

Registration decision: The Grand Lodge of Antient Free and Accepted Masons of New Zealand

The facts

1. The Grand Lodge of Antient Free and Accepted Masons of New Zealand (the Applicant¹) applied to the Charities Commission (the Commission) to be registered as a charitable entity under the Charities Act 2005 (the Act) on 20 June 2008.
2. The Applicant supplied the Book of Constitution of The Grand Lodge of Antient Free and Accepted Masons of New Zealand (the Constitution) and the Grand Lodge of Freemasons of New Zealand Trustees Act 1903 (the 1903 Act) as its rules documents.
3. The Constitution and the 1903 Act do not have any stated purposes.
4. The Commission analysed the application for registration and on 13 October 2008, sent the Applicant a notice that may lead to a decline on the basis that the Applicant is not established exclusively for charitable purposes, that the Commission considered that the Applicant is an unincorporated society, and the Applicant's rules did not contain a provision that prevented private pecuniary profit.
5. On 11 November 2008, the Applicant requested a meeting to discuss the issues raised in the notice. A meeting with Commission staff was held on 26 November 2008.
6. On 1 December 2008, the Applicant responded to the notice making the following submissions:

"It has been realised that 'The Grand Lodge of Antient Free and Accepted Masons' as entity, has a number of meanings including membership of the one hand and its charitable work on the other. Accordingly, the entity for registration as a charitable entity should be:

'all the real and personal property as vested in the trustees for the time being of the Grand Lodge of Antient Free and Accepted Masons of New Zealand as defined in section 3 of the Grand Lodge of Freemasons of New Zealand Trustees Act 1903.'

7. The Applicant also advised that rule 222(b) of the Constitution had been amended to read:

"The Board shall control and administer the property and finances of Grand Lodge. Provided however, that notwithstanding any other provision contained within these rules or the Collected Rulings no distribution of income after expenses shall be made except for charitable purposes"

¹ Refer to paragraph 18.

8. The Applicant submitted that the above amendments meant that all property and all excess income pursuant to either the 1903 Act or the Constitution has been established and is maintained exclusively for charitable purposes. By amending the entity to be registered, the Applicant considered there was a clear delineation established between the assets (including future income) of the Grand Lodge and its other activities.
9. The Commission considered the Applicant's submissions and on 4 December 2008, sent the Applicant a second notice that may lead to a decline on the basis that it was not established exclusively for charitable purposes and that the Commission remained of the view that the Applicant was an unincorporated society.
10. The Applicant responded to the notice on 23 July 2009, submitting the following:
- The English decision of *United Grand Lodge of Antient Free and Accepted Masons of England v Holborn Borough Council* [1957] 3 All ER 281, CA was decided on the basis that the ground advanced by The Grand Lodge in England was that freemasonry was a religion, and the appellants in that case had failed to establish that freemasonry was a religion.
 - The ground on which The Grand Lodge in New Zealand seeks charitable status is not that freemasonry is a religion.
- "The head of charitable status on which The Grand Lodge relies is that which has been recognised in a series of cases involving 'any other matter beneficial to the community' and associated with this, the advancement of education.*
- ...it is our contention, that freemasonry is directed at mental and moral improvement and encouraging its members into good citizenship and the practice of benevolence. The encouragement and promotion of the benevolent fund is a very important aspect central to freemasonry."*
11. In support of this view, the Applicant referred to the following: *In Re South Place Ethical Society*, *Barralet v Attorney-General*²; *Tudor on Charities*³; *Incorporated Council of Law Reporting for England and Wales v Attorney General*⁴; *Re Hood*⁵ and *Re Price*⁶.

² [1980] 1 WLR 1565; [1980] 3 All ER 918.

³ (6th ed 1967, pp 85, 230).

⁴ [1917] 3 All ER 1029.

⁵ [1931] 1 Ch 240.

⁶ [1943] 2 All ER 505.

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 issues for consideration are:
 - (a) whether the Applicant is a trust or society; and
 - (b) whether the Applicant qualifies for registration as a charitable entity under section 13(1) of the Act.

Trust or society

13. On its application form, the Applicant indicated that it is a trust, and the officer certification forms supplied with the application state that the officers are trustees. At the time of making the application, the Applicant submitted that "[a]lthough the Grand Lodge was in existence before this date, it was established by Parliament as a Trust in New Zealand by way of the Grand Lodge of Freemasons of New Zealand Trustees Act 1903".
14. The Commission analysed the Constitution and the 1903 Act and considered that the application related to the Grand Lodge, which is an unincorporated society.
15. The Applicant, in its letter of 1 December 2008, submitted that the entity for registration should be:

"all the real and personal property as vested in the trustees for the time being of the Grand Lodge of Antient Free and Accepted Masons of New Zealand as defined in section 3 of the Grand Lodge of Freemasons of New Zealand Trustees Act 1903."

16. The Commission notes that clause 166 of the Constitution states:

"Appointment of Trustees

Grand Lodge shall from time to time appoint not less than five of its members resident in New Zealand to be Trustees in terms of The Grand Lodge of Freemasons of New Zealand Trustees Act 1903."

17. Section 3 of the 1903 Act states:

"Vesting real and personal property in Grand Lodge trustees

All lands and any estate therein, and all moneys and securities for money, and all personal property now held by Grand Lodge or by any person or persons on behalf of Grand Lodge, and all Masonic lands, and all moneys or securities for moneys and personal property which may at any time or times hereafter be acquired by Grand Lodge by gift, purchase, devise, bequest, or otherwise, shall, after the coming into operation of this Act, but subject to and without prejudice to any mortgage, charge, encumbrance, lien, or lease affecting the same respectively, become vested in the trustees who shall be appointed by Grand Lodge in accordance with the constitution and laws of Grand Lodge, upon such trusts and for such purposes and subject to such

conditions as shall from time to time be defined by such constitution and laws of Grand Lodge, and shall be subject to the provisions of this Act."

18. The Commission accepts the Applicant's contention that the entity for registration is "all the real and personal property as vested in the trustees for the time being of the Grand Lodge of Antient Free and Accepted Masons of New Zealand as defined in section 3 of the Grand Lodge of Freemasons of New Zealand Trustees Act 1903" (the trustees of the Grand Lodge), and not the Grand Lodge. Accordingly, the reference to the Applicant is a reference to the trustees of the Grand Lodge in respect of the trust property referred to above.

Qualification for registration as a charitable entity

The law on charitable purpose

19. Under section 13(1)(a) of the Act, in order to meet the essential requirements for registration, a trust must be of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.
20. 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.⁷ This means that the purpose must be directed at benefitting the public or a sufficient section of the public.
21. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
22. In considering an application for registration, section 18(3)(a) of the Act requires the Commission to have regard to the entity's activities at the time the application was made, the entity's proposed activities, and any other information that the Commission considers relevant.

Charities Commission's analysis

23. The Constitution and the 1903 Act do not include any stated purposes. The only indication of the purpose for which the trust property is held are the words from section 3 of the 1903 Act stating that the property shall –

"... become vested in the trustees who shall be appointed by Grand Lodge in accordance with the constitution and laws of Grand Lodge, upon such trusts and for such purposes and subject to such conditions as shall from time to time be defined by such constitution and laws of Grand Lodge, and shall be subject to the provisions of this Act".

⁷

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

24. The Courts have held that when determining the purpose or purposes for which an institution is established, the entity's founding documents must be assessed. If these documents do not clearly show the main objects of the entity, then reference can be made to the activities of the entity. As noted above, this has been formalised in the Charities Act in terms of section 18(3)(a) which requires the Commission, in considering an application for registration, to have regard to the entity's current and proposed activities and any other information that may be relevant.
25. Accordingly, the Commission has looked at the provisions of the Constitution, the 1903 Act, and the entity's activities, in order to assess whether the Applicant is established exclusively for charitable purposes. The Commission has also given careful consideration to the submissions made by the Applicant and the cited case law.
26. Clause 210 of the Constitution states:

Terms of Vesting

- a. *All property which by law is vested in the Trustees of Grand Lodge and which is an asset of the Fund of Benevolence is declared to be so vested in trust for the particular charitable purposes declared by these Rules in respect of that fund.*
 - b. *All property which by law is vested in the Trustees of Grand Lodge and in respect of which, by declaration of trust or any other instrument, particular trusts are for the time being in force is declared to be so vested upon those particular trusts respectively.*
 - c. *All property which by law is vested in the Trustees of Grand Lodge and in respect of which no particular trusts are for the time being in force is declared to be so vested in trust for the general purposes of Grand Lodge.*
27. It appears from this clause that the property in question could be seen as being vested in the Applicant on three different trusts, namely:
 - i. In trust for the charitable purposes declared by the rules in respect of the Fund of Benevolence
 - ii. In trust for the purposes of any particular trust declared
 - iii. In trust for the general purposes of the Grand Lodge
 28. As the Applicant has applied as one entity, the Commission considers that these trusts must be considered together to determine the charitable status of the Applicant.

Fund of Benevolence

29. Clause 217 of the Constitution states:

Charitable Funds Generally

- a. *This rule applies to the Fund of Benevolence, and, as far it is not inconsistent with their terms, to particular trusts for charitable purposes for the time being in force (in this rule collectively referred to as "the Charitable Funds").*
- b. *There may be deducted from the income derived from investment of capital of the Fund of Benevolence such sum as may be decided from time to time by the Board of General Purposes, to be applied in or towards the expenses of the management of the Charitable Funds.*
- c. *No provision of these Rules applicable to the Charitable Funds or any of them shall be read as authorising the application of any of those Funds to any purpose that is not in law a public charitable purpose in New Zealand.*

30. Clause 228 of the Constitution states:

Objects and Purpose of the Fund

- a. *The Fund of Benevolence (in the Part referred to as "the Fund") consists of:*
 - i. *Donations from time to time received for the benefit of the Fund;*
 - ii. *Money required by these Rules to be paid to the Fund;*
 - iii. *The investment of the Fund and the accumulation of investments together with income arising therefrom.*
- b. *The Fund shall be solely devoted to charity within New Zealand.*
- c. *The provisions of these Rules relating to particular cases where the person seeking relief is a Mason or the dependant of a Mason shall not be read as limiting the general public charitable purpose of the Fund.*
- d. *The object of the fund is to afford relief in New Zealand to the indigent widows and orphans of deceased Freemasons and other persons, to the indigent wives and children of Freemasons and other persons who are incapacitated, to aged and infirm indigent persons, to indigent persons who are incapacitated, and to assist any public charity or public charities, or any organisation dispensing charity or relieving sickness or distress, and which the Board may consider worthy of support.*

31. Under clause 231 of the Constitution, the Fund of Benevolence is to be administered by the Board of Benevolence. The functions of the Board of Benevolence are set out in clause 230 of the Constitution as follows:

The functions of the Board are:

- a. *To administer, supervise and control the charitable funds under its control.*
 - b. *To promote and co-ordinate the charitable and benevolent activities of the Craft, including assisting and counselling Craft Lodges in their charitable undertakings.*
 - c. *To undertake such further duties and functions as may be delegated to it from time to time.*
32. The Commission has analysed these provisions and considers that the purposes of the Fund of Benevolence are exclusively charitable.

Particular trusts declared

33. The Commission considers that it does not have sufficient information about the purposes of the 'particular trusts' managed by the Applicant to determine that these trusts are exclusively charitable.

General purposes of the Grand Lodge

34. Clause 211 of the Constitution states:

Management and Control of Property

All property which by law is vested in the Trustees of Grand Lodge shall be managed, controlled or disposed of, whether temporarily or partially or otherwise, as the Board of General Purposes may from time to time direct, subject always:

- a. *To all restrictions arising out of the purposes for which the same is held and all restrictions arising out of any declaration of trust or other instrument affecting the same;*
 - b. *Within those restrictions, to the provisions of these Rules and the special direction of Grand Lodge.*
35. The general functions of the Board of General Purposes are set out in clause 222 of the Constitution as:
- a. *The Board has the general care and regulation of all the affairs of Grand Lodge and shall take into account all matters concerning the Craft in New Zealand.*
 - b. *The Board shall control and administer the property and finance of Grand Lodge. Provided however, that notwithstanding any other provision contained within these rules or the Collected Rulings no distribution of income after expenses shall be made except for charitable purposes.*
 - c. *The Board may inspect any books and papers relating to the accounts, funds and property of Grand Lodge, give directions*

relating thereto and may summon any Brother having possession of any records belonging to Grand Lodge.

- d. *The Board may recommend or report to Grand Lodge or to the Craft whatever it may deem necessary or advantageous for the welfare and good government of the Craft.*
- e. *The Board may on behalf of Grand Lodge appoint such personnel as it thinks fit for the satisfactory conduct of the business of Grand Lodge on such terms and conditions as it shall determine.*
- f. *The Board may from time to time make and publish Rulings to be known as "Collected Rulings".*
- g. *The Board may from time to time determine what expenses it will allow to any Officer or Brother and the amount thereof.*

36. The Commission considers that the purpose of the Board of General Purposes is to hold the assets vested in it for the general care and regulation of all the affairs of the Grand Lodge. Accordingly, in order to assess whether this purpose is charitable, the Commission has considered the purposes of the Grand Lodge.

37. The overarching principles by which the Grand Lodge operates are outlined in the Constitution as:

Freemasonry as a Society is:

Charitable –

its resources are devoted to the welfare and happiness of Mankind.

Benevolent –

believing that the good of others is of primary concern.

Communal –

it promotes ethical conduct and responsible attitudes amongst its members, and attitudes of heart and mind which will help them to practice charity and goodwill to all.

Educational –

its authorised ceremonials teach a system of morality and brotherhood based upon Universal Truth.

Reverent –

it acknowledges a Supreme Being, Creator of the Universe whom all men should revere. The Volume of the Sacred Law is open whenever a Lodge is in session and is a constant reminder of that fundamental duty.

Social –

it encourages the meeting together of men for the purpose of fellowship, instruction and charity.

38. Clause 13 of the Constitution states:

Grand Lodge governs and possesses supreme superintending authority over the Craft in New Zealand and alone has the inherent power of enacting laws and regulations for the government of the Craft and of altering, repealing and replacing them.

39. Clause 14 of the Constitution states:

Executive and Judicial Power of Grand Lodge

- a. *Grand Lodge has the power of investigating, regulating and deciding all matters relating to the Craft, to particular Lodges, and to individual Brethren.*
- b. *Grand Lodge may exercise this power acting in Communication, or by such delegated authority as it may appoint subject to these Rules.*
- c. *Except as provided in Rule 244(a), Grand Lodge alone has the power of erasing Lodges and expelling Brethren from the Craft, powers it cannot delegate to any subordinate authority.*

40. In *United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council*⁸, the English Court of Appeal held that the purpose of the United Grand Lodge of Ancient Free and Accepted Masons of England was to promote freemasonry. The court went on to hold that the main object of freemasonry was to “promote and advance those virtues which every mason is charged to cultivate: good citizenship, honest work, morality and wisdom, brotherly love, compassion, charity to the poor and belief in a supreme architect of heaven and earth”.

41. The Commission considers that the purpose of the Grand Lodge is to promote freemasonry in New Zealand. The Grand Lodge does this by administering and centrally governing masonic activities. Accordingly, the Commission considers that all assets which are vested in the Applicant for the “general purposes of the Grand Lodge” are vested for the purpose of promoting freemasonry in New Zealand.

42. The Commission notes that clause 222(b) limits the distribution of income after expenses to charitable purposes. The Commission does not consider this sufficient to render the purpose of promoting freemasonry in New Zealand charitable. The activities done to promote freemasonry in New Zealand could be regarded as expenses of the Grand Lodge, and therefore would not be subject to the charitable purpose limitation.

43. The Commission does not consider that promoting freemasonry in New Zealand will relieve poverty. Therefore, this purpose has been considered in relation to the advancement of religion, advancement of education and “any other matter beneficial to the community”.

Advancement of religion

44. In order for a purpose to advance religion, it must:
- be for the benefit of a religion and
 - ensure a religious faith is passed on to others.

⁸ [1957] 1 WLR 1080.

45. The term "religion" includes many different faiths and belief systems (for example, Christianity, Judaism, Islam, Hinduism, and Buddhism).
46. Generally, to be religious there needs to be:
- a belief in a supernatural being, thing, or principle, and
 - an acceptance of conduct in order to give effect to that belief⁹.
47. To "advance" religion, the faith must be passed on to others by promoting it, spreading its message, or taking positive steps to sustain and increase the religious belief.
48. In *United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council*¹⁰, the Court held that the United Grand Lodge of Freemasons in England did not advance religion as there was "no religious instruction, no programme for the persuasion of unbelievers, no religious supervision to see that its members remain active constant in the various religions which they might profess, no holding of religious services and no pastoral or missionary work of any kind". Moreover, the Court found that "no mason need practise any religion; provide he believes in a Supreme Being and lives a moral life, he may be and remain a mason".
49. The Commission considers that the Applicant is analogous to the United Grand Lodge of Ancient Free and Accepted Masons of England. While freemasonry acknowledges a "Supreme Being, Creator of the Universe whom all men should revere" (see Reverent principle), neither the Applicant nor the Craft Lodges in New Zealand provide any religious instruction or programmes for the persuasion of unbelievers, provide religious supervision to see that its member remain active and constant in the various religions which they might profess, hold religious services or provide pastoral or missionary work of any kind. Accordingly, the Commission does not consider that the Applicant's purpose of promoting freemasonry in New Zealand will advance religion.

Advancement of education

50. In order for a purpose to advance education, it must:
- provide some form of education, and
 - ensure learning is passed on to others.
51. The Commission considers that the promotion of freemasonry may provide some educational benefits to members. However, the Commission considers that promoting freemasonry is not limited to advancing education, and that the Applicant has other main non-charitable purposes. In addition, the Commission is of the view that the

⁹ *Church of the New Faith v Commissioner of Pay-roll Tax* (1983) 154 CLR 120; *Centrepoint Community Growth Trust v Commissioner of Inland Revenue* [1985] 1 NZLR 673 at 695-697.

¹⁰ [1957] 1 WLR 1080.

promotion of freemasonry will not provide educational benefits to a significant section of the community for the reasons outlined in the section on private or public benefit. Accordingly, the purpose is not exclusively charitable.

Other matters beneficial to the community

52. In order for a purpose to be charitable as “any other matter beneficial to the community”, the purpose must be:

- beneficial to the community; and
- within the spirit and intent of the purposes listed in the Preamble to the Statute of Elizabeth.¹¹

53. Not all organisations that have purposes that benefit the community will be charitable. The purposes must benefit the community in a way that the law regards as charitable. According to *Charity Law in Australia and New Zealand*:

“... it is not all objects of public utility that are charitable, ‘for many things of public utility may be strictly matters of private right, although the public may indirectly receive a benefit from them.’ Nor are essentially economic or commercial objects within the spirit of the Preamble.”¹²

54. The Commission considers that the Applicant’s purposes are not within the spirit and intent of the purposes set out in the Preamble to the Statute of Elizabeth for the reasons set out in the succeeding paragraphs.

55. The Applicant has submitted that the mental and moral improvement of mankind has been held to be charitable under “any other matter beneficial to the community”. In support of this view, the Applicant referred to *In Re South Place Ethical Society; Barralet v Attorney-General*¹³; *Tudor on Charities*¹⁴; *Incorporated Council of Law Reporting for England and Wales v Attorney General*¹⁵; *Re Hood*¹⁶; *Re Price*¹⁷.

56. In addition to the above cases, the Commission has also considered whether *Re Scowcroft*¹⁸ would assist the Applicant.

¹¹ *Charitable Uses Act 1601* 43 Elizabeth I c. 4. See *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.

¹² *Gino Dal Pont*, 2000, Oxford University Press, p 178; citing *Nightingale v Goulburn* (1847) 5 Hare 484, 490 and *Re Davis (deceased)* [1965] WAR 25, 28.

¹³ [1980] 1 WLR 1565; [1980] 3 All ER 918.

¹⁴ (6th ed 1967, pp 85, 230).

¹⁵ [1917] 3 All ER 1029.

¹⁶ [1931] 1 Ch 240.

¹⁷ [1943] 2 All ER 505.

¹⁸ [1898] 2 Ch 638.

57. In *Re Scowcroft*, a vicar left a building used as a village hall and reading room "to be maintained for the furtherance of Conservative principles and religious and mental improvement and to be kept free of intoxicants and dancing". The Court found that the furtherance of religious and mental improvement was an essential part of the gift, and therefore held it was a gift for that purpose and a good charitable gift.

58. In *Re Hood*, the testator left his residuary estate on trust on the following instructions:

Whereas I believe in the Universality of the Christian religion and that the remedy for all the unrest and disorders of the body politic will be found in the application of Christian principles to all human relationships And whereas I believe the drink traffic to be one of the most subtle and effective forces in preventing the successful application of these principles and I therefore hope and trust that active steps will be taken to minimize and ultimately extinguish this enemy of my country's welfare. Now therefore I declare it to be my wish that my general beneficiaries shall hold the whole of my residuary trust estate together with the income thereof in spreading the Christian principles before mentioned and in aiding all active steps to minimize and extinguish the drink traffic.

59. The Court concluded that this meant the advancement of Christian principles and the particular method by which that advancement may take place, being gradually extinguishing the drink traffic. They held that the advancement of Christian principles was charitable under the advancement of religion. The Court also went on to hold that "promoting temperance" was charitable. In coming to this conclusion, the Court relied on the decision in *Re Scowcroft* and held that temperance comes within the fourth class as it contributes to the moral improvement of mankind.

60. In *Re Price*, a testator left money on trust for the "Anthroposophical Society in Great Britain to be used at the discretion of the chairman and executive council of the society for carrying on the teachings of the found Dr Rudolf Steiner". The teachings of Dr Rudolf Steiner were broad but directed to the extension of knowledge of the spiritual in man and in the universe generally and of the interaction of the spiritual and the physical. It was not strictly necessary for the Court to decide whether the gift was charitable but the Court went on to find that the gift was charitable because:

(a) *on the evidence the teachings of Rudolf Steiner are directed to the mental or moral improvement of man;*

(b) *that provided this teaching is not contra bonos mores the court is not concerned to decide whether it will result in mental or moral improvement of anyone, but only whether on the evidence before the court it may have that result".*

61. In *Re South Place Ethical Society, Barralet v Attorney-General* the object of the Society was "the study and dissemination of ethical principles and the cultivation of a rational religious sentiment". The Court decided that

the Society was charitable by way of advancing education, or alternatively, by analogy with *Re Price*, *Re Hood* and *Re Scowcroft*, it was charitable under the fourth head (other matters beneficial to the community) as promoting the moral or spiritual welfare or improvement of the community. In coming to this conclusion, Dillon J stated:

"I turn therefore to the objects of this society, as set out in its rules. The first part of the objects is the study and dissemination of ethical principles. Dissemination, I think, includes dissemination of the fruits of the study, and I have no doubt that that part of the objects satisfies the criterion of charity as being for the advancement of education. The second part, the cultivation of a rational religious sentiment, is considerably more difficult. As I have already said, I do not think that the cultivation is limited to cultivation of the requisite sentiment in the members of the society and in no one else. In the context the society is outward looking, and the cultivation would extend to all members of the public whom the society's teachings may reach. The sentiment or state of mind is to be rational, that is to say founded in reason. As I see it, a sentiment or attitude of mind founded in reason can only be cultivated or encouraged to grow by educational methods, including music, and the development of the appreciation of music by performance of high quality. The difficulty in this part of the society's objects lies in expressing a very lofty and possibly unattainable ideal in a very few words, and the difficulty is compounded by the choice of the word "religious", which, while giving the flavour of what is in mind, is not in my view used in this correct sense. Despite this, however, I do not see that the court would have any difficulty in controlling the administration of the Society's assets. [Emphasis Added]"

62. The Regulator for Charities in England and Wales, the Charity Commission, analysed these cases in its decision of 17 November 1999 in relation to the application for registration as a charity by the church of Scientology (England and Wales).¹⁹ The Charity Commission considered that these cases were not entirely clear and unambiguous and had come about with little judicial explanation as to why promoting the moral or spiritual welfare or improvement of the community was considered charitable. The Charity Commission concluded that there were no clear principles that could be drawn out of the cases. However, it considered that a traditional interpretation of the cases suggested that an entity claiming to exist for the promotion of the moral or spiritual welfare or improvement of the community would need to be:

- promoting a set of principles;
- that do not constitute a formal belief system;
- which may be adopted by the public at large according to individual choice; and
- which do not require membership of a particular organisation.

¹⁹

<http://www.charitycommission.gov.uk/Library/registration/pdfs/cosfulldoc.pdf>.

63. The Charity Commission interpreted the cases broadly in a way that was compatible with the European Convention on Human Rights. On this basis, the Charity Commission considered that the key aspects of the purpose of promoting the moral or spiritual welfare or improvement of the community would be that the "doctrines, beliefs and practices of the organisation are accessible to the public and capable of being applied by members of the public according to individual judgement or choice from time to time in such a way that the moral or spiritual welfare or improvement of the community may result".
64. The Commission has considered the above cases and the Charity Commission's approach to "promoting the moral or spiritual welfare or improvement of the community". In light of these authorities, the Commission considers that in order for an entity to be promoting the moral or spiritual welfare or improvement of the community, the entity must have a set of ideas or beliefs that are broadly philosophical in nature and the ideas or beliefs of the entity must be accessible to the public.
65. In this case, the Commission considers that freemasonry does have a set of ideas or beliefs that are broadly philosophical in nature. However, the Commission does not consider that the ideas or beliefs of freemasonry are accessible to the public. The Freemasons keep their beliefs and practices substantially confidential. Accordingly, in order to have full access to the ideas and beliefs of freemasonry, a person must become a member of a craft lodge. In order to become a member, a person must be man over the age of 21 found to be in reputable circumstances who has been proposed and seconded by Master Masons and not had three black balls appear against him in a ballot.²⁰ Such requirements place significant limitations on membership.
66. Consequently, the Commission considers that the ideas and beliefs of freemasonry are not sufficiently open to the public to be analogous to the cases referred to above and therefore the Applicant is not charitable under the fourth head by way of promoting the mental and moral improvement of mankind.

Public or private benefit

67. The public benefit criterion necessarily requires that any private benefits arising from the Applicant's activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to that public benefit. It will not be a public benefit if the private benefits are an end in themselves.²¹ 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.²²

²⁰ See clauses 52-56 of the Constitution.

²¹ *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* 69 TC 231; *Travel Just v Canada Revenue Agency* 2006 FCA 343 [2007] 1 CTC 294.

²² *Gilmour v Coats* (1949) AC 26; *Re Blyth* [1997] 2 Qd R 567, 582; *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

68. An association that exists mainly to advance the interests of, or otherwise benefit, its members cannot be said to be charitable.²³ In *Inland Revenue Commissioners v Yorkshire Agricultural Society*²⁴, Atkin LJ stated:

"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 objects may be, would not be for a charitable purpose, and if it were a substantial part of the object that it should benefit its members I should think that it would not be established for a charitable purpose only. But, on the other hand, if the benefit given to its members is only given to them with a view to giving encouragement and carrying out the main purpose which is a charitable purpose, then I think the mere fact that the members are benefited in the course of promoting the charitable purpose would not prevent the society being established for charitable purposes only."

69. The Commission considers that a substantial part of the Applicant's purposes will advance the interests of, or otherwise benefit, the members of the masonic movement in New Zealand.
70. In addition, in *Travis Trust v Charities Commission*²⁵, the Trust was held not to meet the public benefit requirement because:

"Membership is not open to the public generally upon payment of a subscription or similar. Instead, members must be elected after being proposed and seconded in writing by two members of the club. It is very much a private club similar in format to those considered in the Strathalbyn case. I hold that the Cambridge Jockey Club is not the community or a sufficient section of it to amount to "the public" in accordance with that requirement"

71. As noted above, membership of the masonic movement in New Zealand is limited to men over the age of 21 found to be in reputable circumstances who have been proposed and seconded by Master Masons and not had three black balls appear against him in a ballot²⁶.
72. In light of the above, the Commission does not consider that the purposes in question will provide sufficient public benefit.²⁷

²³ *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380.

²⁴ [1928] 1 KB 611.

²⁵ HC WN CIV-2008-485-1689 [3 December 2008].

²⁶ See clauses 52-56 of the Constitution.

²⁷ See also *Thompson v Commissioner of Taxation (Commonwealth)* (1959) 102 CLR 315 where the High Court of Australia found the funding of schools for the children of the members of the Masonic Order was found to be insufficiently public because Masonic members were themselves admitted only by election.

Other Cases

73. The Commission has also considered the decisions in *Grand Lodge of Ancient, Free and Accepted Masons of Scotland v Commissioners of Inland Revenue*²⁸, *Re Westphal (deceased)*²⁹ and *Shears v Miller*³⁰.
74. In *Grand Lodge of Ancient, Free and Accepted Masons of Scotland v Commissioners of Inland Revenue*³¹, the Grand Lodge of Scotland held and administered five separate funds known respectively as the General Fund, the Metropolitan District General Fund, the Fund of Scottish Masonic Benevolence, the Annuity Fund and the Metropolitan District Benevolent Fund. The question arose as to whether the funds were liable for duties under the Customs and Inland Revenue Act of 1885 or whether they were exempt as being "property which, or the income or profits whereof shall be legally appropriated and applied for any purpose connected with any religious persuasion, or for any charitable purpose". The Grand Lodge accepted that they were liable for duties in respect of the General Fund and the Metropolitan District General Fund, however, they argued that the other funds fell within the terms of the exemption. The Court accepted that the exemption applied to the Fund of Scottish Masonic Benevolence, the Annuity Fund and the Metropolitan District Benevolent Fund.
75. In *Re Westphal (deceased)*³², the testator left the residue of his estate to the Fountain of Friendship Lodge Society, to be held in trust for ever and to apply the income for the benefit of the Lodge or members thereof or any widow or child or a member, and directed that the capital should be kept as a separate fund. The Court held that the objects of the Lodge were not charitable as the Lodge was no more than "a fraternal association of good citizens with common interests and worth-while purposes".
76. In *Shears v Miller*³³, the Court considered a trust known as the South Canterbury Masonic Land Development Committee. The trust did not have stated purposes and the Court held that the primary purpose of the trust was to "acquire the Levels land and to establish a Masonic complex on that land". The Court held that the trust was not charitable. In coming to the conclusion Chisholm J stated: "to me this trust is in a similar category to the bequest for the maintenance and upkeep of a building devoted to Masonic purposes which the English Court of Appeal in *Porter & Anor v Porter* [1925] All ER 179 decided was not a good charitable bequest".

²⁸ [1912] 2 SLT 74 (1 Div).

²⁹ [1972] NZLR 792.

³⁰ 30/05/2000, Chisholm J, HC Timaru CP10/99.

³¹ [1912] 2 SLT 74 (1 Div).

³² [1972] NZLR 792.

³³ 30/05/2000, Chisholm J, HC Timaru CP10/99.

77. Chisholm J then went on to consider the decision in *United Grand Lodge of Ancient Free and Accepted Masons v Holborn Borough Council*³⁴ and stated:

"In that case the Court decided that the main objects of Freemasonry did not include the advancement of religion. On the information available I am not prepared to differ from that conclusion. I also note that Holborn specifically recorded that it had not been claimed that the main objects of Freemasonry included the advancement of education, social welfare, or benevolent work through the appellant's Board of Benevolence. Although the defendants have argued that those categories are applicable in this case, I cannot accept that there is any tenable foundation for such a conclusion to be drawn. The benefit was private rather than public. Since the relief of poverty cannot be established, absence of public benefit must be fatal to the suggestion that this was a charitable trust."

Conclusion

78. The Commission concludes that the trust property could be seen as being vested in the Applicant on three trusts. However, as stated above, because the Applicant has applied as one entity, these trusts must be considered together to determine the charitable status of the Applicant.
79. The Commission considers that:
- the purposes of the Fund of Benevolence appear to be charitable
 - the general purpose of the Grand Lodge is the promotion of freemasonry in New Zealand and this is not a charitable purpose
 - no sufficient information has been provided about the "particular trusts" which establishes that these trusts are charitable.

Section 61B of the Charitable Trusts Act 1957

80. In order to be a valid trust at law, a trust for charitable purposes must be exclusively charitable or it will be void for uncertainty. However, section 61B of the Charitable Trusts Act can operate in two situations to "save" a trust that has both charitable and "non-charitable and invalid" purposes.
81. The first is where the entity's **stated purposes** include charitable and non-charitable purposes (in which case the non-charitable purposes may be "blue pencilled out"). The second is where the stated purposes are capable of both a charitable and a non-charitable **interpretation** and the primary thrust of the gift is considered to be charitable (in which case the purposes could be deemed to apply only in terms of the charitable interpretation).³⁵

³⁴ [1957] 3 All ER 281.

³⁵ *Re Beckbessinger* [1993] 2 NZLR 362, 373.

82. In *Re Beckbessinger*³⁶, Tipping J held:

"In the case of designated and identifiable organisations it may well be necessary to have evidence as to whether or not they are charitable to determine the flavour of the gift. The Court cannot in my judgment say, . . . that because a gift might have been applied for charitable purposes, s 61B can be used to save it. The testator must be shown to have had a substantially charitable mind but to have fallen foul of the law of uncertainty by including either actually or potentially a non-charitable element or purpose."

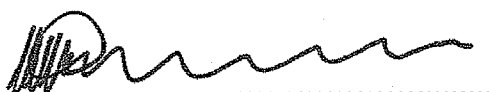
83. The Commission considers that the Applicant has a primary purpose of promoting freemasonry in New Zealand and this purpose is not charitable. Viewed as a whole, the Applicant purposes do not appear to be substantially charitable and therefore section 61B of the Charitable Trusts Act cannot operate to validate the trust.

Charities Commission's determination

84. 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 a trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) 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

26/11/09

Date

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[1993] 2 NZLR 362, 376.