

Please note:

The Foundation for Reversal of Solid State Hypothermia appealed the Charities Registration Board's decision (shown below). The appeal was upheld in the High Court, and the Foundation was registered on the Charities Register on 30 September 2016. The decision of the High Court is available here:

<https://charities.govt.nz/charities-in-new-zealand/legal-decisions/view-the-decisions/view/the-foundation-for-anti-aging-research-and-the-foundation-for-reversal-of-solid-state-hypothermia-v-charities-registration-board>

Registration decision: The Foundation for Reversal of Solid State Hypothermia (THE42853)

Executive summary

1. The Charities Registration Board (**the Board**) has determined to decline the application for registration of The Foundation for Reversal of Solid State Hypothermia (**the Foundation**).¹
2. The Foundation has applied for registration on the basis that its purposes are charitable under the advancement of education, relief of the aged and impotent and the fourth head of charity (“any other purposes beneficial to the community”): by analogy with cases on protecting human life, promoting human health and relief of human suffering and distress; and under an alternative “presumption of charitable status” test.
3. The Board has determined that the Foundation is not qualified to be registered as a charitable entity under the *Charities Act 2005* (**the Act**).² The Board considers that the Foundation has an independent (non-ancillary) purpose that is not charitable at law, contrary to the registration requirements set out in section 13 of the Act and case law. We consider that the Foundation pursues an independent purpose to fund cryonics research (research into the cryopreservation and reanimation of people).³ This purpose does not advance education or any other purpose that is charitable at law. Further, we are also not satisfied that the Foundation’s purposes provide sufficient public benefit, which is a requirement for charitable status.
4. The Board’s reasons appear below, organised under the following headings:
 - A. Background
 - B. Legal framework for registration
 - C. Charities Registration Board’s analysis
 - C.1. The Foundation’s purpose to fund cryonics research
 - C.2. The Foundation’s purposes are not charitable
 - D. Section 5(3) of the Act

1 The decision is made under section 19 of the *Charities Act 2005*.

2 The essential requirements for registration are set out in section 13 of the *Charities Act 2005*.

3 Refer paragraph 85 of the Affidavit of Gregory Michael Fahy dated 1 May 2013 which states that cryonics has “as its primary goal the cryopreservation and future revival of a person after a terminal illness or a presently-fatal accident, in the hope that medical science will be able to revive that person in the future, when life extension and medical technologies are sufficient to restore that person to health”.

- E. Other submissions raised by the Foundation
- F. Charities Registration Board's determination

A. Background

- 5. The Foundation was established by Deed executed on 14 July 2011. It was incorporated under the *Charitable Trusts Act 1957 (the CTA)* on 13 September 2011. On 21 November 2011 the Foundation applied for registration under the Act.
- 6. The current Trustees of the Foundation are six individuals (Bernard Lampert, Bruce Waugh, Christina Apert, Derek Smith, Saul Kent, William Faloon) and two corporate trustees, Committee of Perpetual Guardians (in Virginia, United States) and Allied Finance Trust AG (in Liechtenstein).
- 7. The Foundation's purposes are set out in Clause 3 of the Deed. This clause states:

3. PURPOSES

3.1. The purposes of the Foundation ("the Purposes") shall be all purposes which are charitable under the laws of New Zealand. The Foundation shall have no objectives or purposes which are not charitable purposes as defined in section 5(1) of the Charities Act 2005 (New Zealand) or section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended and in effect on the date the Foundation is established.

3.2. Subject to this clause, the purposes of the Foundation shall be as follows:

3.2.1. The principal purpose of the Foundation shall be to fund scientific research. The fruits of the scientific research funded may be used for the general benefit of all of mankind, including individuals who may benefit from advancements in organ and tissue transplantation, regenerative medicine, genetic engineering, cloning, DNA transplant engineering, cell colony cloning, immunologic engineering, molecular engineering (nanotechnology) during their lifetime, and including deceased individuals who have been placed into cryopreservation or individuals who have made legal arrangements to be placed into cryopreservation or who may wish to make legal arrangements to be placed into cryopreservation for the purpose of future reanimation.

3.2.2. The major focus in furthering research shall be:

- i. The development of highly sophisticated methods of repair and/or regeneration of tissues damaged by

disease, injury, aging and the cryopreservation process.

- ii. The development of ultra-small cell repair machines capable of entering individual cells, especially brain cells, in order to make these cells fully functional again.
 - iii. The development of methods to regenerate or re-grow healthy cells, tissues, and organs to replace damaged or missing cells, tissues and organs.
 - iv. The development of methods to determine the biologic, physical, and chemical bases to revive, restore or reconstruct the identity of cryopreserved individuals.
- 3.3. The Foundation shall also fund research to restore cryopreserved individuals to full health and youthful vigour, either through the repair or regeneration or replacement of damaged or missing cells, tissues, and organs, or through the reversal of aging and degenerative disease processes and general rejuvenation of their organisms.
- 3.4. The Foundation shall also fund research to develop appropriate medical protocols to carry out the entire reanimation process for the cryopreserved individuals. These protocols are likely to vary, according to the specific needs and requirements of individuals who may be cryopreserved under completely different circumstances.
- 3.5. The Foundation may also may fund research aimed at uploading of the identity of cryopreserved individuals into a computer or other type of artificial system for the purpose of being able to download their identify in the future into a biological or artificial body.
- 3.6. The Foundation shall fund reanimation research directly by giving scientists working in universities, medical centres, non-profit organizations or private companies grants, through their research institutions, to conduct research in the above noted areas, or indirectly by funding the development of scientific research organizations that seek to develop reanimation technologies and therapies, or by investing in such companies.
- 3.7. Emphasis of scientific research funding will be to repair or reverse cryopreservation damage or replace lost cells, tissues or organs for those who have been cryopreserved with today's primitive cryopreservation methods, prior to significant advances in vitrification or other preservation methods. Preservation methods that are considered to be "primitive" are methods that cause significant damage to the molecular biological structure of cryopreserved individuals. Such "primitive" cryopreservation methods, by way of example, are the cryopreservation methods

currently being used even under the best circumstances at the time of the founding of this Foundation, and probably for decades thereafter. This scientific research shall aim to restore health, youthful biological function to those cryopreserved by these primitive methods.

- 3.8. Recognizing that research objectives aimed at discovering methods of restoring cryopreserved individuals to life may radically change in the future, the Board of the Foundation and the Board of Curators (see Art. 12 and Art. 13) are given discretion to fund other scientific research projects that fall within the objectives of the Foundation.
- 3.9. While the Foundation is established for charitable purposes under the laws of New Zealand, it is the intention of the Board of the Foundation and Board of Curators to also operate the Foundation for charitable purposes within the meaning of section 501(c)(3) of the United States Internal Revenue Code of 1986, for the furtherance of charitable scientific research, as that term is defined under section 501(c)(3) as currently enacted, provided that such law does not contradict New Zealand law, or otherwise contravene the purely charitable nature and charitable scientific research purposes of the Foundation.
- 3.10. The Foundation shall not engage in any activity which is prohibited for a corporation exempt from United States income tax under section 501(c)(3) of the Internal Revenue Code unless the Internal Revenue Code is altered or misinterpreted in a prejudicial manner to disallow charitable funding of the type of scientific and medical research that furthers the Foundation's specific exempt purpose.
- 3.11. In accordance with the existing US tax law, the Foundation shall not participate or intervene in any political campaign on behalf of any candidate for public office by publishing or distributing statements, or in any other way. No substantial part of the activities of the Foundation shall be the carrying on of propaganda, or otherwise attempting to influence legislation. The Foundation's assets shall not inure to the benefit of any private shareholder or individual, within the meaning of United States Internal Revenue Code section 501(c)(3).

Correspondence on the Foundation's application for registration

8. On 26 April 2012, the Foundation was notified that its application may be declined as its purposes are not exclusively charitable. The test for charitable research has not been met and the purposes do not have sufficient public benefit. This letter also raised a jurisdictional issue and a concern that the Deed created opportunity for private pecuniary profit. After considering submissions made by the Foundation, these two issues are no longer of concern.

9. On 28 June 2012, the Foundation (via its solicitor) responded to the notice. The Foundation:
- (a) submitted that it is charitable under advancement of education, relief of the aged and impotent and the fourth head of charity (“any other purposes beneficial to the community”): by analogy with cases on protecting human life, promoting human health and relief of human suffering and distress; and under an alternative “presumption of charitable status” test;
 - (b) submitted that the purposes of the Foundation are not limited to research into reanimation of cryopreserved individuals, but extend to other areas where cryopreservation may have useful benefit;⁴
 - (c) submitted that the research supported by the Foundation will be a useful subject of study. It will benefit people worldwide and there are many life-saving and life-improving uses for the advancements in cryobiology (including cures for diseases, transplant medicine, cryopreservation of cells, tissues and organs for later use, cryopreservation of umbilical cord blood, DNA cryopreservation of endangered species);⁵
 - (d) submitted that the research supported by the Foundation will be disseminated internationally;
 - (e) also submitted that it is incorrect to state that cryonic reanimation is not accepted as feasible. The fact that reanimation of cryopreserved individuals is an unproven procedure illustrates the need for more research to develop the knowledge needed to document the potential of cryonics. The views of the mainstream scientific community as to the feasibility of the reanimation of cryopreserved individuals do not preclude the Foundation’s purposes from being exclusively charitable;
 - (f) submitted that the benefit of the Foundation’s research goes to a sufficient section of the public. The number of people donating their bodies for cryopreservation is growing⁶ and the fees are lower than previously.⁷ The Foundation itself does not itself perform cryopreservation so does not have a fee structure. The fact that there are costs associated with the process of cryonics cannot exclude the public from benefitting from the research proposed. Further, the costs are often covered by life insurance policies;

4 Refer Susan Barker’s letter dated 28 June 2012 at paragraph 10.

5 Refer Susan Barker’s letter dated 28 June 2012 at paragraphs 11 to 21.

6 Refer Susan Barker’s letter dated 28 June 2012 at paragraph 56: “As of 2012, a further 50 people [in addition to the 200 previous] have undergone the procedure.”

7 Refer Susan Barker’s letter dated 28 June 2012 at paragraph 56 – for example the non-profit Cryonics Institute “have memberships in the much lower costs (under \$30,000)”.

- (g) stated that cryopreservation of recently-deceased people may prove to be a way to save lives and could be viewed as continuing to care for sick people when others have given up;
- (h) submitted that the public benefit is assumed under the first three heads of charity unless the contrary is shown. The Foundation referred to *McGovern v Attorney General*⁸ (**McGovern**) where the Court stated “no doubt in some cases a purpose may be so manifestly beneficial to the public that it would be absurd to call evidence on this point”,⁹ and
- (i) further submitted that Charities Services erred in its analysis of the case law.¹⁰ In particular, the Foundation submitted that *Re Shaw*¹¹ (**Re Shaw**) has no application to the Foundation’s factual situation and that it is not authoritative given the decisions in *Re Hopkins Will Trust*¹² (**Re Hopkins**) and *Re Collier (Deceased)*¹³ (**Re Collier**).

10. Information provided with the Foundation’s submissions included a document entitled “The Charitable Benefits of Cryonics Research: Executive Summary”.¹⁴ This “documents the origin and progression of an emerging science that will enable FRSSH [the Foundation] to fulfil its charitable purpose of funding meaningful reanimation research and reintegration” and provided information on cryonic related research funded by the Foundation including:

- (a) The research efforts “will lead to banks of cryopreserved tissues and organs for transplantation, which will improve and save lives; cures for today’s serious illnesses; perfected human suspended animation; new technologies to repair, cure, rejuvenate and revive now living and cryopreserved patients”.
- (b) There is “strong evidence that these ambitious and far-reaching goals are based upon scientific research that has been ongoing for many years and that their achievement is likely to improve and save the lives of millions of people around the world”.
- (c) Information is provided about past and current research into hypothermia, cryopreservation and basic nanotechnology. The past and current research is funded and/or conducted by the Life Extension Foundation, Critical Care Research, Suspended

8 [1982] Ch. 327 at 352-353.

9 *McGovern v Attorney General* [1982] Ch 327 at 352-353 (“*McGovern*”) at 333.

10 Refer Susan Barker’s letter dated 28 June 2012 at paragraphs 18 to 21.

11 [1957] 1 WLR 729.

12 [1964] 3 All ER 46

13 [1998] 1 NZLR 81.

14 The Foundation also provided supporting documentation including an open letter from Dr Richard Kratz relating to 21st Century Medical’s research into the vitrification of corneas, a document entitled “The Charitable Benefits of Cryonics Research”, a document entitled “Scientists’ Open Letter on Cryonics and an extract from a recent ALCOR magazine showing membership statistics.

Animation and 21st Century Medicine. The current research has medical uses for example therapeutic hypothermia is used to reduce risk of injury to tissue. 21st Century Medicine is also conducting research into vitrifying brains and whole organisms.

- (d) Scientists already know how to cryopreserve and revive sperm, corneas, blood etc but what is “missing is reanimation methods to reverse the damage inflicted on human patients who have to rely on today’s imperfect cryopreservation procedures and to reverse the damage caused by disease, injury, and aging”.
- (e) Basic research in nanotechnology is currently being carried out in the United States, which will lead to medical advances. It will also eventually lead to the development of nanomedicine that will “be used in the future to eliminate the damage caused by disease, injury, and aging, and to revive patients who have been cryopreserved”.
- (f) There is a “major project called Timeship which is where applied reanimation research likely to be partially funded by FRSSH [the Foundation] will be conducted”. Timeship is owned by the Stasis Foundation (based in the United States and recognised by the US Internal Revenue Service as a tax-exempt, non-profit organisation). It is imperative that the Foundation be granted charitable status “and allowed to provide sufficient funds to support meaningful research at the Timeship facility that will result in enormous public benefit”. The Timeship facility will be a “modernistic long-term research facility where cryopreserved patients can be cared for, and cryopreservation and nanotechnology research can be conducted, so that such patients can be brought safely to a time where advanced reanimation technologies can be used to cure them of their ailments and injuries and restore them to youthful health life.” Timeship “will be used to preserve near-extinct species and DNA, conduct research into the cryopreservation of human tissues and organs for transplantation, conduct promising reanimation research such as applied molecular nanotechnology, and house more than 10,000 cryopreserved human patients”. “One of the main purposes of the Timeship building is conducting applied reanimation research to develop advanced methods of reviving cryopreserved patients.”
- (g) In terms of applied reanimation research, it “is not yet possible to fund applied reanimation research. The timeline for this type of research depends upon two factors; first is the pace of progress in cryopreservation... second is the pace of progress in nanotechnology”.

11. On 12 December 2012, the Department of Internal Affairs, Charities Services (**Charities Services**) wrote to the Foundation to notify that, after considering the submissions made and the information provided, the application did not meet registration criteria. This letter advised that the Foundation's purposes are not exclusively charitable and do not provide sufficient public benefit. The focus of the research funded by the Foundation is the cryopreservation and reanimation of cryopreserved individuals and that this research is not considered charitable at law. The basis for this view is discussed below at paragraphs 24 to 96.
12. The Foundation provided further submissions dated 28 May 2013 including a number of affidavits.¹⁵ The submissions provided additional information about the Foundation's activities including:
 - (a) The Foundation's overall focus is on scientific research. The Foundation anticipates funding the ongoing research currently funded by the Life Extension Foundation (in the United States) which includes providing funding for the Timeship project. The Timeship project is not simply providing a cryopreservation and reanimation facility but is also carrying out research. In relation to the other entities funded by the Foundation, Critical Care Research does not research cryopreservation.¹⁶ 21st Century Medicine researches cryopreservation but it does not research cryonics.¹⁷ The Suspended Animation organisation will not be funded by the Foundation.
 - (b) There are many steps between research being conducted now and successful reanimation and that it is not yet possible to fund reanimation research.¹⁸
 - (c) Currently cryopreservation services are not provided by the Foundation or any research centres which it funds. The costs for cryopreservation are not prohibitive, many non-profits offer subsidised services, costs will likely reduce over time and life insurance proceeds can cover the costs.

15 From Chana de Wolf dated 25 April 2013, Steven Harris dated 25 April 2013, Brian Wowk dated 30 April 2013, Gregory Fahy dated 1 May 2013, Ralph Merkle dated 4 May 2013, Stephen Valentine dated 6 May 2013 and William Faloon dated 16 May 2013.

16 Refer paragraph 28 below – While Critical Care Research may not research cryopreservation, it funds research into nanotechnology which is needed for reanimation research to progress.

17 Refer paragraph 28 below – This information contradicts with the information contained within Brian Wowk's affidavit of 30 April 2013 which states that in 2007 21st Century Medicine carries began research into whole body preservation.

18 The Board notes that this submission appears to contradict the statement in the Susan Barker's letter of 28 June 2012 at paragraph 91 which states that "the primary funding sources for the Foundation will be existing registered charities in the United States (and Europe) that are already supporting cryopreservation and reanimation-related research".

13. The Foundation's submissions of 28 May 2013 repeated a number of submissions made in its response of 28 June 2012. The Foundation:

- (a) submitted that Charities Services has focused on the long-term goals of the Foundation whereas its short-term goals are of more importance. The short term goals are the first part of clause 3.2.1 ending in "...during their lifetime".¹⁹ Current activities have more importance when assessing applications for registration under the Act than proposed activities. The short term goals provide substantial benefit to the current population;
- (b) further submitted that Charities Services has erred when specifying the legal test. In particular:
 - The case law relied upon by Charities Services in relation to educational purposes is not relevant²⁰. *McGovern* is a British decision and has not been adopted into New Zealand law. The leading authorities in New Zealand with respect to scientific research are: *Auckland Medical Aid Trust v Commissioner of Inland Revenue*;²¹ *Re Travis (Deceased)*, *Young and others v Otago University and another*;²² *Re New Zealand Dairy Research Institute v Attorney General*;²³ and *Institution of Professional Engineers New Zealand v Commissioner of Inland Revenue*.²⁴
 - The research currently being conducted is not controversial. Further, *Molloy v Commissioner of Inland Revenue*²⁵ relates to advocacy so is not relevant
 - That *Scottish Burial Reform and Cremation Society Ltd v Glasgow Corporation*²⁶ (**Scottish Burial Reform**) is relevant. In that case cremation and burial were considered activities in furtherance of a charitable purpose (as an analogous extension of repair of churches and cemeteries in churchyards), even though amounts were charged for the services. The Foundation submits that cryopreservation is the next evolution from cremation.
 - When construing an entity's purposes a benign construction is to be applied;
- (c) submitted that the correct test for registration under the Act is whether the Foundation's purposes are charitable. Activities

19 Refer paragraph 7 above.

20 Refer paragraphs 9(h) and 9(i) above.

21 [1979] 1 NZLR 382.

22 [1947] NZLR 382.

23 (High Court, Wellington, CP 7601/91, 30 June 1992, Jaine J).

24 [1992] 1 NZLR 571.

25 [1981] NZLR 688.

26 [1968] AC 138.

should only be considered where the constituting document does not indicate the entity's purposes with clarity. The enquiry into activities under section 18 of the Act is directed to the question of whether the entity's activities are carried out in furtherance of its purposes and is clearly directed to Charities Services' monitoring function (rather than its registration function). Clause 3.1 of the Trust Deed precludes objects which are not charitable;

- (d) submitted that the public benefit for the charitable purposes of "advancement of education" and "relief of the aged and the impotent" is presumed;
- (e) submitted that Charities Services erred in applying an analogous approach to recognised purposes under the fourth head. An alternative "presumption of charitable status" test²⁷ exists in New Zealand law and applies to the Foundation. This test provides that under the "any other matter beneficial to the community" head of charity, objects beneficial to the public are prima facie within the spirit and intendment of the preamble of the Statute of Elizabeth;²⁸ and
- (f) further submitted that, if the Foundation was found to have a non-charitable purpose, section 61B of the CTA should be invoked to strike the purpose out in order to "save" the Foundation.

B. Legal framework for registration

- 14. Section 13 of the Act sets out the essential requirements for registration. Under section 13(1)(a) of the Act, 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. This criterion is not met unless the income is derived for exclusively charitable purposes.²⁹
- 15. 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. This statutory definition adopts the well-established fourfold classification of charitable purpose at general law.³⁰

27 The "alternative test" referred to in paragraph 8 above.

28 *Statute of Charitable Uses 1601* (43 Elizabeth 1 c 4) ("Statute of Charitable Uses").

29 See *McGovern* at 340. In New Zealand, see *Canterbury Orchestra Trust v Smitham* [1978] 1 NZLR 787 at 794-796; *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 ("*Molloy*") at 691. See also the assumption evident in the provision at section 5(3) and (4) of the Act, that a trust will not be disqualified from registration because it has *ancillary* non-charitable purpose.

30 This statutory definition adopts the general law classification of charitable purposes in *Commissioner for Special Purposes of Income Tax v Pemsel* [1891] AC 531 extracted from the preamble to the *Statute of Charitable Uses* and previous common law: *Greenpeace of New*

16. To be charitable at law a purpose must be for the public benefit.³¹ Public benefit must be expressly shown where the claimed purpose is benefit to the community.³² Further, in every case, the direct benefit of the entity's purposes must flow to the public or a sufficient sector of the public.³³ Any private benefits arising from an entity's activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it.³⁴
17. Section 5(3) of the Act provides that the inclusion of a non-charitable purpose will not preclude registration if it is merely ancillary to a charitable purpose. Pursuant to section 5(4) of the Act, a non-charitable purpose is ancillary if the non-charitable purpose is:
- (a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society or institution; and
 - (b) not an independent purpose of the trust, society or institution.

Zealand Incorporated [2012] NZCA 533 ("*Greenpeace, CA*") at [42]; *In Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 ("*Education New Zealand Trust*") at [13]; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [11].

- 31 Authorities include: *Oppenheimer v Tobacco Securities Trust Co Ltd* [1951] AC 297; *Verge v Somerville* [1924] AC 496; *Dingle v Turner* [1972] AC 601. See also: *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 ("*Accountants*") at 152-155; *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 ("*Latimer, CA*") at [32]; *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 (HC) ("*Travis Trust*") at [54], [55]; *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818, 24 June 2011 ("*Queenstown Lakes*") at [30]; *Education New Zealand Trust* at [23].
- 32 *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 ("*CDC*") at [45].
- 33 See discussion in *Latimer, CA* at [32] - [37]. The courts have held that the downstream benefits of an entity's activities do not serve to characterize the purpose of the entity: see *Accountants* at 153 (the "generalised concept of benefit" identified with the public satisfaction of knowing that the fund is there to safeguard and protect clients' interests is too "nebulous and remote" to characterise the purpose of the fund); *Travis Trust* at [30] - [35] (holding that where the express purpose was to "support the New Zealand racing industry by the anonymous sponsor a group race known as the Travis Stakes", the purpose was to support that single group race and not to support the racing industry or racing public as a whole). See to the same effect *Queenstown Lakes* at [68] - [76] (held that the purpose of the Trust was to provide housing for individuals not to advance the overall welfare of the community by enabling workers to stay in the area); *CDC* at [67] (primary purpose is the assistance of individual businesses and the "hope and belief" that the success of those businesses would increase the economic wellbeing of the Canterbury region does not establish public benefit as a primary purpose).
- 34 See for example *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 ("*Professional Engineers*") at 578; *Re New Zealand Computer Society Inc* HC WN CIV-2010-485-924 [28 February 2011] ("*Computer Society*") at [42]; *Education New Zealand Trust* at [23]; *Queenstown Lakes* at [68] - [76]; *CDC* at [67]. Compare: *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218 ("*Oldham*"); *Travel Just v Canada (Revenue Agency)* 2006 FCA 343, [2007] 1 CTC 294.

18. It is clear that determining whether a non-charitable purpose is ancillary includes a qualitative assessment of whether it is a means to advance the charitable purpose.³⁵ It also involves a quantitative assessment, focusing on the relative significance of the purpose as a proportion of the entity's overall endeavour.³⁶

Relevance of entity's activities in registration decision-making

19. Section 18(3)(a)(i) and (ii) of the Act provide that the current and proposed activities of an entity must be taken into consideration when determining whether that entity qualifies for registration under the Act.³⁷ The courts have confirmed that consideration of activities is a mandatory aspect of decision-making under the Act.³⁸
20. Activities are not to be elevated to purposes,³⁹ but reference to activities may assist, for example, to make a finding about:
- the meaning of stated purposes that are capable of more than one interpretation;⁴⁰
 - whether the entity is acting for an unstated non-charitable purpose;⁴¹
 - whether the entity's purposes are providing benefit to the public;⁴²
 - whether a non-charitable purpose is within the savings provision set out in section 5(3) of the Act.⁴³

35 For recent judicial comment on the qualitative test see *Greenpeace, CA* at [62], [83] – [91].

36 The quantitative requirement was applied by the High Court in *Re Greenpeace of New Zealand Incorporated* HC WN CIV 2010-485-829 [6 May 2011] ("*Greenpeace, HC*") at [68]; *Computer Society* at [16]; *Education New Zealand Trust* at [43]-[44]; *Re The Grand Lodge of Antient Free and Accepted Masons in New Zealand* [2011] 1 NZLR 277 (HC) ("*Grand Lodge*") at [49]-[51]. The Board notes the Court of Appeal's observation in *Greenpeace, CA* at [92], including footnote 95.

37 See also section 50(2)(a) *Charities Act 2005*.

38 *Greenpeace, CA* at [48] and [51]. See also the approach taken in the High Court in *CDC* at [29], [32], [44], [45] - [57], [67], [84] - [92]; *Queenstown Lakes* at [57] - [67]; *Grand Lodge* at [59], [71]; *Computer Society* at [35] – [39], [60] and [68]; *Greenpeace HC* at [75].

39 McGovern at 340 and 343; *Latimer v Commissioner of Inland Revenue* [2004] 3 NZLR 157 ("*Latimer, PC*") at [36]. Compare *Public Trustee v Attorney-General* (1997) 42 NSWLR 600 at 616; *Vancouver Society of Immigrant and Visible Minority Women v the Minister of National Revenue* [1999] 1 SCR 10 ("*Vancouver Immigrants*").

40 See *Professional Engineers* at 575 (Tipping J).

41 *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380 ("*Glasgow Police Athletic Association*"); compare *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited* [2008] HCA 55 at [25] (Gummow, Hayne, Heydon and Crennan JJ).

42 See for example *Glasgow Police Athletic Association*; *CDC* at [29], [32], [44], [45] - [57], [67], [84] - [92]; *Queenstown Lakes* at [57] - [67]; *Grand Lodge* at [59], [71]; *Computer Society* at [35] – [39], [60] and [68].

43 See for example *Greenpeace, CA* at [40], [48], and [87] – [92], [99] and [102], [103]. Earlier authorities to the same effect include *Mollo* at 693 and the authorities cited there.

21. The Foundation has submitted that when the terms of the stated objects are clear, activities do not need to be considered. We do not accept that decision-making on the Foundation's qualification for registration under the Act must focus solely on the words in the Trust Deed. Such an approach would be inconsistent with authorities that construe an entity's constitution as a whole, and the clear statutory mandate to consider an entity's current and proposed activities when making a determination whether the entity qualifies for registration under the Act.⁴⁴ In determining qualification for registration under the Act, substance must prevail over form, and an entity cannot qualify for registration, even if its purposes are exclusively charitable, if its activities belie its stated charitable purposes.⁴⁵

Characterisation of an entity's purposes

22. Once an entity's purposes are established as a matter of fact, whether or not they are charitable is a question of law.⁴⁶ The Board is bound to apply the law as declared by the courts and legislature, and adopted by the Act.
23. Determining whether an entity's purposes are charitable involves an objective characterisation, and a declaration in an entity's rules document that the entity's purposes are charitable in law will not be determinative.⁴⁷ Similarly, the subjective intentions of individuals involved in a charity do not establish its charitable status.⁴⁸

C. Charities Registration Board's analysis

24. The Foundation maintains that its sole purpose is to carry out scientific research. It submits that this purpose is charitable and for the public benefit under "advancement of education", "relief of the aged and impotent" and the fourth head: by analogy to protecting human life, promoting human health and the relief of human suffering and distress; and under the alternative test presumption of charitable status for purposes of established public benefit in law.
25. We consider that the Foundation's purposes include a focus on funding research into the cryopreservation and reanimation of individuals. This purpose is not charitable as it does not advance education; provide relief for the aged and impotent or any other benefit to the community that is charitable at law.

44 Section 18(3) *Charities Act 2005*.

45 G E Dal Pont *Law of Charity* (LexisNexis Butterworth, Australia, 2010) at [2.12], [13.19], [13.20].

46 *Molloy* at 693.

47 *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405 at 407; *CDC* at [56].

48 G E Dal Pont *Law of Charity* (LexisNexis Butterworth, Australia, 2010) at [13.18], and see also the discussion at [2.8] – [2.11]. See for example *Latimer, PC* at 168 (PC) ("whether the purposes of the trust are charitable does not depend on the subjective intentions or motives of the settlor, but on the legal effect of the language he has used. The question is not, what was the settlor's purpose in establishing the trust? But, what are the purposes for which trust money may be applied?"); *Molloy* at 693; *Keren Kayemeth Le Jisroel Ltd v Inland Revenue Commissioners* [1932] AC 650 at 657 (Lord Tomlin), 661 (Lord Macmillan); *Oldham* at 251 (Lightman J).

C.1 The Foundation's purpose to fund cryonics research

26. We consider that the Foundation has a purpose to fund cryonics research (research into the cryopreservation and reanimation of individuals). The stated objects indicate a focus on this type of research. Further, the current and proposed activities of the Foundation show that this is a focus.
27. The stated purposes manifest the purpose to fund cryonics research. The principle stated object in clause 3.2.1 of the Trust Deed is to fund scientific research for the general benefit of all mankind "during their lifetime, and including deceased individuals who have been placed into cryopreservation or individuals who wish to be placed into cryopreservation or who may wish to make legal arrangements to be placed into cryopreservation for the purpose of future reanimation". Clause 3.2.2 provides that the major focus of the Foundation's research includes methods of repair and regeneration of tissues damaged by the cryopreservation process and methods to determine bases to restore or reconstruct the identity of cryopreserved individuals (clauses 3.2.2(i) and (iv)). Further, clauses 3.3, 3.4, 3.5, 3.6 and 3.7 refer to funding research to restore cryopreserved individuals, reanimation research, development of medical protocols to carry out the reanimation process and research aimed at uploading the identity of cryopreserved individuals into a computer or artificial system.
28. We consider that the Foundation's current and proposed activities focus on reanimation research. First, the Foundation's current activities include funding research into cryonics and basic nanotechnology, which are essential for cryopreservation and reanimation.⁴⁹

49 See for example, "The Charitable Benefits of Cryonics Research: Executive Summary" (attached to Susan Barker's letter of 28 June 2012 and Jackson & Campbell's letter of 28 May 2013) at page 10 states "The timeline for this type of research [reanimation research] depends upon two factors: first is the pace of progress in cryopreservation of the kidney, the brain, and the entire body. The more progress is made in cryopreservation, the less the burden will be for future medicine to revive cryopreserved patients. Second is the pace of progress in nanotechnology, which will have to be developed well beyond what is possible today to be used in the treatment of patients (nanomedicine)" and at page 20 states that FRSSH will continue to fund nanotechnology research "to repair damage inflicted by today's relatively primitive methods of cryopreservation"... "once these scientific advances are applied, the FRSSH will be in a position to help fund the reintegration of cryopreserved individuals into future society"; Gregory Michael Fahy's affidavit of 1 May 2013 at paragraph 106 states reanimation research "cannot even be attempted without driving forward cutting edge research into nanotechnology, nanomedicine, and advanced computation"; Ralph Charles Merckles' affidavit of 4 May 2013 at paragraphs 107 to 108 discusses the use of nanotechnology in reanimation.

29. Second, the Foundation provides funding to research entities carrying out research essential for cryopreservation and reanimation.⁵⁰ 21st Century Medicine carries out research into cryobiology, however they also carry out research that will assist with cryonics and in 2007 they began research into whole body preservation.⁵¹ Critical Care Research will fund research into nanotechnology (which is needed for reanimation research to progress).⁵²
30. Third, the Foundation's proposed further activities include funding the Timeship facility.⁵³
31. Fourth, clauses 4.4 to 4.6 of the Trust Deed establish an Endowment Fund for reanimation research. These clauses state:
 - 4.4 To ensure the Foundation is able to continue funding reanimation research in perpetuity, the Board of the Foundation shall make scientific research grants during any calendar year only in an amount up to 60% of the Foundation's annual gross revenues received from royalties from the previous calendar year. Any surplus funds from royalties and other sources of income not used for scientific research and reasonable administrative expenses shall be placed in the Endowment Fund described in Articles 4.5 and 4.6.

50 The Foundation provides funding to the Critical Care Research and 21st Century Medicine laboratories. Jackson & Campbell's letter of 28 May 2013 states that the Foundation does not fund Suspended Animation however, The Charitable Benefits of Cryonics Research: Executive Summary (attached to Susan Barker's letter of 28 June 2012 and Jackson & Campbell's letter of 28 May 2013) at page 20 states "There is a methodical ongoing program to perfect the cryopreservation process (examples cited herein are laboratories Critical Care Research, Suspended Animation, and 21st Century Medicine) that will result in a substantial medical benefit to mankind. FRSSH [the Foundation] will continue funding all three of these entities, which it owns virtually 100%". Whether or not the Foundation provides funding to Suspended Animation does not change the outcome of its application for registration. However, we note that if the Foundation is providing funding to Suspended Animation, this further illustrates the Foundation's focus on cryopreservation and reanimation research.

51 Brian Wowk's affidavit of 30 April 2013 at paragraph 43 refers to the next step being improving brain cryopreservation to ultimately have reversible technology for cryopreserving human brains, at paragraph 45 states that although "cryobiology is a mainstream area of science and medical application, such important cryobiology research is motivated by cryonics" and at paragraphs 107 and 108 Brain Wowk provides information about 21st Century Medicine's research programme into whole body preservation.

52 Refer Ralph Charles Merkle's affidavit of 4 May 2013 at paragraphs 65 and 91; The Charitable Benefits of Cryonics Research: Executive Summary (attached to Susan Barker's letter of 28 June 2012 and Jackson & Campbell's letter of 28 May 2013) at page 11 and 12.

53 Refer "The Charitable Benefits of Cryonics Research: Executive Summary" (attached to Susan Barker's letter of 28 June 2012 and Jackson & Campbell's letter of 28 May 2013); Life Extension 02 (attached to Susan Barker's letter dated 28 June 2012) at page 39 "Timeship is at the heart of biotechnology. Its mission is research into life extension and preservation of biological materials, including DNA from extinct and near extinct species, organs for transplantation, and patients travelling to the future for reanimation – and, hopefully practical immortality".

- 4.5 As it relates to the Foundation's initial capital, this should be allowed to accumulate in an Endowment Fund in order to offset the effects of inflation, unexpected expenses, and other assets depreciating factors... The Endowment Fund capital is expected to grow from investment income (interest, dividends and capital gains etc.) along with surplus funding received from donations and royalties.
- 4.6 To further ensure the Foundation is able to continue supporting reanimation research in perpetuity, the Board of the Foundation shall not make any scientific research disbursements from the Endowment Fund for the first 20 years (the accumulation period) from the date when the royalties and other sources of income are first received... In the twenty-first year and each year following, the funds available for disbursement shall be determined by comparing the current Endowment Fund balance (as calculated above) with the benchmark [an inflation adjusted balance of the Endowment Fund after the 20 year accumulation period]. Any Endowment Funds exceeding the benchmark (the Surplus) may be distributed for research funding... In case there is no surplus at the end of any year: Up to 5% of the benchmark may be distributed for funding of critical ongoing significant research projects in the next year..."Significant research projects" are research projects that a majority of the Board determines are likely to result in methods to repair/reverse ischemic and other types of damage from post-mortem changes prior to cryopreservation; and to repair/reverse damage inflicted during the cryopreservation or reanimation process, which may include research projects to develop methods to replace or regenerate lost cells, tissues, and organs during any phase of the cryopreservation or reanimation process.

The Endowment Fund has a 20 year accumulation period and the benchmark can only be spent after that period on cryopreservation and reanimation research. We consider that these clauses illustrate that the Foundation's purpose is to fund cryopreservation and reanimation research and that the Foundation's assets and income is currently being saved for this purpose.

32. Having regard to this information, we consider that, as a matter of fact, the Foundation's current purposes include providing funding cryonics (cryopreservation and reanimation) research and that this purpose is a focus of the Foundation.
33. The Foundation submits that the assessment of its application should focus on its short term goals and that the long term goals "are of little immediate consequence".⁵⁴ However, the Board notes that section 18 of the Act requires an

54 Refer Jackson & Campbell's letter of 28 May 2013 at paragraphs 2 to 14. The Board considers that the cases show that the law of charities is dynamic but does not consider that they are authority that we should assess charities today based on what the Court may or may not extend charity law to recognise in the future. We must assess the Foundation based on its stated goals

assessment into both the current⁵⁵ and proposed⁵⁶ activities and thus the future or long term activities and aims are relevant. Further, the Applicant's purposes and Endowment Fund show a focus on the goals into cryopreservation and reanimation without stating that these goals are secondary goals.

C.2 The Foundation's purposes are not charitable

The Foundation's purposes and advancement of education

34. The Foundation has submitted that its research purposes are charitable because it advances education for the public benefit. We consider that the Foundation's purpose to fund research into cryopreservation and reanimation of individuals does not advance education in a way that is charitable at law.

(a) Legal framework

35. New Zealand law recognises that a purpose to advance education for the public benefit is a valid charitable purpose in law. Education may be advanced through formal tuition or training. Further, research purposes may be charitable.⁵⁷

36. In the 1982 British case *McGovern*, Slade J considered research into maintenance and observance of human rights and referred to the unreported case of *Re Bexterman's Will Trust*.⁵⁸ In that case, Slade J who set out the principles governing the charitable nature of research as follows:

- (1) A trust for research will ordinarily qualify as a charitable trust if, but only if
 - (a) the subject-matter of the proposed research is a useful subject of study; and
 - (b) it is contemplated that knowledge acquired as a result of the research will be disseminated to others;⁵⁹ and
 - (c) the trust is for the benefit of the public, or a sufficiently important section of the public.

and activities under the current charities law. As charities law continues to evolve, the Foundation would be able to reapply for charitable status should that evolution mean that it may be able to gain charitable status in the future.

55 Section 18(3)(a)(i) *Charities Act 2005*.

56 Section 18(3)(a)(ii) *Charities Act 2005*.

57 *Auckland Medical Aid Trust v Commissioner of Inland Revenue* [1979] 1 NZLR 382 ("Auckland Medical Aid"), *In Re Travis (Deceased), Young and Others v Otago University and Another* [1947] NZLR 382; *New Zealand Dairy Research Institute v Attorney General* (High Court, Wellington, CP 760/91, 30 June 1992, Jaine J); *Professional Engineers, McGovern*;

58 January 21, 1980 unreported, referred to in *McGovern* at 352-353. See also, Jean Warburton, *Tudor on Charities* (9th ed, Sweet & Maxwell, London, 2003), at 57.

59 See also *Re Shaw's Will Trusts* [1952] Ch 163 ("Re Shaw"); *Taylor v Taylor* (1910) 10 CLR 218; *Re Hopkins' Will Trusts* [1965] Ch 669 ("Re Hopkins").

- (2) In the absence of a contrary context, however, the court will be readily inclined to construe a trust for research as importing subsequent dissemination of the result thereof.
 - (3) Furthermore, if a trust for research is to constitute a valid trust for the advancement of education, it is not necessary either
 - (a) that a teacher/pupil relationship should be in contemplation or
 - (b) that persons to benefit from the knowledge to be acquired be persons who are already in the course of receiving 'education' in the conventional sense.
 - (4) In any case where the court has to determine whether a bequest for the purposes of research is or is not of a charitable nature, it must pay due regard to any admissible extrinsic evidence which is available to explain the wording of, the will in question or the circumstances in which it was made.
37. Although *McGovern* is a British decision and the *McGovern* test in relation to assessing research has not been specifically adopted by New Zealand courts, we consider it provides useful guidance for assessing whether entities established for research purposes are charitable at law.
38. There is broad judicial acceptance of the requirements that research be in an area that is a 'useful subject of study'. In the 1998 New Zealand decision of *Re Collier*,⁶⁰ the Court considered whether the publication of a book was charitable as advancement of education (note, this case was not in relation to research). Hammond J stated that the public benefit must be conferred and it was advisable to bring expert evidence before the Court that indicated the "prospective work has at least some educative value or public utility to enable recognition of it" and that "the principle operates as a floor below which a work cannot sink". In that case the Court held that there was no educative value or public utility in the book.⁶¹
39. In *Re Hopkins*, Wilberforce J had to consider whether a publication bequest into the Bacon-Shakespeare manuscripts was charitable. Wilberforce J referred to the decision in *Re Shaw* in relation to Harman J's comments that if the object be merely the increase of knowledge it is not in itself a charitable object unless it is combined with teaching or education. Wilberforce J determined that the word "education" as used by Harman J was to be used in a wide sense, extending beyond teaching and that "the requirement is that, in order to be charitable, research must either be of educational value to the researcher or must be so

60 [1998] 1 NZLR 81 (HC) at 92.

61 See also *Re Shaw* and *Re Hopkins* (referred to by Chilwell J in the New Zealand 1979 *Auckland Medical Aid* case at page 393 line 20 when considering whether an object to educate the public in the facts of human reproduction was charitable. Although *Re Shaw* and *Re Hopkins* are not discussed in any detail, Chilwell J includes them in a list of "important authorities"). Also refer to Jackson & Campbell's letter of 28 May 2013 at paragraph 106 where the Foundation submits that the test in *Re Hopkins* relates to whether results of research would be useful if successful.

directed as to lead to something which will pass into the store of communicable knowledge in an area which education may cover – education in this last context extending to the formation of literary taste and appreciation”⁶²

(b) Assessment of the Foundation’s purposes

40. The Board acknowledges that some of the research funded by the Foundation may meet the legal tests for charitable research. However, it is an independent purpose of the Foundation to fund research into the cryopreservation and reanimation of individuals. We consider that this subject matter and type of research is not charitable on the test in *McGovern*.
41. Taking into account the information provided by the Foundation and the Court’s view that it will readily be inclined to construe a trust for research as importing subsequent dissemination of the results,⁶³ the Board is satisfied that the Foundation’s research will be disseminated. However, we are not satisfied that the cryopreservation and reanimation research funded by the Foundation (and intended to be funded) meets the requirements of being a useful subject of study. Further, the Board is not satisfied that the Foundation meets the public benefit requirement.

Useful subject of study

42. The Board considers that cryonics research is not currently an area of charitable educational research as it is not a useful subject of study.
43. The Board considers that this determination is open on the *McGovern* and *Re Hopkins* approaches. In *McGovern*, the Court considered that the proposed research into the study of human rights was a useful subject of study and took into consideration that the study of human rights had become an accepted academic discipline.⁶⁴ In *Re Hopkins*, the Court considered whether the research was into “an area which education may cover”.⁶⁵ The Board notes the Foundation’s comments that cryonics, cryobiology and nanotechnology are accepted academic disciplines.⁶⁶ However, the Board does not accept that cryonics (cryopreservation and reanimation of individuals) is an accepted academic discipline. The Foundation has not provided evidence to show that cryonics is an area which education may cover in New Zealand. Further, the Board notes that not all cryonic research facilities and providers consider that

62 *Re Hopkins* page 680, line E. The Bacon-Shakespeare manuscripts that were thought to show that some of the Shakespeare plays were in fact authored by Bacon.

63 Refer *McGovern* at 352-353.

64 Refer *McGovern* at 353.

65 Refer paragraph 39 above.

66 Refer Jackson & Campbell’s letter of 28 May 2013 at paragraph 16.

cryonic research is current science. For example, the Cryonics Institute states:

Note that cryonics is science-based, but cannot correctly be called current science. Cryonics is based on expectations of the repair capabilities of future science. Although the projection is less, possible human habitation of Mars is similarly a science-based concept based on projections of the capabilities of current science.⁶⁷

44. The Board also notes that there is a lack in the mainstream scientific community as to the feasibility and benefit of the research.⁶⁸ Further, there is strong consensus in the research community that this is not an area which education can cover.
45. To summarise, the Board considers that the research into cryopreservation and reanimation does not meet the legal test for usefulness for the reasons provided above.
46. The Foundation has submitted that the onus is on Charities Services to provide evidence to show that the research is not useful. This is not correct. The onus is not on the Board or Charities Services to provide evidence. The Board notes MacKenzie J's comments in *New Zealand Computer Society (Computer Society)* that:

67 Cryonics Institute comment (<http://cryonics.org/prod.html>) [accessed 28 June 2013]

68 See for example extract from From: Iserson KV: *Death To Dust: What Happens To Dead Bodies?* 2nd Edition, 2001 Galen Press, Ltd. Tucson, AZ; available online at <http://www.galenpress.com/extras/extra32.htm>. This states "Opinion among scientists is divided over the feasibility of cryonic preservation. Those who deal with conventional medicine and cryobiology tend to be pessimistic, while opinions of those in such fields as computer science and nanotechnology (a new field that studies atomic- and molecular-level manipulation of matter) are more favorable. Much of the mainstream scientific community, including those scientists who work in the area of cryobiology, view cryonic preservation as science fiction at best, and a cruel hoax at worst." The Board notes the Foundation's submissions regarding the reliability of this reference (Refer Susan Barker's letter dated 28 June 2012 at paragraphs 37 to 55) and the fact that since this comment was made a process of vitrification has been discovered and there have been developments in nanotechnology which are a significant development. However, even since these developments, the mainstream science community remains divided on the benefits and likelihood of success (refer note 64 above). Even from the information provided by the Foundation, opinions differ regarding the chances of successful reanimation. See for example, "Scientists' Open Letter on Cryonics" (attached to Susan Barker's letter dated 28 June 2012) states "Opinions on how much cerebral ischemic injury (delay after clinical death) and preservation injury may be reversible in the future vary widely among signatories"; Timeship extract "04 Cryopreservation" at page 69 "Most [people] know that the chances of eventual reanimation of cryopreserved patients are uncertain. Those who have chosen to be cryopreserved are even more knowledgeable. They know that no one who has been cryopreserved has ever been brought back, and that no experimental animal has ever been brought back."

the question whether a gift is or may be operative for the public benefit is a question to be answered by the Court forming an opinion **upon the evidence before it**".⁶⁹ [emphasis added]

47. Further, the Board notes the comments in *Re Collier* (above in paragraph 38) that it is advisable for the applicant to bring evidence to show that the work has educative value or public utility to enable recognition of it. The Board considers that the Foundation has not proven that the cryonics research is "an area which education may cover."⁷⁰

Public benefit requirement – is there a benefit to cryonics research?

48. The Foundation has submitted that under the "advancement of education" head of charity, the public benefit is presumed. However, as above in paragraph 46, in *Computer Society MacKenzie J* stated:

For the first three heads of charity [which includes advancement of education], public benefit is assumed to arise unless the contrary is shown. This does not mean, however, that existence of public benefit is a foregone conclusion. Rather, "the question whether a gift is or may be operative for the public benefit is a question to be answered by the Court forming an opinion upon the evidence before it".⁷¹

In light of these comments, the Board considers that while the public benefit is assumed for educational purposes, an objective consideration is still required as to whether there is a public benefit.⁷²

49. The Board is not satisfied that the Foundation's cryonics research provides sufficient public benefit.
50. We note that the matter of cryopreservation and reanimation of people raises a number of ethical/moral questions.⁷³ For example it raises questions relating to

69 *Computer Society* at [13].

70 Refer *Re Hopkins* discussed in paragraph 39 above.

71 *Computer Society* at [13].

72 The Board further notes Chadwick LJ's comments in his Court of Appeal judgment in the case of *Southwood v Attorney-General* [2000] ECWA Civ 204 (BILII) at <http://www.baillii.org/ew/cases/EWCA/civ/2000/204.html> at [5] that "The question, which the court must address in each case, is whether the objects to be pursued, although expressed to be of a charitable nature within the spirit and intendment of the preamble to the Statute of Elizabeth (43 Eliz. 1 cp 4), should be recognised as being for the public benefit in the sense in which that concept has come to be understood in the light of the many decisions in this area of the law. It is not enough that the objects should be expressed to be the advancement of education; it is necessary that the advancement of education in the manner intended should promote public benefit."

73 The Foundation submits that Charities Services did not provide any evidence to show the research is controversial or raises ethical/moral questions. However, Charities Services' letter of 12 December 2012 at footnote 15 stated: see for example the "Timeship" extract "02 Life Extension Research" (attached to Susan Barker's letter dated 28 June 2012) at page 31. "Extreme life extension and possible practical immortality will be enthusiastically welcomed by

the meaning of death, immortality and what it means to be a human. Given the controversial nature of the research, it is not possible to conclude that it will be for the public benefit.⁷⁴

51. The courts have expressed a great deal of scepticism about the appropriateness of defining the purpose of a trust by reference to alleged downstream benefits.⁷⁵ While we acknowledge that some of the cryonics research may provide benefits, we consider that the possible public benefits from the cryonics focused research are too downstream or remote from the Foundation's cryonics research focus and the funding of the Timeship to meet the legal test for public benefit.

Public benefit requirement – Is “benefit” available to a “sufficient section of the public”?

52. As above, the Board does not consider that there is a benefit from the Foundation's cryonics research. Further, we consider that even if there were to be a benefit, it is not to a sufficient section of the public. While charities can charge fees for their services, the costs must not be so high as to prevent a sufficient section of the public benefiting.⁷⁶ The costs associated with individual cryopreservation and reanimation services are prohibitive⁷⁷ and would exclude

some and objected to by others”. “But the new technologies under discussion here raise deeper questions. What is the “self?” Is identity synonymous with the brain and the memories it stores?... And would we still be “human?” Would it matter?; A further example of the moral/ethical questions is the complex question of what “death” means (refer Gregory Michael Fahy's affidavit of 1 May 2013 at paragraphs 92 and 122; Ralph Charles Merkle's affidavit of 4 May 2013 at paragraphs 135 to 139 and 174 and appendix C, Brian Wowk's affidavit of 30 April 2013 at paragraphs 46 and 67).

74. In *Molloy* at 695-696 Somers J wrote in relation to the case of abortion “Reason suggests that on an issue of a public and very controversial character, as in the case of abortion.... The inability of the Court to judge whether a change in the law will or will not be for the public benefit must be as applicable to the maintenance of an existing provision as to its change. In neither case has the Court the means of judging the public benefit”. As submitted by the Foundation this case relates to the issue of advocacy. However, we consider that it illustrates that when a matter is controversial the Court does not consider that it has the means of judging whether it is for the public benefit. We consider that this applies here, the research proposed in relation to cryopreservation and re-animation is sufficiently controversial that we cannot judge that it will be for the public benefit.

75. See for example *Amateur Youth Soccer Association v Canada (Revenue Agency)* (2007) 287 DLR (4th) 4 (SCC) and *CDC*.

76. See for example *The Independent Schools Council v the Charity Commission for England & Wales* [2011] UKUT 421 (TCC), in the Upper Tax Tribunal and Chancery Chamber of the High Court, where three judges ruled that in order to prove public benefit, private schools must not exclude the poor or have fees that are so high that in practice it excludes the poor.

77. For example ALCOR Life Extension Foundation requires minimum funding of \$200,000 for a whole body cryopreservation and \$80,000 for neurocryopreservation (refer <http://www.alcor.org/BecomeMember/scheduleA.html> [accessed 4 July 2013]; Trans Time charges \$150,000 for whole body preservation and \$50,000 for neurocryopreservation (refer <http://cryonics.org/comparisons.html> [accessed 4 July 2013] ; KrioRus and the Cryonics Institute charge approximately \$30,000 for whole body preservation (refer <http://cryonics.org/comparisons.html> [accessed 4 July 2013] and Susan Barker's letter dated 28 June 2012 at paragraph 63).

the less well off. The fact that some cryopreservations are covered by life insurance policies or subsidised by not-for-profit entities does not negate the costs of the procedure. Further, the fact that prices may reduce in the future does not negate the currently high costs.

53. The Foundation has submitted that they will not be providing cryopreservation and reanimation services and therefore the costs of the services are not relevant. However, the Board notes that the Foundation intends to provide funding towards the Timeship facility which will provide cryopreservation and reanimation services.

(c) Summary of whether research is charitable advancement of education

54. The Board determines that the Foundation's research towards the cryopreservation and reanimation of individuals is not charitable advancement of education. While the research will be disseminated, it fails to meet the test for useful subject matter stated in *McGovern*. Further the Foundation's research into cryopreservation and reanimation does not provide sufficient public benefit.

The Foundation's purposes and provision of relief for the aged and impotent

(a) Law on relief for the aged and impotent

55. The Foundation has submitted that its purposes are charitable under the "relief of poverty" head of charity by providing "relief for the aged and impotent".

56. Hammond J, in *D V Bryant Trust Board v Hamilton City Council (DV Bryant)* wrote:

"The questions in this kind of case can conveniently be broken into two subparts: is there a need to be relieved against; and, is the relief that is afforded 'real', as opposed to fanciful, or trifling, or insubstantial?"⁷⁸

57. For the relief of the aged and impotent to be considered charitable, there "must be a need to be relieved by the charitable gift, such need being attributable to the age or impotent condition of the person to be benefited".⁷⁹ In *DV Bryant*, relief of the needs of the aged were seen to overlap with relief from the distress of solitariness.⁸⁰ In that case, Hammond J found that the needs of the aged for fraternity, belonging, respect, mutual activities, interaction and security are real needs, the relief of which are charitable.⁸¹

78 *DV Bryant* at 350

79 *Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney-General* [1983] Ch 159. at 174 cited by Hammond J in *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342 (HC) ("*DV Bryant*") at 350.

80 *DV Bryant*.

81 *DV Bryant* at 349.

58. Purposes which have been seen to provide relief for the aged include erecting and fitting a home for the aged⁸², erection of a home for the purpose of caring for aged women⁸³, building homes for 'aged blind pensioners'⁸⁴ and a community village for the aged erected to be an institution for the relief of the aged.⁸⁵ Purposes which have been held to provide relief for the impotent include gifts for the blind⁸⁶ and gifts to aid mentally afflicted persons.⁸⁷
59. The Foundation has submitted that the public benefit is presumed for the relief for the aged and impotent as it falls under the "relief of poverty head" and that under the first three heads of charity, public benefit is assumed to arise unless the contrary is shown.⁸⁸
60. In the preamble to the *Statute of Charitable Uses*, "the relief of the aged impotent and poor people" appears in one sub-classification. A number of authors, including Tudor and Gino Dal Pont, analyse the relief of the aged and the disabled in the category of relief of poverty. However, Hubert Picarda treats those subjects in a separate category under the fourth head of charity.
61. We consider that Picarda's approach is preferred particularly as the courts have held that the phrase "the relief of the aged impotent and poor people" must be construed disjunctively.⁸⁹
62. As above in paragraph 48, the public benefit under the first three heads of charity is assumed but can be rebutted. In addition, we consider that "relief of the aged

82 *DV Bryant*.

83 *Re Bingham* [1951] NZLR 491 at 495 per Hay J

84 *Lutheran Church of Australia South Australia District Incorporated v Framers' Co-operative Executors and Trustees Ltd* (1970) 121 CLR 628 at 650 per Windeyer J.

85 *Trustees of Church Property of the Diocese of Newcastle v Lake Macquarie Shire Council* [1975] 1 NSWLR 521 at 524 per Moffitt P, at 533-534 per Hutley JA; *Presbyterian Church (New South Wales) Property Trust v Ryde Municipal Council* [1977] 1 NSWLR 620 at 626 per Rath J

86 *City of Hawthorn v Victorian Welfare Association* [1970] VR 205 ("City of Hawthorn") at 209 per Smith J; *Re Bond* [1929] VLR 333 at 225 per Cussen J; *Re Lewis* [1955] Ch 104. See also Dal Pont *Law of Charity*, above n 1, at 183. See also *Re Joseph* (1907) 26 NZLR 504; 9 GLR 480, where a bequest was made for the relief of the indigent blind of the Jewish persuasion in London; *Re Elliot* (1910) 102 LT 528.

87 *Diocesan Trustees of the Church of England in Western Australia v Solicitor-General* (1909) 9 CLR 757.

88 Refer Jackson & Campbell's letter of 28 May 2013 at paragraphs 116 to 122.

89 *Re Glyn's Will Trust* [1950] 2 All ER 1150n; *Re Bradbury* [1950] 2 All ER 1150n; *Re Robinson* [1951] Ch 198. See also Hubert Picarda *The Law and Practice Relating to Charities* (3rd ed, Butterworths, London, 1999) at 118; Gino Dal Pont, *Charity Law in Australia and New Zealand* (Oxford University Press, Oxford, 2000) at 111, footnote 2 citing the following cases: *Re Lucas* (1922) 2 Ch 52; *Re Peacock's Charity* [1956] Tas SR 142 at 145 per Gibson JK; *Re Resch's Will Trusts* [1969] 1 AC 514 at 542-543; *City of Hawthorn* at 208 per Smith J; *Trustees of Church Property of the Diocese of Newcastle v Lake Macquarie Shire Council* [1975] 1 NSWLR 521 at 524 per Moffitt P, at 534 per Hutley JA; *Re McIntosh (deceased)* [1976] 1 NZLR 308 at 309-310 per Beattie J; *West Australian Baptist Hospital & Homes Trust Inc v City of South Perth* [1978] WAR 65 at 58 per Lavan SPJ; *McGovern* at 171-174 per Peter Gibson J; *DV Bryant* per Hammond J.

and impotent” should be considered under the fourth head of charity. Under this head the public benefit is not presumed, it is necessary to establish positively⁹⁰ that the purpose has a tangible or well-recognised benefit to a sufficient section of the public.⁹¹ Indeed, we note that courts have held that public benefit has to be proven for the relief of the aged and disabled.⁹²

63. Accordingly, as Picarda wrote, we consider that “trusts for the relief of aged or impotent persons must still satisfy the test of public benefit”.⁹³

(b) The Foundation’s purpose and relief of the aged and impotent

64. The Board acknowledges that some of the research funded by the Foundation may potentially provide relief to the aged and impotent. However, the majority of the Foundation’s activity and the focus of Foundation’s written purposes relate to funding research into the cryopreservation and reanimation of people. The people who are cryopreserved are legally deceased at the time of the cryopreservation.⁹⁴

65. We do not consider that the cryopreservation of deceased people provides relief of the aged or impotent. As the people are deceased, the cryopreservation of their bodies cannot be seen as relieving a charitable need.

66. We note the Foundation’s submissions on the difference between clinically, legally and biologically dead and the “information theoretic criterion” for death.⁹⁵ Further we note the Foundation’s comments that there is no connection between

90 *DV Bryant* at 350 per Hammond J.

91 *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31 at 49 per Lord Wright.

92 *New South Wales Nursing Service and Welfare Association for Christian Scientists v Willoughby Municipal Council* [1968] NSW 791; *City of Hawthorn; Church of England Property Trust, Diocese of Canberra and Goulburn v Imlay Shire Council* [1971] 2 NSWLR 216. See Gino Dal Pont *Law of Charity* (LexisNexis/Butterworths, Australia, 2010) at 179. While these cases are not binding in New Zealand, they provide useful guidance as to the test of the public benefit for relief of the aged and impotent. In *Re Dunlop* [1984] NI 408 at 423 which involved aged or impotent persons, Carswell J considered that the poverty exception from the rule regarding public benefit was limited to relief of poverty cases. Carswell J wrote:

The discussion in *In Re Scarisbrick* [1951] Ch 622 centred solely round trusts for the relief of poor persons, and there was no case cited in the judgments which concerned only aged or impotent people without the added qualification of poverty [...] Although Lord Simonds said in *Oppenheim v Tobacco Securities Trust Co. Ltd* [1951] AC 297, 308 that the law of charity, so far as it related to ‘the relief of aged, impotent and poor people’ has followed its own line, which might indicate a willingness to regard the exception as applying to the whole of Lord Macnaghten’s first head, I consider that the House of Lords in *Dingle v Turner* intended to circumscribe it more closely and to confine it to cases concerning the relief of actual poverty.

93 Hubert Picarda, *The Law and Practice Relating to Charities* (4th ed, Bloomsbury Professional Ltd, Haywards Heath, 2010) at 202 at 53.

94 See for example Timeship extract “04 Cryopreservation” (attached to Susan Barker’s letter dated 28 June 2012) (“As soon as possible after the heart of a dying patient stops, the patient is cooled down”. “The vitrification process to be used at Timeship begins as soon as possible after the heart of a dying patient stops beating. Ideally, a trained cryonics team is standing by”.)

95 Refer to Brian Wowk’s affidavit of 30 April 2013 at paragraph 67.

declaring someone legally dead and the possibility that future medical advances will forever be unable to restore the individual.⁹⁶ We have also considered the submission that there are examples of people who are clinically and legally dead but are later revived (for example drowning victims).⁹⁷ However, we consider that there is a significant difference between the examples of someone being revived a short time after “death” using existing medicine and someone being preserved for decades or centuries for possible reanimation in the future using possible future medical advances. Further, it is not for the Board to determine there is a “need” when current legislation and regulations treat “death” as an end point.

The Foundation’s purposes and “any other benefit to the community”

(a) Legal framework for “any other benefit to the community”

67. In giving consideration to the fourth category, the courts follow a specific analytical approach, which poses a two part question. First, whether a public benefit to a sufficient section of the public has been established.⁹⁸ Second, whether a benefit falls within the ‘spirit and intendment’ of an influential statutory source, the Preamble to the *Statute of Charitable Uses*.⁹⁹
68. The Foundation has submitted that its purposes are charitable under the fourth head of “other purposes beneficial to the community”: by analogy with cases on protecting human life, promoting human health and the relief of human suffering and distress; and under the alternative “presumption of charitable status” test.¹⁰⁰

(b) Protecting human life, promoting human health and relief of human suffering and distress

69. In terms of protecting human life, promoting human health and relief of human suffering and distress, examples of purposes which have been found to be charitable under these categories include the purposes discussed above under relief of the aged and impotent, a Methodist Church children’s home,¹⁰¹ provision of hospital, clinics and related services,¹⁰² rest homes for those in need of them,¹⁰³ a bequest for a fund for lepers,¹⁰⁴ provision of lifeboats to a town on the

96 Refer to Ralph Charles Merkle’s affidavit of 4 May 2013 at paragraph 185.

97 For example, refer to William John Faloon’s affidavit dated 16 May 2013 at paragraph 85.

98 Refer paragraph 62 above.

99 *Statute of Charitable Uses; Travis Trust* at [20]; *Queenstown Lakes* at [48].

100 Refer Susan Barker’s letter dated 28 June 2012 at paragraph 33.

101 *Re Hook*, High Court, Wellington, A 8/83, 25 October 1984, Ongley J.

102 *Auckland Medical Aid* at 390.

103 *Re White’s Will Trusts* [1951] 1 All ER 528. That case was followed in New Zealand by *Re Harding* [1960] NZLR 379.

104 *Re Chapman* High Court, Napier, CP 89/87, 17 October 1989 at 6.

coast,¹⁰⁵ and the prevention of road traffic accidents or child accident prevention.¹⁰⁶

70. The Board acknowledges that some of the research funded by the Foundation can be seen as resulting in a public benefit, for example the research into transplants. However, as in paragraph 51, this benefit is too downstream from the focus of the Foundation to permit a conclusion that the Foundation has sufficient public benefit.
71. We consider that the Foundation's purpose to fund cryonics research does not have a clear public benefit (see paragraphs 48 to 53 above).
72. Further, we do not consider any benefit is analogous to established charitable purposes contended by the Foundation. We note that the Foundation intends to provide funding to the Timeship facility where cryopreservation and reanimation services will be provided. We do not consider that the cryopreservation of deceased people or research into this area can be seen as protecting human life, promoting human health or the relief of a need including human suffering and distress. As the person is deceased it is not possible to protect their life, promote their health or relieve their suffering (see paragraph 65 above for discussion on the Foundation's discussion regarding "death").

(c) Presumption of charitable status where public benefit is established

73. The Foundation has submitted that there is an alternative test of whether a benefit falls within the spirit and intendment of the preamble.¹⁰⁷ That is a presumption that objects beneficial to the public, or of public utility, are prima facie within the spirit and intendment of the preamble of the *Statute of Charitable Uses*.
74. The Board considers that the status of this test in New Zealand is not clear.
75. In *Re Greenpeace of New Zealand Incorporated (Greenpeace, CA)*, the Court of Appeal stated:

Second, the retention of the fourth category of charitable purpose, namely "any other matter beneficial to the community", confirms that the decisions of this Court relating to its interpretation and application remain applicable. In particular, the purpose must be for the public benefit and charitable in the sense of coming within the spirit and intendment of the preamble to the Statute of Charitable Uses Act 1601 (43 Eliz I c 4) (the preamble). The public benefit requirement focuses on whether the purpose is beneficial to the community or a sufficient section of the public. The requirement to be charitable within the spirit and intendment to the preamble focuses on analogies or the presumption of charitable status. Even in the absence of an analogy, objects beneficial to

105 Johnston v Swann (1818) 3 Madd 457.

106 See New Zealand Charities Register, registration numbers CC43668 and CC34708.

107 Refer Jackson & Campbell's letter of 28 May 2013 at paragraphs 77 to 99.

the public are prima facie within the spirit and intendment of the preamble and, in the absence of any ground for holding that they are outside its spirit and intendment, are therefore charitable in law.¹⁰⁸

76. The Court concluded¹⁰⁹ that promotion of nuclear disarmament and the elimination of all weapons of mass destruction were purposes beneficial to the community and that they also considered that “it is a purpose within the spirit and intendment to the preamble both on the basis of analogy and the presumption of charitable status. It is in our view analogous to the promotion of peace. There is also no ground for holding that it is outside the spirit and intendment of the preamble.”
77. The Board notes that the Court of Appeal did not hear argument on whether the analogy test or presumption test applied in New Zealand. Further, the presumption was not determinative of the outcome as the Court also found that the purposes provided benefits within the spirit and intendment by analogy.¹¹⁰
78. Further, the Board notes that in *Commissioner of Inland Revenue v Medical Council of New Zealand*¹¹¹ (**Medical Council**) all the Court of Appeal Judges accepted that the New Zealand Medical Council had public benefit or there was public interest in the Council’s functions. However, the Judges’ assessment as to whether those public benefits were charitable differed. McKay J stated that presumption was the “correct approach” but then went on to determine the issue by reference to analogy.¹¹² Thomas J referred to the presumption and went on to conclude that the Council was charitable on either the analogy or the presumption test.¹¹³ Keith J did not address the issue of the presumption. Richardson P and Gault J referred to the presumption but appear to reject it in favour of the analogy approach.¹¹⁴ The Board considers that the extent of the difference in view between the minority and majority as to whether the presumption test should apply is unclear, particularly as Keith J did not express a view.
79. In *Latimer v Commissioner of Inland Revenue (Latimer)*, the High Court found that it was bound to follow the approach in *Medical Council* and apply the presumption test. However, O’Regan J also applied the analogy test as well “lest he be wrong” in adopting the presumption.¹¹⁵ The matter was appealed to the

108 *Greenpeace, CA* at [43].

109 *Greenpeace, CA* at [81]

110 Refer paragraph 76 above.

111 [1997] NZLR 297.

112 *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] NZLR 297 (“*Medical Council*”) at 314.

113 *Medical Council* at 321.

114 They noted that Somers J in *Accountants* at 157 expressed doubt as to whether the presumption test represents the law in England and that the Privy Council had concluded it was not the law in Australia (*Brisbane City Council v Attorney-General* [1979] AC 411 (“*Brisbane City Council*”) at 422).

115 *Latimer, CA* at [13].

Court of Appeal where it was argued that O'Regan J was incorrect to apply the presumption, particularly given that McKay J in the *Medical Council* decision did not actually adopt the presumption in reaching his decision, he instead proceeded by analogy.¹¹⁶ The Court of Appeal in *Latimer* found it unnecessary to reach a view on whether all of the majority in *Medical Council* had adopted the presumption. Instead, they agreed with McKay J's comments that it was important to be guided by principle rather than by a detailed analysis of decisions on particular cases.¹¹⁷

80. The Board further notes, that except for *Greenpeace, CA*, the courts have not sought to apply the presumption test when assessing appeals of the Charities Commission's decisions.¹¹⁸ Also, the presumption test has been rejected in Australia¹¹⁹ and Canada,¹²⁰ and it has not been followed in England.¹²¹
81. Further, it is clear that even if the presumption applies in New Zealand law, the presumption can be rebutted. If the purpose does not have public benefit then the presumption cannot apply.
82. As above, the Board considers that the status of this test in New Zealand is not clear. However, even if this test applies in New Zealand law, the Board considers that it does not render the Foundation as charitable. The focus of the Foundation is on research which, as discussed above, does not confer a public benefit. Accordingly, any presumption is not triggered.

D. Section 5(3) of the Act

83. The Board is satisfied that the Foundation's non-charitable purpose to fund research into the cryopreservation and reanimation of individuals is an independent purpose (see above at paragraphs 26 to 33). That purpose is so pervasive and predominant it cannot realistically be considered ancillary to any valid charitable purpose of the Trust.

E. Other submissions raised by the Foundation

84. The Foundation has also raised other submissions. The Board is not convinced by these submissions and does not consider that these change the outcome of the Foundation's application. The reasons for the Board's view are detailed below.

116 *Latimer, CA* at [33].

117 *Latimer, CA* at [39-40].

118 See for example *Travis Trust* at [20].

119 *The Royal National Agriculture and Industrial Association v Charter & Ors* [1974] 45 ANR 304; *Brisbane City Council* at 422.

120 For example, *Vancouver Immigrants* at [46]-[51] (Gonthier J) and [146]-[151] (Iacobucci J).

121 Jean Warburton, *Tudor on Charities* (9th ed, 2003) at 1-005.

Submissions regarding extension of Scottish Burial Reform

85. The Foundation has submitted that cryopreservation is the next evolutionary step from burials and cremations and that applying the reasoning in *Scottish Burial Reform*, it can be seen as charitable by analogy.
86. The Board is not convinced by this argument. In *Scottish Burial Reform* the entity's purposes included the promotion of inexpensive and sanitary methods of disposal of the dead. This differs from the current situation where the research is aimed at the cryopreservation of deceased individuals for future reanimation and the funding of the Timeship facility which aims to store the "patients" bodies for many years. This differs from the permanent disposal of the dead for sanitation reasons in the *Scottish Burial Reform*.

Submission regarding the effect of clauses purporting to limit the Foundation to charitable purposes

87. The Foundation has submitted that the wording of clause 3.1 means that it is restricted to only carrying out charitable purposes. However, this is not sufficient to permit a conclusion that the Foundation is charitable.
88. In *Commissioners of Inland Revenue v White*,¹²² the Court considered limitations in the constitution of the Clerkenwell Green Association. The court noted that the constitution showed a clear intention that this object was exclusively charitable but went on to say:

The charitable intention, clear as it is, is not conclusive in establishing charitable status, however, because clause 2(b) limits the field in which the charitable intention is to be effectuated. If the objects specified in clause 2(b) are of such a nature that there is not charitable purpose which will assist their achievement, then there is no charitable purpose within the specified field and the Association would not be entitled to registration as a charity. In other words, the mere insertion of the word "charitable" in clause 2(b) is not by itself enough to establish that the objects of the Association are charitable.¹²³

89. In *Canterbury Development Corporation v Charities Commission*,¹²⁴ Ronald Young J wrote:

The mere fact that the constitution says that CDC's objects are charitable does not make CDC charitable although such a declaration is relevant in assessing whether they are. However as with Oldham TEC in the end, the objects and operation of the organisations either support a charitable purpose or they do not.¹²⁵

90. Therefore although clause 3.1 purports to limit the purposes to charitable activities, it does not determine that the Foundation is charitable.

122 *Commissioners of Inland Revenue v White* (1980) 55 TC 651 ("*CIR v White*").

123 *CIR v White* at 653.

124 *CDC*.

125 *CDC* at [56].

Submission that a benign interpretation is to be applied

91. The Foundation has submitted that in construing an entity's purposes, a benign construction is to be applied.¹²⁶ However, the case law surrounding this construction¹²⁷ relates to circumstances where there is ambiguity in the trust deed. The Board does not consider that the Foundation's stated purposes are ambiguous. They clearly refer to funding research into cryopreservation and reanimation of individuals, a benign interpretation is therefore not appropriate.

Submissions relating to other examples of medical history

92. We note the Foundation's comments that there are numerous historical examples of one scientist being correct with the entire medical community being proven wrong a short time later,¹²⁸ this does not have a bearing on whether the Foundation's research is charitable. We must still consider whether the research is useful and provides public benefit.

Submission that section 61B Charitable Trusts Act 1957 should be applied

93. The Foundation has submitted that section 61B CTA applies and that if the Foundation is found to have a non-charitable purpose, section 61B CTA should be invoked to strike that purpose out.¹²⁹

94. Section 61B(3) CTA states as follows:

Every trust under which property is held or applied in accordance with an imperfect trust provision shall be construed and given effect to in the manner in all respects as if –

- (c) the trust property could be used exclusively for charitable purposes; and
- (d) no holding or application of the trust property or any part thereof to or for any such non-charitable and invalid purpose had been or could be deemed to have been so directed or allowed.

95. Case law establishes that this statutory remedy is available in cases where there is a 'substantially charitable' purpose, and it is not sufficient that a fund might be applied to charitable purposes.¹³⁰ Having analysed the wording of the Foundation's purposes and activities, the Board does not consider that these provide evidence of a substantially charitable purpose. As discussed above, a focus of the Foundation is on funding cryonics research. This research is not considered charitable. Further, the Foundation does not provide sufficient public benefit. Therefore the remedy in section 61B CTA is not available to the Foundation.

126 Refer Jackson & Campbell's letter of 28 May 2013 at paragraphs 71 – 76.

127 *Inland Revenue v McMullen* [1979] 1 WLR 130 and *Hadaway v Hadaway* [1955] 1 WLR 16.

128 Refer Susan's Barker's letter dated 28 June 2012 at paragraphs 46 to 52.

129 Refer Jackson & Campbell's letter of 28 May 2013 at paragraph 76.

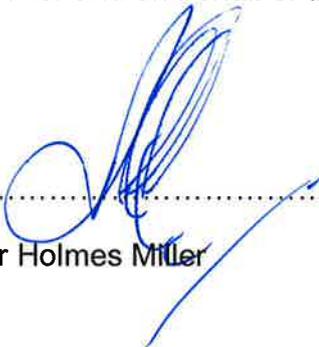
130 *Re Beckbessinger* [1993] 2 NZLR 362 at 376 (Tipping J).

F. Charities Registration Board's determination

96. The Board's finding is that the Foundation has failed to meet an essential requirement for registration as a charitable entity in that it 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. The Foundation is not for exclusively charitable purposes. Specifically, the Foundation has an independent purpose to fund cryonics research (research into reanimation and cryopreservation of individuals) which is not a charitable purpose. This independent purpose is not ancillary to any other charitable purpose. Further, the Foundation's purposes do not provide sufficient public benefit.

For the above reasons, the Board declines the Foundation's application for registration as a charitable entity.

Signed for and on behalf of the Board


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Roger Holmes Miller

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Date