

Registration decision: Naturopaths of New Zealand Incorporated

The facts

1. Naturopaths of New Zealand Incorporated (the Applicant) was incorporated under the Incorporated Societies Act 1908 on 23 January 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 3 July 2008.
3. Clause 2 of the original constitution supplied by the Applicant set out the following purposes:
 - “2.1 *To promote a high standard of competency for the profession of naturopathy, including but not limited to education, research and clinical practice.*
 - 2.2 *To advance strong membership participation for the benefit of NoNZ Inc.*
 - 2.3 *To promote the role of naturopaths of NoNZ Inc. to the public, Governmental and local bodies, and others.*
 - 2.4 *That all members shall vigorously oppose, with all lawful means available to them, any restrictions of our members' rights to practise naturopathy.*
 - 2.5 *To support and promote the welfare and integrity of our members toward their demonstration of good health principles in their personal lives.*
 - 2.6 *To affiliate with any organisation whether established in New Zealand or elsewhere having objects similar to complementary to the objects of NoNZ Inc.*
 - 2.7 *To buy, or otherwise acquire property, chattels of all descriptions, books, papers, machines, apparatus and other requirements for, or of use, in connections with the affairs of NoNZ Inc*
 - 2.8 *To provide bursaries or scholarships to students of naturopathy.*
 - 2.9 *To ensure and keep insured all property for the replacement or indemnity value against such risks or losses as may be from time to time considered expedient for NoNZ. To insure practitioners and students who are members of NoNZ with indemnity insurance.*
 - 2.10 *To purchase, taken on lease or otherwise acquire lands, buildings and premises for the furtherance of the objects of NoNZ.*
 - 2.11 *To erect and maintain, alter, repair and otherwise improve any buildings and erections or other property that may be required for the purpose of NoNZ.*
 - 2.12 *To manage, let, sell, exchange or otherwise deal with property of NoNZ in such manner as the members of NoNZ shall deem expedient.*

- 2.13 To enter into any arrangement with any person, firm, company, government, municipal, or other local authority or other Association which may seem conducive to the objects of NoNZ, or any of them; to obtain from any such person, firm, company, government, or other authority, things required for use in connection with the affairs of NoNZ.
- 2.14 To promote deputations of the Ministers of the Crown of New Zealand, to any parliamentary committee or any other body in relations to bills presented to Parliament or action proposed to be taken or suggested calculated to promote or enhance the practice of Naturopathy.
- 2.15 To print and publish any newspapers, periodicals, books, leaflets, radio scripts or films and such other descriptive or educational material that NoNZ may think desirable for the promotion of its objects.
- 2.16 To provide an information service for members.
- 2.17 To seek and secure from the government of New Zealand and local government bodies and from any interested individual or organisation recognition and financial support for carrying out the objects of NoNZ.
- 2.18 To adopt such means of making known the objects of NoNZ as may seem expedient and in particular by advertising in the Press or on the radio or by television or by circulars, films, pictures and posters or by publications of books and periodicals.
- 2.19 To provide suitable premises for meetings and carrying on the work of and for the purpose of carrying into effect the objects of NoNZ and to employ and dismiss servants and agents.
- 2.20 To establish branches and branch offices and to provide for the appointment of local committees to deal with local matters or matters of general interest to NoNZ, which may require local attention.
- 2.21 To do any act, matter or thing which may appear to NoNZ to be incidental to or conducive toward carrying into effect or attainment of the objects of the Association."

4. The Applicant's winding up clause (clause 10.1) provided:

"In the event of NoNZ Inc. voluntarily winding up, NoNZ Inc.'s Funds, property, and assets shall be distributed as agreed by members at the final AGM. They shall be transferred to another institution or institutions having objects similar to those of NoNZ Inc."

- 5. The Commission analysed the application for registration and on 21 January 2009, sent the Applicant a notice advising that its application for registration might be declined on the basis that its main purposes are for the benefit of members and not primarily for the benefit of the public, and its winding up clause is insufficient.
- 6. On 15 May 2009, the Applicant responded to the notice providing an updated constitution and information about its activities. The Applicant's amended purposes are set out in clause 2:

- 2.1 To promote a high standard of competency for the profession of naturopathy, including but not limited to education, research and clinical practice.
- 2.2 To advance strong membership participation and encourage members to retain long term membership for the benefit of NNZ Inc and the Naturopathic Profession.
- 2.3 To promote the role of naturopaths of NNZ Inc. to the public, Governmental and local bodies, and others.
- 2.4 That all members shall vigorously uphold, with all lawful means available to them, our member's rights to practise naturopathy.
- 2.5 To support and promote the welfare and integrity of our members toward their demonstration of good health principles in their personal lives.
- 2.6 To affiliate with any organisation whether established in New Zealand or elsewhere having objects similar or complementary to the objects of NNZ Inc.
- 2.7 To promote deputations of the Ministers of the Crown of New Zealand, to any parliamentary committee or any other body in relations to bills presented to Parliament or action proposed to be taken or suggested calculated to promote or enhance the practice of Naturopathy.
- 2.8 To provide an information service for members.
- 2.9 To do any act, matter or thing which may appear to NNZ inc. to be incidental to or conducive toward carrying into effect or attainment of the objects of the Incorporated Society."

7. The Applicant advised that it had changed its winding up clause to transfer surplus assets upon winding up to organisations with aims similar to Naturopaths of New Zealand that also support public health:

"13.1 In the event of NNZ Inc. voluntarily winding up, NNZ Inc.'s Funds, property, and assets shall be distributed as agreed by members at the final AGM. They shall be transferred to another institution or institutions having objects similar to those of NNZ Inc."

8. The Applicant described its activities as follows:

"Naturopaths of New Zealand (NNZ) is an incorporated society established to improve the professional standing of naturopaths in our community through advocacy, and to provide continuing education opportunities.

For the benefit of the public, Naturopaths of New Zealand ensures a high standard of competency is maintained among the naturopathic profession, making available education material, forums, networks, workshops and seminars for continuing education, research and improved clinical efficacy.

Naturopaths of New Zealand promote the principles and philosophy of naturopathy in order to increase public awareness of alternative options available to support improved health outcomes.

Naturopaths actively work toward improving the health status for those in their community, seeking to improve overall wellbeing.

Naturopaths of New Zealand promotes the role of naturopaths to the public and special interests group with specific health challenges, Governmental and local bodies, and other health professionals.

Naturopaths of New Zealand Inc is a not for profit organisation, not aimed at creating private financial profit."

The issues

9. 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 society or institution established and maintained exclusively for charitable purposes, as required by section 13(1)(b)(i) of the Act. In particular:
- (a) whether all of the Applicant's purposes fall within the definition of charitable purpose in section 5(1) of the Act and, if there are any non-charitable purposes, whether these are ancillary to a charitable purpose; and
 - (b) whether, in the event of winding up, the Applicant is required to dispose of its surplus assets to charitable purposes.

The law on charitable purpose

10. Under section 13(1)(b) of the Act, a society or institution qualifies for registration if it is established and maintained for exclusively charitable purposes and is not carried on for the private pecuniary profit of any individual.
11. 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 benefitting the public or a sufficient section of the public.
12. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
13. 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; ..."*

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

Relevant case law

14. There have been a number of Court decisions involving professional bodies.
15. In *Re Mason*², the High Court considered that while the objects of the Auckland District Law Society were entirely wholesome and likely to lead to the ultimate benefit of the public, they fell short of making the society a charity. In that case, the court made a distinction between charitable institutions whose main object was the advancement of education which provided a clear public benefit and non-charitable institutions whose main object was the protection and advantage of those practising in a particular profession. McMullin J cited examples of charitable institutions, such as an institute of pathology³ and a college of nursing,⁴ and examples of non-charitable institutions, such as an insurance institute⁵ and a society of writers.⁶ Promotion of charitable purpose must be its predominant object and any benefits to individual members of non-charitable character which result from its activities must be of a subsidiary or incidental character.⁷
16. In *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue*⁸, the High Court held that although the advancement of the science of engineering was beneficial to the general public, a significant and non-incidental function of the institution was to act as a professional organisation for the benefit of engineers therefore it could not be said that the institution was established exclusively for charitable purposes.
17. In *Commissioner of Inland Revenue v Medical Council of New Zealand*⁹, the Court of Appeal considered that the principal function of the Medical Council was the registration of medical practitioners. It held that the protection of the public in respect of the quality of medical and surgical services clearly fell within the broad category of purposes beneficial to the community. Any benefits to practitioners were incidental and consequential therefore the council was an institution established exclusively for charitable purposes.
18. In *Tudor on Charities*¹⁰ the authors note:

“...an institution whose main object is in the protection and advantage of those practising a particular profession is not a charity even though the

² [1971] NZLR 714, 721.

³ *Royal College of Surgeons of England v National Provincial Bank* [1952] AC 631; [1952] 1 All ER 984.

⁴ *Royal College of Nursing v St Marylebone Corporation* [1959] 1 WLR 1077; [1959] 3 All ER 663.

⁵ *Chartered Insurance Institute v Corporation of London* [1957] 1 WLR 867.

⁶ *Society of Writers to Her Majesty's Signet v Commissioners of Inland Revenue* (1886) 2 TC 257.

⁷ *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380.

⁸ [1992] 1 NZLR 570.

⁹ [1997] 2 NZLR 297.

¹⁰ *Tudor on Charities*, 9th Edition, para 2-045, page 71.

carrying out of the main object results in benefit to the community. Because of this problem, several established charities have formed separate non-charitable bodies for negotiating purposes to preserve the charitable status of the original institutions. For example, the College of Radiographers is a charitable institution which promotes radiography and the Society of Radiographers is a non-charitable body which negotiates on behalf of its members."

19. In *Commissioners of Inland Revenue v Oldham Training and Enterprise Council*¹¹, the court held that promoting the interests of individuals engaged in trade, commerce or enterprise and providing benefits and services to them conferred private benefits on those individuals, regardless of any public benefit. The remoteness of any public benefit disqualified the Council from having charitable status.

Charities Commission's analysis

Established for charitable purposes?

20. In order to conclude whether an applicant entity has been "established" for charitable purposes, the Commission makes an assessment of the objects clauses set out in the entity's rules. It also has regard to the current and proposed activities of the entity and any other information that it considers relevant.
21. The Commission considers that the Applicant's purpose set out in clause 2.1 is likely to amount to promoting and maintaining the health and safety of the community and therefore would be charitable as "other matters beneficial to the community". The purposes set out in clauses 2.2, 2.5, 2.6 and 2.9 are considered to be ancillary.
22. The remaining purposes, set out in clauses 2.3, 2.4, 2.7 and 2.8, do not indicate an intention to relieve poverty, advance religion, or any other matters beneficial to the community. These purposes have therefore been considered in relation to advancement of education.
23. 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 advertisements for particular goods or services, or the promotion of a particular point of view.
24. The Commission considers that providing an information service for members (clause 2.8) may amount to advancing education. However, promoting the role of naturopaths (clause 2.3), upholding members' rights to practice naturopathy (clause 2.4), and promoting or enhancing the practice of naturopathy (clause 2.7) will amount to advertisements for particular goods or services or the promotion of a particular point of view. Such purposes will not advance education.

¹¹ [1996] STC 1218.

Public or private benefit?

25. In *Commissioners of Inland Revenue v Yorkshire Agricultural Society* the Court said:

*"There can be no doubt that a society formed for the purposes of merely benefiting its own members, though it may be to the public advantage that its members should be benefited by being educated ... or whatever the object may be, would not be for a charitable purpose, and if it were a substantial part of the object that it should benefit its members I should think that it would not be established for a charitable purpose only."*¹²

26. In *Institution of Professional Engineers New Zealand Incorporated v Commissioner of Inland Revenue*, Tipping J stated:

"I consider that the following words of Lord Normand at page 396 in the Glasgow Police Association case are highly material:-

'... what the respondents must show in the circumstances of this case is that so viewed objectively, the association is established for a public purpose and that the private benefits to members are unsought consequences of the pursuit of the public purpose and can therefore be disregarded as incidental. That is a view which I cannot take. The private benefits to members are essential.'

*While there can be no doubt that there are distinct public benefits from the objects and functions of IPENZ it is my view, after careful consideration of both the oral and documentary evidence, that the private benefits cannot be disregarded as incidental."*¹³

27. In *General Nursing Council for England and Wales v St Marylebone Borough Council*¹⁴ the Court said an institution whose main object is the protection and advantage of those practising a particular profession is not a charity even though the carrying out of the main object results in benefit to the community. Given this decision, in order to preserve the charitable status of the original institutions, several established charities have formed separate non-charitable bodies primarily to promote the benefits of the members.

28. The leading New Zealand case in this regard is *Commissioner of Inland Revenue v Medical Council of New Zealand*.¹⁵ In that case, the Court of Appeal held that the principal function of the Medical Council was the registration of medical practitioners. It considered that the purpose of registration was to provide protection for the public in respect of the quality of medical and surgical services and that this clearly fell within the broad category of purposes beneficial to the community. Any benefits to practitioners were incidental and consequential therefore the Medical Council was an institution established exclusively for charitable purposes.

¹² [1928] 1 KB 611, 631.

¹³ [1992] 1 NZLR 570, 582.

¹⁴ [1959] AC 540.

¹⁵ [1997] 2 NZLR 297.

29. The Commission considers that the Applicant's purposes set out in clauses 2.3, 2.4, 2.7 and 2.8 can be distinguished from the *Medical Council* case because they aim to promote the interests of the Applicant's members, rather than providing protection for the public.
30. Applying the test established by Tipping J in the *Institution of Professional Engineers New Zealand* case, the Commission considers that while some public benefits may arise from the purposes in clauses 2.3, 2.4, 2.7, and 2.8, the private benefits arising from these purposes cannot be regarded as incidental.

Conclusion

31. The Commission concludes that the purpose set out in clause 2.1 is charitable, but that the purposes set out in clauses 2.3, 2.4, 2.7 and 2.8 do not provide sufficient public benefit to be considered charitable. The non-charitable purposes are not ancillary to the charitable purpose in clause 2.1.

Maintained for charitable purposes?

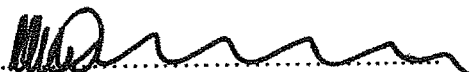
32. In assessing whether an applicant entity is "maintained" for charitable purposes, the Commission analyses the clauses in the entity's rules relating to winding up or dissolution. In the event of an entity being wound up, its surplus assets will be distributed prior to the entity ceasing to exist. The Commission therefore considers that distribution of any surplus assets is included in the "maintenance" of that entity for charitable purposes and requires that any surplus assets are directed to charitable purposes.
33. Clause 13.1 does not restrict distribution of surplus assets on winding up to charitable purposes for two reasons. Firstly, as outlined above, it is unlikely that an organisation with similar purposes to those of the Applicant would be considered charitable. Second, even if the Applicant did have exclusively charitable purposes, clause 13.1 could still allow for distribution to non-charitable purposes, because while two organisations may have similar purposes, the specific nature of each may render one charitable and the other non-charitable.

Charities Commission's determination

34. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that the Applicant is not established and maintained for exclusively 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

21/9/09
.....
Date