

## Registration decision: The Browns Bay Racquets Club Incorporated

### The facts

1. The Browns Bay Racquets Club Incorporated (the Applicant) was first incorporated under the Incorporated Societies Act 1908 under the name "The Browns Bay Tennis & Squash Raquets Club Incorporated" on 7 September 1949. The Applicant's name was changed to "The Browns Bay Racquets Club Incorporated" on 31 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 7 July 2008.
3. Clause 4.1 of the Applicant's constitution states that its objects are as follows:

*"OBJECTS*

4.1 *The objects of the Club are:*

4.1.1 *To encourage and provide facilities for the competitive and social playing of the sports of Squash and Tennis.*

4.1.2 *To establish and maintain premises and associated amenities for the benefit of the Members."*
4. The Applicant's liquidation clause (clause 31.2) provides:

*"After the discharge of all liabilities, the net proceeds of such realisation and any resulting accumulation of income shall be given or transferred to other squash and tennis organisations on Auckland's North Shore having objects similar to the Objects."*
5. The Commission analysed the application for registration and on 9 July 2008 sent the Applicant a notice advising that its application may be declined on the basis that, while the purposes of the society were charitable, the constitution did not provide for surplus assets to be distributed solely for charitable purposes upon winding up. The Applicant was advised that if clause 31.2 was amended to read "to other **charitable** squash and tennis organisations on Auckland's North Shore having objects similar to the Objects", then the clause would meet registration requirements.
6. On 31 July 2008, the Applicant responded to the notice indicating its intention to amend its rules as suggested at a Special General Meeting. The Commission granted the Applicant an extension of time to allow for the Special General Meeting to be held and for the changes to be sent to the Companies Office.

7. On 25 August 2008, the Applicant advised the Commission that, following advice from one of its members, it had reconsidered its decision and was now unwilling to make the suggested change to the rules on the basis that "charitable sports clubs' cannot exist".

### **The issues**

8. 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, 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**

9. Under section 13(1)(b)(i) of the Act, to be registered as a charitable entity, a society or institution must be established and maintained for exclusively charitable purposes.
10. 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.<sup>1</sup> This means that the purpose must be directed at benefitting the public or a sufficient section of the public.

### **Charities Commission's analysis**

11. In assessing whether an entity will be "maintained" for charitable purposes, as required by section 13(1)(b)(i) of the Act, the Commission analyses the clauses in the entity's rules relating to winding up or dissolution.
12. 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.
13. While the Commission was initially prepared to conclude that the Applicant's purposes were charitable, it does not necessarily follow that an entity with similar purposes would also be charitable. "Charitable purpose" has a special meaning in law and while two organisations may have similar purposes, the specific nature of each may render one charitable and the other non-charitable. For example, another squash or tennis club with similar objects could have purposes that include providing private pecuniary profit, in which case that entity would not be charitable.

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


14. The Commission considers that the direction of surplus assets and funds to "other squash and tennis organisations on Auckland's North Shore having objects similar to [the Applicant's]" set out in clause 31.2 will not restrict distribution of surplus assets to an entity with charitable purposes. Accordingly, the Commission's view is that the Applicant is not "maintained for exclusively charitable purposes" as required by the Act.

### **Charities Commission's determination**

15. 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 society or institution 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

24/8/09  
Date