

Registration Decision: Henderson Returned and Services Association Incorporated

The facts

1. Henderson Returned and Services Association Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 19 April 1972. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the *Charities Act 2005* (the Act) on 1 May 2008.
2. The Applicant's purposes are set out in clause 6 of its constitution:
 - 6 *The local Association is established with the express purpose of pursuing the aims and objects of RNZRSA as expressed hereunder.*

The objects for which the local Association is established are: -

 - (a) *Loyally to uphold the sovereignty of New Zealand as a member of the Commonwealth of Nations and as a member of the United Nations.*
 - (b) *To foster and maintain the welfare and security of New Zealand within the concept of the establishment and maintenance of international peace with honour.*
 - (c) *To inculcate in the individual a sense of responsibility to his fellow citizens, his local community, and for the well-being of mankind.*
 - (d) *To perpetuate the comradeship born of service and to promote the general well-being of servicemen and of former servicemen and their respective dependants.*
 - (e) *To promote, foster, and generally supervise branches of the local Association.*
 - (f) *To pursue the resolutions of the National Council of RNZRSA.*
3. The Applicant's original winding up provision was set out in clause 55(b) of its constitution:

If upon the liquidation of the local association there remains, after the satisfaction of all its liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the local Association but shall be given or transferred to some other Institution or Society having objects similar to the objects of the local Association, such Institution or Society to be determined by a majority of the members of the local Association present in person at a General Meeting to be held according to the Rules of the local Association at or before the liquidation and in default thereof to such institution or institutions as a Registrar of Incorporated Societies, or the High Court of New Zealand or a Judge thereof, or in the event of an appeal being made, the relevant appeal authority may direct.

4. The Commission analysed the application for registration and on 30 September 2008 sent the Applicant a notice that may lead to a decline because the Applicant's winding up clause did not limit the distribution of surplus assets to charitable purposes or organisations. The notice also suggested that the Applicant add clauses preventing private pecuniary profit to its constitution and requested further information about the Applicant's activities pursuant to section 18(3)(a) of the Act.
5. The Applicant responded by letters dated 6 January 2009 and 22 March 2009 (both received by the Commission on 25 March 2009), submitting that it believed that it did comply with both the winding up requirement and the private pecuniary profit requirements. The Applicant submitted that it is a non-profit organisation and that no members gain private pecuniary profit.
6. The Commission responded by email on 30 March 2009, stating that the addition of clauses preventing private pecuniary profit was a suggestion as the Incorporated Societies Act 1908 prevents private pecuniary profit. However, the email stated that the Commission remained of the view that the Applicant's winding up clause did not meet requirements. The Commission also reminded the Applicant that further information about the activities of the Applicant was required.
7. The Commission received no formal response to this email, so on 23 September 2009, the Commission sent a second notice that may lead to decline on the basis that the Applicant's winding up clause did not meet requirements.
8. The Applicant amended its constitution as follows:

That Rule 6 be amended by the addition of:-

NO PRIVATE PECUNIARY PROFIT, AND EXCEPTIONS

Rule 6A Any income, benefit or advantage shall be applied to the objectives of the organisation. No member of the organisation or any other person associated with a member, shall participate in or materially influence any decision made by the organisation, in respect of the payment to or on behalf of that member or associated person of any income, benefit, or advantage whatsoever. Any such income shall be reasonable and relative to that which would be paid in an arms length transaction (being open market value). And the provisions and effect of this clause shall not be removed from this document and shall be included into any other document replacing this document.

ALTERATION OF RULES

That Rule 47 be amended by the addition of:-

Rule 47(f) No addition to or alteration of the non profit aims, personal benefit clause (rule 6A) or winding up clause shall be made which affect the tax exempt status. The provisions and effect of this clause (Rule 6A) shall not be removed from this document and shall be included and implied into any document replacing this document.

LIQUIDATION

That Rule 55(b) be amended by:-
Deleting the existing wording and replacing with

55(b) *If upon the liquidation of the local Association there remains, after the Satisfaction of all its liabilities, any property whatsoever, the same shall not be paid or distributed among the members of the local Association but shall become vested in and transferred to any local RSA Trust having Charitable Status or to RNZRSA, on such conditions, providing such conditions are not inconsistent with the Aims and Objects of RNZRSA, as shall be determined by a Majority of Members admitted under Rules 8(a) and/or 8(b) of the local Association present in person at a General Meeting to be held according to the Rules of the local Association at or before the liquidation.*

9. The amendments were lodged with the Companies Office on 2 October 2009. The amendments are sufficient to meet the Commission's requirements in relation to the prevention of private pecuniary profit and winding up.
10. The Commission considered these amendments and the financial statements lodged with the Companies Office. On 4 March 2010, the Commission sent the Applicant a third notice that may lead to decline. This notice stated that the Commission considered the Applicant had a primary purpose of the provision of recreation or entertainment activities for members and therefore was not exclusively charitable.
11. The Applicant responded on 30 June 2010 providing a letter from its solicitors submitting:

Current income earning activities of the Association

As detailed on the Association's website, there are a number of entertainment and sporting activities which are run as a means of promoting comradeship and companionship, as well as raising funds for the Association. Such activities include raffles, performances by live bands, gaming machines, housie competitions, the operation of a restaurant at the Association's premise in Henderson, and sporting activities such as bowls, darts, golf, snooker and fishing competitions. The Association also charges its members subscription fees and receives donations from the public.

The Association rents out part of its premises as another means of raising funds. ...

The Association is divided into several sections, which can raise their own funds. For example, there is a Women's Section which raises funds for the use explained at paragraph 18 by holding raffles, charging for catering for funerals (although such charges are below market rates) and operating a trading table whereby goods donated by members are sold. ...

The Association also holds raffle nights as another fundraising mechanism. Different nights throughout the year are allocated to each of the Association's sections, with the raffle proceeds from such nights being applied by the particular section towards the Association's objects; the restaurant and bar proceeds from raffle nights are retained for use by the Association towards its Objects.

Present and future allocation of the Association's funds

The Executive Committee of the Association holds the capital and income of the Association to pay all expenses and other liabilities of the Association, as well as paying or applying the Association's funds in New Zealand for the advancement of the Association's objects, to the extent that these are charitable purposes. ... Additionally, the Women's Section of the Association has its own committee which can decide how funds raised by it can be applied to the activities.

The funds raised by the activities described at paragraphs 4 to 7 above are applied to maintaining the RSA premises and facilities (including paying salaries and maintaining the library), and welfare causes (such as grants for exchange students). ... The "Welfare Expenses/Donations" funds are applied to grants of financial assistance which are made to the public as a means of raising the profile of the Association and to promote the idea of comradeship and companionship. Additionally, the funds of the Association are applied to run the ANZAC Day service. Members of the Association raise funds for a separate Trust (that falls under the umbrella of the Association, details of which are discussed further at paragraphs 21 and 22) through the sale of poppies in the lead up to ANZAC Day, and the Association also covers the cost of the ANZAC Day services. ...

The Association's Restaurant is a subsidised service and runs at a loss. Therefore, some of the Association's funds are applied to keeping the restaurant operating. The restaurant facilities are provided to members and visitors who sign in as members in order to provide meals at an affordable cost in an atmosphere to support comradeship and companionship.

The Association also provides a block of holiday units at Matapouri Bay for its members and members of affiliated RSA's and their families to use. The rates charged for using the holiday units are below market rates. The purpose of these units is to allow members and their families some family time, in order to support and build the bonds within the family unit.

The Association receives numerous applications for grants and financial assistance from many organisations and individuals alike, for example, from high schools, sporting groups and exchange students. ...

Sporting grants have been provided to the Association's members in the past. For the current year, sporting grants of \$3,000 have been approved and supplied to the Snooker, Pool and Darts sections of the Association, and \$1,500 has been granted to each of the Association's Golf, Indoor Bowls and Fishing sections. These funds are used to support the attendance of members to events hosted by other RSA's throughout New Zealand in order to support a network of comradeship and companionship throughout New Zealand. ...

For example, in the last year, a grant of \$200 was provided to assist a Henderson High School student to go on exchange to Japan. Another grant of \$600 was provided to send another Henderson High School student on an Outward Bound course. In terms of future activities, it is intended that the Association will support and financially assist with the RNZRSA youth tour. It is proposed that financial support of approximately \$1,500 will be provided (assuming sufficient funds are available at that time). ...

The Association's Women's Section assists the Association's members and the community by providing companionship to members and their families. For example, the activities of the Women's Section include holding morning tea events once a month, making hospital visits, catering for funerals at a subsidised rate, and making donations to other charitable organisations. For instance, the funds raised by the Women's section have been donated to registered charities such as the Ronald McDonald House Charities (CC23403), Royal New Zealand Foundation of the Blind (CC21361), Alzheimers Auckland Incorporated (CC32974), Hearing Dogs for Deaf People New Zealand (CC11184) and West Auckland Hospice (CC27137). Additionally, in the future, it is intended that the Women's Section will provide companionship by taking ladies who are members of the Women's Section on day trips, and provide a transport service so that ladies can attend the evening meetings.

Within the next year the Association intends to expand the resource base of its library in order to support companionship for its members and the general public. The Association also intends to run educational seminars for both the older members of the Association and the general public. These seminars will focus of the operation of many modern technological developments. In particular, the Association intends to provide education to older citizens (both members of the Association and members of the general public alike) as to how to use email and access the use of the internet. ...

Inter-relationship with the Henderson R.S.A. Trust Fund

... The Henderson R.S.A. Trust Fund (Trust) was established by the Association on 16 July 1986 and duly registered with the Charities Commission as from 3 December 2009 (CC43044).

Although the Trust is administered by a separate executive committee, it falls under the umbrella of the Association. In the lead up to the ANZAC Day the Association's members raise funds which are passed on by the Association to the Trust. The Trust carries out much of the welfare activities of the general umbrella association, such as assisting returned and ex servicemen and their wives and dependants who are in need. The trust also provides assistance to people with disabilities, and other charitable organisations that care for the aged, sick or infirm. The provision of funds for medical research, educational funds and assistance to schools is also another area in which the Trust's funds are allocated.

The issues

12. The issue the Commission must consider is 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 society or institution established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual, as required by section 13(1)(b) of the Act.

The law on charitable purpose

13. Under section 13(1)(b) of the Act a society or institution must be established and maintained exclusively for charitable purposes and must not be carried on for the private pecuniary profit of any individual.
14. Section 5(1) of the Act defines charitable purpose as including every charitable purpose, whether it relates to the relief of poverty, the advancement of education, the advancement of religion, or any other matter beneficial to the community. In addition, to be charitable at law, a purpose must be for the public benefit.¹ This means that the purpose must be directed at benefiting the public or a sufficient section of the public.
15. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
16. In considering an application for registration, section 18(3)(a) of the Act requires the Commission to have regard to the activities of the entity at the time the application was made, the entity's proposed activities, and any other information that the Commission considers relevant.

Charities Commission's analysis

17. The Commission considers that the purposes outlined in clause 6 of the Applicant's constitution do not indicate an intention to relieve poverty, advance education, or advance religion. The Commission has therefore considered whether these purposes are charitable under "any other matter beneficial to the community".
18. In order for a purpose to qualify as "any other matter beneficial to the community", the purpose must be beneficial to the community and must be within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth)² namely:

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

² *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; *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.

- relief of aged, impotent, and poor people
- maintenance of sick and maimed soldiers and mariners
- schools of learning
- free schools and scholars in universities
- repair of bridges, ports, havens, causeways, churches, sea banks, and highways
- education and preferment of orphans
- relief, stock or maintenance of houses of correction
- marriage of poor maids
- supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed
- relief or redemption of prisoners or captives and
- aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.

Case law

19. A number of cases have considered gifts for the benefit of servicemen and ex-servicemen of the armed forces.
20. *In Re Good*,³ the Court held that a gift to his regiment for the maintenance of a library for the officers mess was a good charitable gift. In coming to this conclusion that Court held:

I have come to the conclusion that this is a good charitable gift on the first ground – namely that it is a direct public benefit to increase the efficiency of the army, in which the public is interested, not only financially, but also for the safety and protection of the country...

I am not of course suggesting for a moment that the officers are objects of charity. It is the public, not the officers that are benefited by better means being put at the disposal of the officers to enable them to make themselves efficient servants of the King for the defence of their country.

I think it would be difficult to say that money given to be expended in terms in some specific way in order to increase the efficiency of a regiment in a particular mode is not a good charity. This gift, to my mind, does tend to increase the efficiency of the army by giving the officers greater opportunities of providing themselves with literature.⁴

21. However, the Court went on to hold that the gift of two houses to be held for the use of old officers of the regiment at a small rent during their lives was not charitable. In coming to this conclusion, the Court held that the word "old" meant "former officers" and was not a reference to age.⁵

³ [1905] 2 Ch 60.

⁴ [1905] 2 Ch 60, 66-67.

⁵ [1905] 2 Ch 60, 66-68.

22. In *Verge v Somerville*,⁶ the Privy Council held that a gift of residue “unto the trustees for the time being of the “Repatriation Fund” or other similar fund for the benefit of New South Wales Returned Soldiers” was charitable. In coming to this conclusion Lord Wrenbury states:

There can be no question but that the gift in the testator’s will satisfies the first test required to support it as a good charitable trust. It is a public trust and is to benefit a class of the community – namely men from New South Wales who served in the war and were returned or to be returned to their native land. Further, if it were necessary to consider at all the question of a trust for the poor, it is a gift which is to benefit that class in some sense expressed by the word “repatriation”. This does not mean simply restoring them to New South Wales by paying their fare home. They may be “returned” already, not “returning” soldiers. It means restoring them to their native land and there giving them a fresh start in life. Their Lordships have no doubt that this is a charitable purpose. If it were (which in their opinion it is not) necessary to find that need of assistance is to be a qualification for benefit – that the gift is charitable in the sense of assisting the needy – they find that the words “Repatriation Fund”, in relation to the facts as to the Australian Repatriation Fund of which no doubt the testator had knowledge, indicate an intention to benefit the needy. If his words “Repatriation Fund or some similar fund” are referable at all to the statutory Australian Soldiers’ Repatriation Fund and if it were necessary to find a reference to poverty, their Lordships have no difficulty in finding it.⁷

23. In *Re Gray*,⁸ the Court upheld a gift to a regiment “for the promotion of sport”.
24. In *re Simmons (Deceased), Public Trustee v Stone and Others*,⁹ it was held that gifts to St Dunstan’s Hostel for Blind Soldier, to the wounded and disabled soldiers of New Zealand, to a home for wounded sailors of the British Empire and to the Thames Soldiers Memorial Fund, were charitable.
25. In *Barby and Others v Perpetual Trustee Company*,¹⁰ the Court held that a gift “for the relief of necessitous returned soldiers and their widows children or grandchildren who may be in necessitous circumstances (that is those only earning the basic wage for the time being or under and not possessed of more than \$200)” was charitable.
26. In *Re Daniel Timothy McAuliffe, Deceased*,¹¹ the Court held that the “purpose of safeguarding the interests of and of obtaining just and equitable treatment for all ex-members of the Forces who contract TB and the dependants of any members of the Association who have died” was a charitable purpose.

⁶ [1924] AC 496.

⁷ [1924] AC 496, 506.

⁸ [1925] 1 Ch 362.

⁹ [1933] NZLR 172.

¹⁰ [1937] 58 CLR 316.

¹¹ [1944] St. R Qd 167.

27. *In Re Driffill (Decd) Harvey and Another v Chamberlain and Others*,¹² the Court held that a gift “to promote the defence of the United Kingdom from the attack of hostile aircraft” was charitable. Danckwerts J states:

*It seems to me that this is a case clearly falling within the well-known authorities in which gifts for promotion of the efficiency of the armed forces of the Crown were held to be valid charitable bequests.*¹³

28. *In Re Meyers, London Life Association v St George’s Hospital*,¹⁴ the Court held that a gift “for such charitable or benevolent institutions fund or funds having as its or their object the welfare, benefit of assistance of members of His Majesty’s [Navy, Army and Air Force respectively] (whether past present or future) or their wives or children” was not charitable. The Court looked at the decision in *Re Good*¹⁵ and stated:

*Mr Parker, on behalf of the Attorney General in that case [In Re Good], admitted that if “old” meant former officers of the regiment the gift was bad. Therefore, that was tantamount to the Crown’s admitting that a gift to persons not in the army or to anybody who had formerly been but had ceased to be in it was a bad gift. ... It seems to me that this is a decision that a gift confined to ex-members of the forces for their benefit is not a good charity. I cannot help thinking that this gift here could be applied exactly in that way, namely, to maintain two houses for ex-naval officers. If that is so, it seems to me that it would offend just as the second gift In re Good offended.*¹⁶

29. *In The Armenian General Benevolent Union v The Union Trustee Company of Australia Limited and Others*,¹⁷ the Court considered a gift “for the benefit of the orphans whose fathers fought with the Russian Army against Germany and Japan in the World War which ended last year”. Dixon J and McTiernan J state:

In our opinion it is a good charitable trust. The reference to orphans of fathers who fought in the Russian army would, according to ordinary usage be understood as contemplating persons who were young and, through orphanage, if not reduced to poverty, or other hardship, had at least been placed in a situation where relief in the way of succour assistance or protection was desirable...

*No very definite description of distress or disadvantage is perhaps conveyed, but that is not necessary.*¹⁸

30. *In Inland Revenue v Glasgow Police Athletic Association*,¹⁹ a police athletic association, established for the encouragement of all athletic sports and general pastimes, was held not to be exclusively charitable. In coming to this conclusion, Lord Reid stated:

¹² [1950] 1 Ch 92.

¹³ [1950] 1 Ch 92, 95.

¹⁴ [1951] A Ch 584.

¹⁵ [1905] 2 Ch 60.

¹⁶ [1951] 1 Ch 584, 545.

¹⁷ [1953] 87 CLR 597.

¹⁸ [1953] 87 CLR 597, 603.

¹⁹ [1953] AC 380.

The peculiarity of this case is that the same activities have a double result. They are beneficial to the public by increasing the efficiency of the force and they are beneficial to the members themselves in affording to them recreation and enjoyment: and all the relevant facts appear to me to indicate that the purpose was to produce this double result. It may well be that considerations of public interest were the primary cause of the Association being established and maintained: but I think that it is clear that all or most of the activities of the Association are designed in the first place to confer benefits on its members by affording to them recreation and enjoyment. It is only as a result of these benefits that the purpose of increasing the efficiency of the force is achieved. In some cases where the end is a charitable purpose the fact that the means to the end confer non charitable benefits may not matter; but in the present case I have come to the conclusion that conferring such benefits on its members bulks so largely in the purposes and activities of this Association that it cannot properly be said to be established for charitable purposes only.²⁰

31. *In re Booth (deceased), Guardian Trust and Executors Company of New Zealand Limited v Booth*,²¹ it was held that a bequest for the “benefit and maintenance of New Zealanders who are or may be on active service in the war with Germany and her allies which commenced in September 1939 and who are or may be disabled or who contract ill health whilst on such active service from the effects of which they are nor or may be suffering or how are or may be incapacitated by ill health however caused and who are in indigent or necessitous circumstances” was charitable.
32. *In Re Bertling Deceased, Noone v Bertling and Others*,²² a gift to the organisation known as “Legacy” was held to be charitable. The Court held:
- ... the testator did not intend his gift to be devoted to the social activities of Legacy Clubs or the other possible non-charitable purposes of those Clubs, but that he intended to make a gift for the public charitable purposes set out in para (a) of the objects of the Legacy Club of Brisbane and the objects of the several War Widows and Orphans’ Funds established in various parts of the State of Queensland.²³*
33. *In Re Stable*,²⁴ the Court held that a gift to the Legacy club of Brisbane absolutely to be used by them for the benefit of war orphans and widows” was charitable.
34. *In re Elgar, Rhodes v Pharazyn*,²⁵ it was held that a gift for the re-establishment in civilian life of men who have been, or who are about to be, discharged from the armed services or their children, was charitable.

²⁰ [1953] AC 380, 402-403.

²¹ [1954] NZLR 114.

²² [1956] Queensland Law Reporter 379.

²³ [1956] Queensland Law Reporter 379, 388.

²⁴ [1957] Queensland Law Reporter 90.

²⁵ [1957] NZLR 1221.

35. In *Re Sahal's Will Trusts*,²⁶ the Court held that a gift of a house to be used and maintained as a "hostel for young soldiers sailors airmen or merchant seamen or for the poor aged and infirm people of the neighbourhood" was charitable. However, a trust, the income of which was to be applied to the purchase of extra comforts for the residents in such hostel was held not to be charitable on the basis of *Re Cole*.²⁷
36. In *Re Chitty's Will Trust*.²⁸ a gift "to the colonel and adjutants for the time being of the regular battalions Suffolk Regiment on trust to use the income as to one half for the benefit of the officers and as to one half for the benefit of the warrant officers, NCO's and men who belong to or have belonged to such regular battalions and I express the wish that a free issue of drinks on Minden day shall be regarded as a benefit" was not considered charitable.
37. In *Downing v Federal Commissioner of Taxation*,²⁹ a gift "for the amelioration of the conditions of the dependents of any member or ex-member of Her Majesty's Naval military or air forces or the naval military or air forces of the Commonwealth" was held to be charitable. Walsh J stated:

*I do not doubt that there may be gifts for the benefit of a class of ex-servicemen which are not good charitable gifts. For example, the object of a gift may be merely of a social or of a sporting character or of some other character such that the purpose could not be classed as one which the law would recognise as charitable. But I am of the opinion that valid charitable trusts may be created for the purposes relating to the welfare and to the assistance of ex-servicemen or of their dependants, as well as for the welfare and assistance of persons who are still serving members of the forces, if the purpose can reasonably be considered to advance the safety and security of the country. I am of opinion that a trust may be considered to tend towards that result by means of providing aid, comfort and encouragement to the armed forces or a section of them, notwithstanding that those who will directly benefit from the trust are those who have ceased to serve or their dependents.*³⁰

38. In *Re Perry and Kovacs et al*,³¹ the Court held that a gift of a dilapidated cottage on an island to the Canadian and New Zealand navies "as a rest for navy personnel" was not charitable. The Court stated:

In my opinion, the word "rest" as used in the gift is adequate to describe a place where sailors may have shelter or lodging during their spare time; and there is no need to look to surrounding circumstances to supply some such word as "home" which may or may not have been omitted by the testatrix.

²⁶ [1958] 3 All ER 428.

²⁷ In *Re Cole* [1958] 3 All ER 102, the Court Appeal held that a gift of houses for the purposes of creating a fund for the general benefit and general welfare of the children for the time being in the home was not a charitable trust. This was because the funds applied for the purpose of supplying any sort of amenity in these homes which were not necessary amenities essential to the welfare of the children, involved a perpetuity and the purpose was not to be regarded as charitable.

²⁸ [1970] 1 Ch 261.

²⁹ (1971) 125 CLR 185.

³⁰ (1971) 125 CLR 185, para 18.

³¹ (1984) 12 DLR (4th) 751.

...
No doubt the provision of a home for servants of the Crown such as soldiers and sailors is a legitimate charitable object (Re Sahal's Will Trusts [1958] 1 WLR 1243.) But is a "rest", as I have defined the property here, a "house" of the sort held to fall within the ambit of the Charitable Uses Act, 1601 (U.K.), c.4, by the authorities bearing thereon, such as in Re Sahal's Will Trusts, supra? In my opinion, it does not. Rather should this "rest" be regarded as a "comfort" only. The devise is too vague and uncertain in its terms to qualify as a devise for a specific and exclusively charitable purposes: Re Cole [1958] 2 WLR 447.³²

39. The Commission considers that these authorities recognise that advancing the safety and security of a Country is charitable under "any other matter beneficial to the community" and indicate that a gift for servicemen or ex-servicemen may be charitable where it is promoting their welfare or will tend to advance the efficiencies of the armed forces. However, gifts for the provision of social activities or entertainment for servicemen or ex-servicemen will not be charitable.

40. This is consistent with the general proposition decided by the Courts that the provision of entertainment or social activities for their own sake are not charitable. Thus, in *IRC v Baddeley*,³³ Lord Reid stated:

*It is well settled that the provision of entertainment or amusement is not by itself a charitable purpose.*³⁴

41. In *Travis Trust v Charities Commission*,³⁵ Williams J stated:

*In the area of sport and leisure, the general principle appears to be that sport, leisure and entertainment for its own sake is not charitable but that where these purposes are expressed to be and are in fact the means by which other valid charitable purposes will be achieved, they will be held to be charitable.*³⁶

Applicant's purposes

42. The Applicant's purposes outlined in clause 6 of its rules are:

6 *The local Association is established with the express purpose of pursuing the aims and objects of RNZRSA as expressed hereunder.*

The objects for which the local Association is established are: -

(a) *Loyally to uphold the sovereignty of New Zealand as a member of the Commonwealth of Nations and as a member of the United Nations.*

(b) *To foster and maintain the welfare and security of New Zealand within the concept of the establishment and maintenance of international peace with honour.*

³² (1984) 12 DLR (4th) 751, 753.

³³ [1955] AC 572.

³⁴ [1955] AC 572, 600.

³⁵ HC WN CIV-2008-485-1689 [3 December 2008].

³⁶ HC WN CIV-2008-485-1689 [3 December 2008] at para 52.

- (c) *To inculcate in the individual a sense of responsibility to his fellow citizens, his local community, and for the well-being of mankind.*
- (d) *To perpetuate the comradeship born of service and to promote the general well-being of servicemen and of former servicemen and their respective dependants.*
- (e) *To promote, foster, and generally supervise branches of the local Association.*
- (f) *To pursue the resolutions of the National Council of RNZRSA.*

43. The Commission considers that the Applicant's purposes could be considered charitable under the fourth head, "other matters beneficial to the community" as they relate in general terms to promoting the security of New Zealand.
44. However, the Commission notes that these purposes are very broad and inspirational in nature and section 18(3)(a) of the Act requires the Commission to have regard to the Applicant's current and future activities. Accordingly, in order to assess whether the Applicant's purposes are exclusively charitable, the Commission has considered the Applicant's constitution, information on its website, its financial information available on the Companies Office register, and further information provided to the Commission by the Applicant.
45. The Commission considers that the Applicant is undertaking some charitable activities, for example where it provides for the welfare of servicemen and ex-servicemen and others in need or where it makes donations to charitable purposes or to other charitable organisations.
46. However, the Commission considers that the Applicant is undertaking a wide range of social or entertainment activities for members. The Applicant has submitted that these activities are charitable as they are a means of promoting comradeship and companionship and are a means of raising funds for the Applicant.

Comradeship and companionship

47. In its letter of 30 June 2010, the Applicant states that it runs a number of entertainment and sporting activities as a means of promoting comradeship and companionship. The Applicant's website states:

Welcome to the Henderson RSA. Where we offer a safe and friendly social environment for our members and visitors to enjoy food, entertainment and the company of friends.

Situated in the heart of Henderson with ample parking and close to all public transport. The RSA offers all club members and visitors a safe and friendly environment to have a social drink at club prices while listening to the live entertainment or perhaps take part in one of the many activities in the club.

*With three big screen TV's, four snooker tables, three pool tables six competition dart boards and indoor bowls there is no shortage of activities.*³⁷

48. The Commission does not consider that promoting comradeship and companionship through the provision of entertainment and recreational activities for ex-service personnel is a charitable purpose based on the court's reasoning in *Downing v Federal Commissioner of Taxation*.³⁸

*I do not doubt that there may be gifts for the benefit of a class of ex-servicemen which are not good charitable gifts. For example, the object of a gift may be merely of a social or of a sporting character or of some other character such that the purpose could not be classed as one which the law would recognise as charitable. But I am of the opinion that valid charitable trusts may be created for the purposes relating to the welfare and to the assistance of ex-servicemen or of their dependants, as well as for the welfare and assistance of persons who are still serving members of the forces, if the purpose can reasonably be considered to advance the safety and security of the country.*³⁹

49. The third schedule to the Applicant's constitution also states that its Associate members do not need to be returned or service personnel, but may include the general public. This is confirmed by the Applicant's website which states:

It is easy to join the Henderson RSA. There are several ways to join our club, you can join as a Returned and Service member if you are or have been in the services or returned, your application can be processed immediately (with proof of service details).

You do not have to be Returned or Service personnel you can join as an Associate member with all the same rights as. Simply download the form and fill in. If you do not have someone to nominate or second you just come into the office and we will help you. We will also take the photo for you.

Your application then goes on the notice board for a period of at least 14 days and then is passed in at the next Executive meeting where all new members are approved (unless there has been an objection in writing).

You are welcome to transfer to the Henderson RSA if you are a member of another RSA. There is no charge if you are financial. Simply fill in the details on the Transfer form.

Our charges are as set out below to join the RSA

- Returned and Service - \$25 per year*
- Associate \$50 one off admin fee then \$40 per year⁴⁰ [Emphasis added]*

³⁷ <http://www.hsnrsa.co.nz/Home.htm> (last accessed 10 August 2010).

³⁸ (1971) 125 CLR 185.

³⁹ (1971) 125 CLR 185, para 18.

⁴⁰ <http://www.hsnrsa.co.nz/Membership.htm> (last accessed 10 August 2010).

50. The Commission does not consider that providing “comradeship and companionship” for the general public through the entertainment and recreational activities undertaken by the Applicant is a charitable purpose. It bases this conclusion on the reasons set out in *Inland Revenue v Glasgow Police Athletic Association*⁴¹, *Inland Revenue Commissioners v Baddeley*⁴² and *Travis Trust v Charities Commission*.⁴³

Fund-raising activities

51. In its letter of 30 June 2010, the Applicant states that it runs a number of entertainment and sporting activities as a means of raising funds.
52. The Applicant’s letter of 30 June 2010 states that the Applicant spent money on its bar; its restaurant (which runs at a loss); a block of holiday units for members’ use at Matapouri Bay; sports such as darts, fishing, snooker and pool; hiring bands; and gaming machines.
53. The Commission considers that the Applicant’s financial accounts show that it is spending a significant proportion of its income on the running of the Association including its sporting and entertainment activities. Only a small proportion of the Applicant’s income is being spent on charitable activities. The Applicant’s financial statements for the year ending 31 December 2008, show that:
- the Applicant’s club activities had an income of \$579,064. Of this income, \$2,022 was spent on Anzac day costs and \$5,943 was spent on welfare grants or expenses (in 2007, this figure was \$100). In contrast, \$50,307 was spent on bands.
 - The Applicant’s gaming account had an income of \$611,658. Of this, \$1,203 was spent on Anzac day costs, no money was spent on welfare expenses/donations (in 2007, \$5,411 was spent on welfare expenses/donations) and \$10,915 was spent of grants expense.
 - The Applicant’s housie proceeds had an income of \$12,615. Of this, \$2000 was spent on donations.
54. Accordingly, the Commission does not consider that entertainment or sporting activities are simply a means of raising money for the Applicant’s charitable activities. Rather, the Commission considers that the entertainment or sporting activities undertaken by the Applicant are a primary purpose of the Applicant.

Applicant’s submissions

55. The Applicant has submitted that The Henderson RSA Inc Trust Fund, which has been registered as a charitable entity by the Commission, falls under its umbrella of the Association. It states:

⁴¹ [1953] AC 380.

⁴² [1955] AC 572.

⁴³ HC WN CIV-2008-485-1689 [3 December 2008].

The Trust carries out much of the welfare activities of the general umbrella association, such as assisting returned and ex servicemen and their wives and dependants who are in need...

56. The Commission considers that The Henderson RSA Inc Trust Fund is a separate entity to the Applicant. Accordingly, while the trust fund may be carrying out welfare activities, its activities are not relevant in determining whether the Applicant has exclusively charitable purposes.

Conclusion

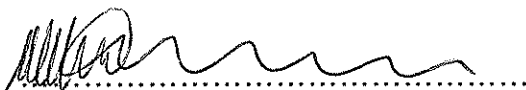
57. The Commission concludes that the Applicant has a primary purpose of providing entertainment activities for its members and this is a non-charitable purpose.

Charities Commission's determination

58. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that it is not established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) 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

24/8/10

Date