

Registration decision: The Game and Forest Foundation of New Zealand Incorporated

The facts

The Applicant was incorporated under the Incorporated Societies Act 1908 on 15 November 2001. The constitution of the Applicant indicates that its goal is "to implement a management system for New Zealand's game animal resource that can achieve sustained conservation for the natural environment in conjunction with public social and economic benefits." The Applicant's aims are:

- To change the status of New Zealand's wild animals to that of game under New Zealand statute
- To enhance the perception that game animals are a public resource to be managed and where necessary controlled for public benefit
- To ensure the wise management of game animals, through public participation that is compatible with reasonable biodiversity conservation goals.

The Applicant applied to the Charities Commission for registration as a charitable entity on 5 July 2007.

The Commission analysed the Applicant's application and on 30 January 2008 sent the Applicant a letter advising that its application for registration might be declined because the purposes of the society did not meet the registration requirements in section 13(1) of the Charities Act 2005.

In that letter the Commission advised that in its view the Applicant's advocacy role was a political one and that it was the primary purpose of the society.

On 3 March 2008 the Applicant sent the Commission a submission in support of its view that its overall goal was to achieve "sustained conservation, social and economic benefits". The Applicant also stated that its advocacy activities were of a personal and representational advocacy type and not direct political advocacy.

The issues

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 law on charitable purpose

Under section 13(1) of the Charities Act a society must be established and maintained exclusively for charitable purposes. All of an applicant's purposes

must therefore be charitable in nature, or any non-charitable purposes must be ancillary to a charitable purpose.

In order for a purpose to be charitable it must fall within one of the four charitable purposes set out in section 5(1) of the Charities Act, it must provide a public benefit, and it must not be aimed at creating private financial profit.

Section 5(1) defines 'charitable purpose' as including every charitable purpose relating to:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; or
- any other matter beneficial to the community.

The benefit to the community should be capable of being identified and defined and if a purpose is illegal or if there is a benefit that is outweighed by a greater harm to the community, no benefit will result.¹

An entity must not have a primary purpose which is political because it is not possible to judge whether a proposed change in the law will, or will not, provide a benefit to the public.^{2,3} A "political purpose" means any purpose directed at furthering the interests of any political party; or securing or opposing any change in the law or in the policy or decisions of central or local government, whether in this country or overseas.^{4, 5}

In the assessment of charitable purpose section 18(3)(a) of the Charities 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

The Applicant's purposes as set out in the goal and aims clauses of its constitution are as follows:

3. *Goal*
To implement a management system for New Zealand's game animal resource that can achieve sustained conservation for the natural environment in conjunction with public social and economic benefits
4. *Aims*

¹ *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31, 56; [1947] 2 All ER 217.

² *Knowles v Commissioner of Stamp Duties* [1945] NZLR 522; [1945] GLR 235 (CA).

³ *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688, (1981) 5 TRNZ 1 (CA).

⁴ *In Re Wilkinson (dec'd)* [1941] NZLR 1065, 1077; [1941] GLR 533.

⁵ *Bowman v Secular Society Ltd* [1917] AC 406, 442; [1916-17] All ER Rep 1.

- 1) *To change the status of New Zealand's wild animals to that of game under New Zealand statute*
- 2) *To enhance the perception that game animals are a public resource to be managed and where necessary controlled for public benefit*
- 3) *To ensure the wise management of game animals, through public participation that is compatible with reasonable biodiversity conservation goals."*

The reference to "sustained conservation for the natural environment" in clause 3 could amount to protection of the environment which would be charitable under the fourth head of charity (other purposes beneficial to the community).⁶ However, this clause continues on to state that conservation requirements are to be balanced against achieving "social and economic benefits". Such benefits have been identified by the Applicant as:

- providing "on-going recreational opportunities" for pig hunting;
- improving the quality of wapiti in Fiordland National Park;
- protecting the numbers of Himalayan tahr in order to provide "significant hunting resources for both locals and for tourists".⁷

It is important to note that species such as deer, chamois, tahr, and wild pigs are currently classified as "wild animals" under the Wild Animal Control Act 1977 in order for them to be controlled or eradicated.

If achieved, the Applicant's objective stated in clause 4(1), to change the status of "wild animals" to that of "game" under the Wildlife Act 1953, would modify the methods available for controlling such animals.

The objective contained in clause 4(1) therefore seeks to secure a change to the law and is therefore non-charitable. Information provided by the Applicant about its activities has led the Commission to conclude that this is a primary purpose and is not ancillary to a charitable purpose.

The objective stated in clause 4(2) seeks to persuade to a particular point of view. This is not a charitable purpose and is not ancillary to a charitable purpose.

The objective stated in clause 4(3) would amount to protection of the environment which would be charitable under the fourth head of charity.

Charities Commission's determination

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 exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Charities Act 2005, due to the non-charitable purposes contained in clauses 3, 4(1), and 4(2) of its constitution.

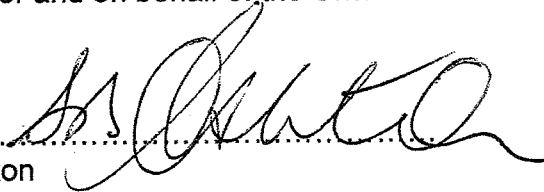
⁶ *Re Centrepont Community Growth Trust* [2000] 2 NZLR 325.

⁷ Letter from Applicant, dated 3 March 2008.

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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Sid Ashton
Chair


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Date

16-4-08