

Registration decision: The Afrikaans Club Charitable Trust

The facts

1. The trustees of the Afrikaans Club Charitable Trust (the Applicant) were incorporated as a board under the Charitable Trusts Act 1957 on 23 March 2000.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 27 June 2008.
3. The Applicant's objects are set out in clause 4 of its trust deed:

"The Trustees shall hold the Trust Fund in perpetuity upon the following trusts within New Zealand:

(a) For a non-profitable Afrikaans Club for all South Africans to establish and development South African culture in New Zealand through typical South African activities;

(b) To raise funds for the furtherance of any object of the trust."

4. The Commission analysed the application for registration and considered information available on the Applicant's website (www.afrikaans.org.nz) about its activities.
5. On 7 April 2009, the Commission sent the Applicant a notice advising that its application may be declined on the basis that undertaking activities such as social networking and business networking could indicate that the Applicant had non-charitable purposes that provided private benefits for the members of the club.
6. On 11 May 2009, the Applicant sent an email to the Commission advising:

"At a recent meeting of the Executive Committee of The Afrikaans Club of New Zealand, it was resolved not to pursue the registration of the Club as a charitable trust any further. Should the application be declined, the Club will continue its activities as a 'club'."
7. On the same day, the Commission sent a letter to the Applicant confirming that its application for registration had been withdrawn in accordance with the Applicant's email.
8. On 13 May 2009, the Applicant advised that it had not withdrawn its application, but that it left the final decision to approve or decline its application to the Commission.

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 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

10. 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.
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; ...*

Charities Commission's analysis

14. As the Applicant did not provide any information about its purposes and activities in response to the notice that may lead to a decline, the Commission has relied on the wording of clause 4 of the Applicant's trust deed and the information on the Applicant's website in order to determine whether the Applicant has charitable purposes.
15. The Applicant's website, under the heading "What do we do?", states:

"The Afrikaans Club of New Zealand is a socio-cultural organisation which also renders support services to immigrants from Southern Africa. This includes social networks, cultural recreation and business networking."
16. Under the heading "Functions of The Afrikaans Club", the website states:

"The Afrikaans Club offers the immigrant:

 - *A weekly electronic newsletter called "Brokkies" (English: "(News) Snippets"). This serves as an advertising and social contact medium at nominal costs. This newsletter is already being sent to more than a thousand families. Subscription is growing weekly.*

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

- Afrikaans music & stage plays ...
- Social functions.
- A social network.
- A business network.”

Relief of poverty

17. 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 the purpose must provide relief.²
18. Assisting people from a particular culture, or people who hold a certain ethnic identity, who are in need will be charitable under this head. For example in *Re Cohen v Wellington Hebrew Philanthropic Society (Inc)*³, the court held that assisting the resettlement of refugees was charitable as both for the relief of poverty and other purposes beneficial to the community.
19. The Commission has been unable to identify an intention to relieve poverty in the Applicant’s stated objects and the Applicant has not provided any evidence of such an intention. Therefore, the Commission has insufficient evidence to conclude that the Applicant has a purpose of relieving poverty.

Advancement of education

20. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced.
21. Some of the Applicant’s activities, such as promoting Afrikaans music and stage plays, may amount to advancing education about a particular culture or language.⁴
22. The purpose stated in clause 4 however, indicates that the Applicant’s main object is to promote South African activities for South Africans in New Zealand. This may involve the advancement of education for people who have no prior knowledge of South African language and culture, but it is unlikely to advance education for those people who are already familiar with that particular language and culture.

Other purposes 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 Charitable Uses Act 1601 (the Statute of Elizabeth).⁵

² *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

³ [1954] NZLR 1097.

⁴ *Canterbury Orchestra Trust v Smitham* [1978] 1 NZLR 787 (CA).

⁵ *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*

24. Providing support services for immigrants could provide a benefit to the community if this facilitated the immigrants' social integration into the community.
25. The Applicant's website states that it is "a socio-cultural organisation which also renders support services to immigrants from Southern Africa" and that it "provides a platform from which its members' adaptation to the new environment can be made somewhat easier". This appears to indicate that social integration is one of the Applicant's purposes.

Public or private benefit?

26. In addition to falling within one of the charitable purposes listed in section 5(1) of the Act, a purpose must provide a public benefit, that is, there must be an identifiable benefit assessed in the light of modern conditions and it must be for the general public or a sufficient section of the public.
27. The public benefit criterion necessarily requires that any private benefits arising from the Applicant's activities must only be a means of achieving an ultimate public benefit and therefore be ancillary or incidental to it. It will not be a public benefit if the private benefits are an end in themselves.⁶ In addition, proof that public benefit will necessarily flow from each of the stated purposes is required, not merely a belief that it will or may occur.⁷
28. The Applicant's website states that its activities include "social networks, cultural recreation and business networking". Based on the court's reasoning in the cases cited below, such activities are unlikely to indicate that the Applicant has charitable purposes.
29. In *Inland Revenue Commissioners v Baddeley*⁸, the court held that providing amusement, entertainment or social activities for members of an entity are not primary purposes which will necessarily provide a public benefit.
30. Several years earlier, in *Williams Trustees v Inland Revenue Commissioners*, the court had held that a trust intending to promote the moral, social, spiritual, and educational welfare of Welsh people in London by a variety of means including the establishment of a social centre, lacked the requisite charitable character. Lord Normand held:

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.

⁶ *Commissioners of Inland Revenue v Oldham Training and Enterprise Council* (1996) STC 1218; *Travel Just v Canada (Revenue Agency)* 2006 FCA 343 [2007] 1 CTC 294.

⁷ *Gilmour v Coats* (1949) AC 26; *Re Blyth* [1997] 2 Qd R 567, 582; *DV Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

⁸ [1955] AC 572, 600. See also *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380, 394-396.

“... while certain features of the Institute conformed to the idea of charity they were not so dominating, nor was the general character of the Institute such, as effectively to distinguish it from an ordinary social club.”⁹

31. In *Hadaway v Hadaway*¹⁰, the court held that assisting persons carrying on a particular trade or business or profession could not be charitable unless there was a condition that this assistance could only be made for a purpose which was itself charitable. In that case, any eventual benefit to the community was considered too remote from the purpose, which was to provide financial assistance to planters and agriculturalists.
32. In *Crystal Palace Trustees v Minister of Town and Country Planning*¹¹, the court held that providing a large park and amenities for public education and recreation were charitable purposes because there was no intention to further the interests of individuals engaged in trade or industry or commerce.
33. More recently, in *Inland Revenue Commissioners v Oldham Training and Enterprise Council*¹², the court held that promoting the interests of individuals engaged in trade, commerce and enterprise and support services for, and advice to, new businesses disqualified the organisation from having charitable status. In the event that there would be any benefit to the public, this would be too remote.
34. The Commission has concluded that the Applicant’s social and business networking activities are independent non-charitable purposes that are not ancillary to the Applicant’s charitable purposes.

Section 61B of the Charitable Trusts Act

35. 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 however, can “save” a trust that has both charitable and “non-charitable and invalid” purposes.
36. Section 61B can operate in cases where the entity’s **stated purposes** include charitable and non-charitable purposes (in which case the non-charitable purposes may be “blue pencilled out”). It can also operate where the purposes are capable of both a charitable and a non-charitable **interpretation** (in which case the purposes could be deemed to apply only in terms of the charitable interpretation).¹³ In both instances, the trust’s purposes must be substantially charitable in nature for section 61B to “save” the trust as a valid charitable trust.¹⁴

⁹ [1947] UKHL 1.

¹⁰ [1955] 1 WLR 16 (PC).

¹¹ [1951] 1 Ch 132.

¹² [1996] STC 1218.

¹³ *Re Ashton (deceased)* [1955] NZLR 192, 197; *Re Beckbessinger* [1993] 2 NZLR 362, 373.

¹⁴ *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.

37. For the reasons set out above, the Commission considers that the Applicant's main purpose, set out in clause 4(a) of the trust deed, is a non-charitable purpose. As there are no additional charitable purposes, it is not possible to "blue-pencil out" the non-charitable purpose to leave a charitable purpose.
38. The words used in clause 4(a) do not indicate an intention to create a substantially charitable trust. Therefore, the Commission does not consider that the Applicant's purpose is capable of a charitable interpretation.
39. Consequently, section 61B of the Charitable Trusts Act 1957 cannot operate to validate the trust.

Charities Commission's determination

40. 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 the trustee of 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

9/8/09
Date