit or educational value."*³

16. In *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue*, Iacobucci J held that the advancement of education included "information or training that is provided in a structured manner and for a genuinely educational purpose – that is, to advance the knowledge or abilities of the recipients" and "informal training initiatives, aimed at teaching necessary life skills or providing information toward a practical end"⁴. However, Iacobucci J goes on to state:

*"[T]he threshold criterion for an educational activity must be some legitimate targeted attempt at educating others whether through formal or informal instruction, training, plans of self-study or otherwise. Simply providing an opportunity for people to educate themselves such as by making available materials with which this might be accomplished but need not be, is not enough"*⁵

17. The Commission considers that training and certifying judges and providing educational material for the public and members may amount to the advancement of education according to the case law cited above. Therefore the purposes in clauses 4(a) and (b) may be charitable under this head.
18. In its letter of 28 February 2010 the Applicant also stated that it assists regional shows to operate through the sponsorship of part of the Border Section. In addition, the Applicant stated:

"Each regional show uses a Border Judge to judge the Border section. Society Judges are available after judging to assist members of the public and society members at the show with information and advice. The shows, after judging, are open for the public to attend and view the birds exhibited. Many members of the public attend these shows and take the opportunity to seek help."

19. The Commission does not consider that staging exhibitions or shows of Border Canaries or providing a person who can answer questions raised by members of the public at shows or exhibitions will amount to the advancement of education. This type of activity does not amount to a targeted attempted at educating others or the provision of information in a structured manner. Rather it appears to be analogous to making

³ [1998] 1 NZLR 81, 91-92.

⁴ (1999) 169 D.L.R. (4th) 34, 113.

⁵ (1999) 169 D.L.R. (4th) 34, 113.

available materials through which people may be educated but need not be. This activity relies on members of the public to ask questions or seek information in order to be educated. Accordingly, not all members of the public who attend the shows or exhibitions will necessarily be educated.

20. In light of the above, the Commission does not consider that the purpose outlined in clause 4(c) is charitable under the advancement of education.

Other matters beneficial to the community

21. 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 listed in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth).⁶
22. The purposes set out in the Statute of Elizabeth are:⁷
- 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.⁸
23. The Courts have upheld purposes aimed at the protection or benefit of animals to be charitable under “any other matter beneficial to the community”. Thus, a trust to found an institution for studying and curing the diseases of animals useful to man⁹, gifts to the Society for the

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 *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.

⁸ *Charitable Uses Act 1601* 43 Elizabeth I c. 4.

⁹ *University of London v Yarrow* (1857) 1 De G & J 72

Prevention of Cruelty to Animals¹⁰, gifts to establish or maintain homes for lost dogs¹¹ or cats¹² or homeless animals¹³, trusts to establish humane slaughterhouses¹⁴ have all been held to be charitable.

24. The reason for holding these purposes to be charitable appears to be that that the protection and preservation of animals will lead to the moral improvements of humans and this provides a benefit to the general public. Thus, in *Molloy v Commission of Inland Revenue* Somers J states:

*"On this part of the case Mr Molloy first referred to cases such as Re Wedgwood [1915] 1 Ch 113, Re Tetley [1923] 1 Ch 258, 266 and Re Moss [1949] 1 All ER 495 in which gifts in varying forms for the benefit or protection of animals were held to be valid charitable dispositions. He submitted that the promotion of the value of human life was a fortiori. But the premise is erroneous. The protection of animals has not per se been held to be to the public advantage in the relevant sense. Such cases derive the element of public good not from notions of general public utility but from the stimulation of sentiments of humanity in mankind, that is to say from the moral improvement of humans which may flow from such gifts. That is referred to in the Antivivisection case [1948] AC 31, 44-45; [1947] 2 All ER 217, 221-222. Where that good cannot be inferred, as in the case of a provision for a sanctuary for animals free from molestation or destruction by man, the gift has been held not to be charitable; Re Grove-Grady [1929] 1 Ch 557."*¹⁵

25. In the present case, the Commission considers that the Applicant's purpose outlined in clause 4(c) does not show an intention to protect or benefit Border Canaries.
26. Moreover, in *Petersborough Royal Foxhound Show Society v Inland Revenue Commissioners* the court found that a society for the promotion of foxhound breeding and the holding of an annual show was not a charitable purpose. Lawrence J said "I can see no satisfactory analogy between a foxhound show and the matters referred to in the Statute of Elizabeth..."¹⁶
27. In *Royal National Agricultural Association v Chester*, the Court held that improving the breeding and racing of Homer pigeons were not charitable purposes. McTiernan, Menzies and Mason J held:

¹⁰ *Tatham v Drummond* (1864) 4 De GJ & Sm 484; *Armstrong v Reeves* (1890) 25 LR Ir 325

¹¹ *Re Douglas* (1887) 35 Ch D 472; *Adamson v Melbourne* [1929] AC 142 at 148, PC

¹² *Re Moss* [1949] 1 All ER 495.

¹³ *Attorney-General for South Australia v Bray* [1964] ALR 955 (High Court of Australia)

¹⁴ *Tatham v Drummond* (1864) 4 De GJ & Sm 484; *Re Wedgwood* [1915] 1 Ch 113 at 116; *Re Gemmill* [1946] 2 DLR 716.

¹⁵ [1981] 1 NZLR 688.

¹⁶ [1936] KB 497, 501.

"It may be that in a general way the breeding of pigeons for racing is a purpose beneficial to the community. It provides recreation for quite a number of pigeon fanciers; it produces birds which are interesting, beautiful, and may at times be useful as a means of communication; it affords opportunity for the scientific study of the birds' remarkable homing instinct.

*It is when the inquiry turns to the question of whether the breeding of racing pigeons is within the spirit and intendment of the statute 43 Eliz. 1, c. 4, that the case of the appellant plainly fails. We find no justification for deciding that the breeding of racing pigeons is a purpose of the kind instanced in the preamble of the statute."*¹⁷

28. The Commission considers that assisting clubs to stage shows or exhibitions of Border Canaries is analogous to the promotion of foxhound breeding and the holding of an annual show. This is not analogous to the purposes which have been held to be charitable under the protection or benefit of animals. Therefore, the Commission considers that the purpose outlined in clause 4(c) is not charitable under "any other matter beneficial to the community".

Section 61A of the Charitable Trusts Act 1957

29. The Commission has also considered whether the purpose outlined in clause 4(c) could 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.*

¹⁷

(1974) 48 ALJR 304.

(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."*

30. Section 61A closely follows section 1 of the United Kingdom *Recreational Charities Act 1958*, section 1 of the *Recreational Charities Act (Northern Ireland) 1958*, and section 103 of the *Australian Trusts Act 1973*.

31. Case law from these jurisdictions indicates that the term "social welfare" must be considered as well as the qualification of this term in the equivalent to section 61A(2) of the Act. Thus, in *Commissioner of Valuation v Lurgan Borough Council*¹⁸, Lord McVeigh assessed whether a swimming pool was provided in the interests of "social welfare" before proceeding to consider whether the facility satisfied the further tests in the equivalent to section 61A(2).¹⁹

32. More recently, in *Re Samford Hall Trust*²⁰, Macrossan C.J. first declared himself persuaded that the facilities were provided in the interests of social welfare, then went on to consider the equivalent to section 61A(2).²¹

33. In *National Deposit Friendly Society Trustees v Skegness Urban District Council*, when considering what was meant by the term "social welfare", Lord MacDermott stated:

*"though I am not sure that this expression has as yet gained a settled primary sense, I would hesitate to regard it as synonymous with 'social well being'. That phrase may be employed to describe a state of comfort and plenty, but 'social welfare' seems to me to savour at present anyway, more of those needs of the community which, as a matter of social ethics, ought to be met in the attainment of some acceptable standard"*²² [Emphasis added].

34. Lord MacDermott then stated:

"In In re Cranston, Webb v Oldfield [1898] 1 I.R. 431, 446, Fitzgibbon L.J. said this: 'The essential attributes of a legal charity are, in my opinion, that it shall be unselfish - i.e., for the benefit of other persons than the donor - that it shall be public, ie that those to be benefited shall form a class worthy, in numbers or importance, of consideration as a public object of generosity, and that it shall be philanthropic or benevolent - i.e., dictated by a desire to do good'

...

¹⁸ [1968] N.I., 104.

¹⁹ Section 1(2) of the *Recreational Charities Act (Northern Ireland) 1958*.

²⁰ [1995] 1 Qd. R.60.

²¹ Section 103(3) of the *Australian Trusts Act 1973*.

²² [1959] A.C., 293, 314

*The principle as I understand it, is that a valid charity must be substantially altruistic and benevolent in its purposes*²³

35. In light of the above, the Commission considers that in order to be “in the interests of social welfare” as set out in section 61A(1) of the Charitable Trusts Act, the purpose must meet a need of the community which, as a matter of social ethics, ought to be met in the attainment of some acceptable standard of living. In addition the organisation must be altruistic in nature.
36. The Commission considers that assisting clubs to stage shows or exhibitions of Border Canaries may be a recreational or leisure time occupation. However, the Commission has been unable to identify that the Applicant’s purposes are meeting any particular 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 conditions of life for the persons for whom they are primarily intended.
37. Accordingly, the Commission does not consider that the purpose outlined in clause 4(c) is charitable under section 61A of the Charitable Trusts Act 1957.

Applicant’s submissions

38. The Applicant has submitted that the Commission has registered at least two other bird societies/avicultural clubs which have activities analogous to the Applicant.
39. 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 another entity have been registered by the Commission will have no bearing on the Applicant’s eligibility for registration.

Conclusion

40. The Commission concludes that while the purposes outlined in clauses 4(a) and 4(b) may be charitable, the Applicant’s purpose in clause 4(c) is a non-charitable purpose which is not ancillary to a charitable purpose.

Commission’s determination

41. The Commission therefore determines that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that it is not established and maintained for exclusively charitable purposes, as required by section 13(1)(b) of the *Charities Act 2005*.

²³ [1959] A.C., 293, 315

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

7/9/10

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Date