

Registration decision: Cuetech Trust

The facts

1. Cuetech Trust (the Applicant) was created by a trust deed dated 2007.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 5 August 2008.
3. The Applicant's purposes are stated in clause 3 of the trust deed:

"The purposes of the trust are as follows:

- (a) The promotion, maintenance and support of amateur cue sport activities and other philanthropic interests.*
 - (b) The provision of financial support for the advancement of the participation in amateur cue sports in the community.*
 - (c) To provide funding to assist the increased participation of younger people in amateur cue sports in New Zealand.*
 - (d) To make grants to amateur cue sport teams, clubs and organisations which are affiliated to a regional or national body to assist with:*
 - (i) the provision and maintenance of facilities for participation in cue sports;*
 - (ii) purchase of equipment;*
 - (iii) provision of playing and training uniforms;*
 - (iv) provision of trophies and modest tournament prizes (excluding cash);*
 - (v) the provision of coaching, training and development programs;*
 - (vi) provision of actual and reasonable travel and accommodation expenses and entry fees for participation in competitions and tournaments;*
 - (e) To provide funding to assist with the promotion and development of other amateur sports;*
 - (f) To provide educational grants and funding to assist non profit social service or welfare agencies in New Zealand;*
 - (g) Such other charitable or philanthropic purposes as the trustees may deem appropriate."*
4. The Commission analysed the application for registration and on 8 January 2009, sent the Applicant a notice advising that its application may be declined because the Applicant's main purposes set out in clauses 3(a) to (e) are not exclusively charitable purposes. The Commission also sought further information about the Applicant's activities conducted under clauses 3(f) and (g).
 5. On 2 February 2009, the Applicant's solicitor responded to the notice submitting that the Applicant's objects are charitable under the fourth head, "other purposes beneficial to the community". He argued:

- Clause 2 limits the activities of the trust to exclusively charitable purposes.
- The provision of public buildings and facilities will be charitable if they are available to the public at large and designed to improve the lives of those using the facilities (citing *Re Cumming*¹).
- “[E]ven if cuesports were deemed to not be of sufficient sporting character to be charitable due to the lack of physical exertion, ... the facilities are provided in the interests of social welfare.” (Refer section 61A Charitable Trusts Act 1957).
- This application can be distinguished from *Travis Trust v Charities Commission*² because under clause 8 of the trust deed:

“the trust is available to the public. The purposes are not restricted to an aspect of promoting cuesports merely for a select group of individuals but to promote cuesports through providing facilities and use accumulated funds to assist members of the community outside of cuesports.”

- Section 61B of the Charitable Trusts Act 1957 allows the inclusion of non-charitable and invalid purposes not to invalidate a trust. Therefore “even if it could be said that elements of the purposes of the Cueteck trust are not exclusively charitable, there are several strictly charitable elements of the Trusts purposes” (referring to clauses 3(c), 3(d)(i), 3(e), 3(f) and 3(g)).
6. In response to the request for further information regarding clauses 3(f) and (g), the Applicant’s solicitor advised that the “trust has the goal of eventually managing ‘pokie’ machines and distributing the winnings to community sports teams and other charities who apply or are brought to the trusts attention.”

The issues

7. The Commission must consider whether the Applicant meets all of the essential requirements for registration under the Act. In this case, the key issue for consideration is whether the Applicant is a 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. In particular, whether the Applicant’s purposes fall within the definition of charitable purpose in section 5(1) of the Act.

The law on charitable purpose

8. 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.

¹ [1951] NZLR 498.

² High Court, Wellington, CIV-2008-485-1689 (3 December 2008).

9. Section 5(1) of the Act defines charitable purpose as including every charitable purpose, whether it relates to the relief of poverty, the advancement of education, the advancement of religion, or any other matter beneficial to the community. In addition, to be charitable at law, a purpose must be for the public benefit.³ This means that the purpose must be directed at benefitting the public or a sufficient section of the public.
10. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
11. In considering an application for registration, section 18(3)(a) of the Act requires the Commission to have regard to:
 - (i) *the activities of the entity at the time at which the application was made; and*
 - (ii) *the proposed activities of the entity; and*
 - (iii) *any other information that it considers is relevant; ...*

Charities Commission's analysis

12. The Commission does not consider that declarations by the Applicant in clauses 2 and 8.1, that its purposes are charitable, provide conclusive evidence that its stated purposes are in fact charitable.
13. The trust's purposes include the promotion, maintenance and support of "philanthropic interests" (clause 3(a)) and such "philanthropic purposes" as the trustees may deem appropriate (clause 3(g)). Following the reasoning set out in *Re Macduff*⁴, the Commission does not consider that "philanthropic" purposes equate to "charitable" purposes because the term "philanthropic" is capable of describing purposes that fall into a broader category than the legal concept of charity.
14. As the purposes set out in clause 3 do not advance religion, they have been considered in relation to relief of poverty, advancement of education, and "any other matter beneficial to the community".

Relief of poverty

15. In order for a purpose to relieve poverty, it must be directed at people who are poor, in need, aged, or suffering genuine hardship, and provide relief.
16. The purpose in clause 3(f), of providing funding to non-profit social service or welfare agencies in New Zealand, is likely to amount to relief of poverty.

Advancing education

17. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. Education does not include the study of subjects that have no educational value.

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

⁴ [1896] 2 Ch 451.

18. The Commission considers that the object set out in clause 3(f), of providing educational grants to non-profit social service or welfare agencies in New Zealand, would be charitable because it would provide some form of education and ensure that learning is advanced.
19. The Applicant's solicitor submitted, in his letter of 2 February 2009, that assisting the increased participation of younger people in amateur cue sports in clause 3(c) has educational elements.
20. In *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue*⁵, Iacobucci J held that the advancement of education included "information or training that is provided in a structured manner and for a genuinely educational purpose – that is, to advance the knowledge or abilities of the recipients" and "informal training initiatives, aimed at teaching necessary life skills or providing information toward a practical end".
21. In *Re Dupree's Deed Trusts*⁶, the court held that promoting an annual chess tournament for boys and young men under 21 was a charitable purpose. In that case, evidence of the educational value of playing chess was presented including that the nature of the game encouraged the qualities of foresight, concentration, memory, ingenuity and reasoning; and the fact that it was taught in some schools as part of the curriculum.
22. The Commission considers that increasing the participation of younger people in cue sports, such as billiards, snooker and pool, would not advance knowledge and would not have the same educational value as playing chess. Clause 3(c) would therefore not amount to advancing education.

Other matters beneficial to the community

23. In order for a purpose to qualify as "any other matter beneficial to the community", the purpose must be beneficial to the community and be within the spirit and intendment of the purposes set out in the Preamble to the Statute of Charitable Uses 1601 (Statute of Elizabeth).⁷ In determining what is within the "spirit and intendment" of the Preamble to the Statute of Elizabeth, it is important to be guided by principle rather than by a detailed analysis of decisions in particular cases.
24. The Commission considers that the object set out in clause 3(d)(i) may be charitable under the fourth head because it relates to the provision of facilities for recreation.⁸

⁵ (1999) 99 DTC 5034, [1999] 1 S.C.R. 10, paras 168-169.

⁶ [1945] Ch 16.

⁷ *Re Jones* [1907] SALR 190, 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447, 455; *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138, 146-48; *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659, 667, 669; *Royal National Agricultural and Industrial Association v Chester* (1974) 48 ALJR 304, 305; *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147, 157; *Re Tennant* [1996] 2 NZLR 633, 638.

⁸ *Re Chapman* (High Court, Napier, CP80/87, 17 October 1989, Grieg J).

25. The Applicant has not provided evidence of any benefit to the community arising from the promotion and support of participation in amateur cue sport activities set out in the remaining clauses 3(a), (b), (c), (d)(ii) to (vi), and (e). The Commission is also unable to identify any such community benefit or to find that the purposes are within the spirit and intent of the purposes set out in the Preamble to the Statute of Elizabeth.
26. Courts have found the maintenance of public buildings and facilities to be charitable under the fourth head⁹, and in *Re Cumming*¹⁰, the court held that providing a hall for public farmers' meetings and other forms of education for the inhabitants of the area was charitable under the fourth head. In that case, there was a clear intention to provide a facility that could be used to advance education for the public in that locality. With the exception of clause 3(d)(i), the Commission does not consider that the Applicant's purposes are analogous to any cases where providing public facilities has been held to be charitable.
27. Courts have held the promotion of public health to be charitable, but the Commission does not consider that the promotion of games such as billiards, snooker, and pool, set out in clauses 3(a), (b), (c), (d)(ii) to (vi), and (e) will necessarily advance health or promote healthy activity, nor are they analogous to other purposes which have been held to be charitable.
28. The Applicant's solicitor stated, in his letter of 2 February 2009, that **some** of the amateur sports funded under clause 3(e) will have the required physical fitness benefits to be charitable under the fourth head. This may be true, but this purpose could also include the promotion of other amateur sports that do not have these qualities and are therefore non-charitable.

Section 61A of the Charitable Trusts Act 1957

29. Section 61A of the Charitable Trusts Act 1957 states:

61A Trusts for recreational and similar purposes

- (1) *Subject to the provisions of this section, it shall for all purposes be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare:
Provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.*
- (2) *The requirement of subsection (1) of this section that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless—*
 - (a) *The facilities are provided with the purpose of improving the conditions of life for the persons for whom the facilities are primarily intended; and*

⁹ *Kjar v Mayor of Masterton* [1930] GLR 303; *Re Chapman* (High Court, Napier, CP89/87, 17 October 1989, Greig J); and *Guild v Inland Revenue Commissioners* [1992] 2 All ER 10 (HL).

¹⁰ [1951] NZLR 498.

(b) *Either—*

(i) *Those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity, disablement, poverty, race, occupation, or social or economic circumstances; or*

(ii) *The facilities are to be available to the members of the public at large or to the male or female members of the public at large.*

(3) *Without restricting the generality of the foregoing provisions of this section it is hereby declared that, subject to the said requirement, subsection (1) of this section applies to the provision of facilities at public halls, community centres, and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.*

30. The Commission has considered whether clauses 3(a), (b), (c), (d)(ii) to (vi) could be considered charitable under section 61A of the Charitable Trusts Act.
31. Organising amateur cue sports could be considered to be a "facility" that is provided for "recreation or other leisure time occupation". While these facilities are capable of making life more enjoyable, the Commission does not consider that these facilities meet a need of the community, which as a matter of social ethics ought to be met, nor are they provided with the purpose of improving the condition of life for the persons for whom the facilities are primarily intended.
32. The Commission has therefore concluded that the purposes set out in clauses 3(a), (b), (c), (d)(ii) to (vi) do not meet the "social welfare" requirement of section 61A.

Section 61B of the Charitable Trusts Act

33. In order to be a valid trust at law, a trust for charitable purposes must be exclusively charitable or it will be void for uncertainty. Section 61B of the Charitable Trusts Act 1957 will operate to "save" trusts that have charitable and "*non-charitable and invalid*" purposes.
34. Section 61B can apply in cases where the entity's stated purposes include non-charitable purposes (in which case the non-charitable purposes may be "blue pencilled out"); or where the stated purposes are capable of a charitable or a non-charitable interpretation (in which case the purposes would be deemed to apply only in terms of the charitable interpretation).¹¹
35. In both instances, the trust's purposes would need to be substantially charitable in nature for section 61B to operate to "save" the trust as a valid charitable trust.¹²

¹¹ *Re Ashton (deceased)* [1955] NZLR 192, 197; *Re Beckbessinger* [1993] 2 NZLR 362, 373.
¹² *Re Ashton (deceased)* [1955] NZLR 192, 205; *Re Pettit* [1988] 2 NZLR 513, 543; *Re Howey* [1991] 2 NZLR 16, 21; *Re Beckbessinger* [1993] 2 NZLR 362, 374; *Re Collier (deceased)* [1998] 1 NZLR 81, 97.

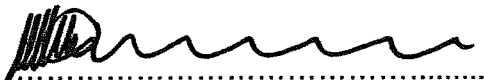
36. The Commission considers that the purposes in clauses 3(d)(i) and 3(f) are charitable, but that the purposes set out in clauses 3(a), (b), (c), (d)(ii) to (vi) and (e) are not charitable.
37. The purposes set out in clauses 3(a), (b), (c), (d)(ii) to (vi) and (e) are not considered to be capable of charitable interpretation and on that basis, section 61B of the Charitable Trusts Act is not considered to apply to "save" the trust.
38. In addition, while two charitable purposes have been identified, looking at the trust as a whole and taking into account the non-charitable purposes, the Applicant is not considered to have substantially charitable purposes. Therefore section 61B of the Charitable Trusts Act 1957 cannot operate to validate the trust.

Charities Commission's determination

39. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that the Applicant is not a trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) of the Act.

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

Signed for and on behalf of the Charities Commission



Trevor Garrett
Chief Executive

15/6/09.....
Date