

Registration decision: Women in Film and Television (Auckland) Incorporated

Background

Women in Film and Television (Auckland) Incorporated (the Applicant) is a society incorporated under the Incorporated Societies Act 1908. The Applicant's constitution indicates that its primary object is to establish "a professional organisation to ensure that the interests of women are recognised and supported throughout the screen industry in New Zealand".

The Applicant applied to the Charities Commission for registration as a charitable entity on 12 June 2007.

The applicant's purposes are set out in clause 5 as follows:

"OBJECTS

The Society is established as a professional organization to ensure that the interests of women are recognised and supported throughout the screen industry in New Zealand. In particular the Society is established to:

- (a) provide a base for career support through information exchange;
- (b) encourage, underline and recognise the achievements of women working in the industry;
- (c) further the professional education of women through seminars and workshops;
- (d) build a profile for the Society as a professional women's organization, the activities of which will be of benefit to the screen industry as a whole."

The Commission analysed the application and, on 19 November 2007, sent the Applicant a letter advising that its application for registration might be declined because the primary purpose of the society did not meet the registration requirements in the Charities Act 2005.

In that letter the Commission also advised that the matters set out in clauses 5(a), (b) and (d) did not come within the definition of charitable purpose and the Commission was not satisfied that there was any benefit to the public arising from the activities of the society.

On 22 January 2008 the Applicant sent the Commission a submission in support of its view that the Applicant is established for charitable purposes and does provide a public benefit.

The Applicant submitted that its purposes as set out in Section 5 of its rules are charitable purposes in terms of the Charities Act in that the Applicant has

core purposes that fall within the categories of advancement of education and other purposes beneficial to the community.

The Applicant also submitted that its activities are not confined to members but have a wider benefit.

In summary, the Applicant requested the Commission to reconsider its intermediate decision and grant charitable status to the Applicant on the basis that the Applicant's constitution is focused on delivering broad education and general community benefit and its activities are available to the broad general public.

The issues

The issue that the Commission has to consider 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 Charities Act 2005.

The law on charitable purpose

Section 5 of the Charities Act defines 'charitable purpose' as including every charitable purpose relating to:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; or
- any other matter beneficial to the community.

The Commission applies the common law test (and any applicable statutory tests) for charitable purpose to determine whether an entity meets the requirements for registration.

To be charitable, a purpose must fall within one of the four categories of charitable purpose and be aimed at benefiting the public or a sufficient section of the public.

The benefit to the public should be capable of being identified and defined. Indirect benefits (where the benefit extends beyond the immediate beneficiaries) as well as direct benefits may be taken into account in assessing whether an entity provides sufficient benefit to the public. For example, courts have held that assisting nurses in promoting efficient nursing services provides an indirect benefit to patients.¹

¹ *In Re Harding, Dixon v Attorney-General* [1960] NZLR 379.

The benefit must be to the public at large, or to a sufficient section of the public.^{2, 3}

If the entity's benefits are available to anyone who, being suitably qualified, chooses to take advantage of them, it provides benefit to all the public, even though in some cases the number of actual beneficiaries may be quite small.

Where members of an entity are also the beneficiaries, any restrictions placed on who may join as a member must be reasonable and justifiable in the circumstances. Benefits must still be provided to a sufficient section of the public, either by providing benefits to members of the entity or by providing benefits to non-members.

Under section 5 of the Charities Act, all of an applicant's purposes must be charitable in nature, or the non-charitable purposes must be ancillary to a charitable purpose.

The Commission considers that the Applicant is not established and maintained for exclusively charitable purposes as the purposes include purposes that do not fall into any of the categories of charitable purpose and are aimed at providing a personal benefit to members, rather than a sufficient benefit to the public or a sufficient section of the public to meet the requirements for registration.

Commission's analysis

The Applicant's purposes as set out in the objects clause (clause 5) of its constitution are as follows:

"5 OBJECTS

The Society is established as a professional organization to ensure that the interests of women are recognised and supported throughout the screen industry in New Zealand. In particular, the Society is established to:

- (e) provide a base for career support through information exchange;
- (f) encourage, underline and recognise the achievements of women working in the industry;
- (g) further the professional education of women through seminars and workshops;
- (h) build a profile for the Society as a professional women's organization, the activities of which will be of benefit to the screen industry as a whole."

The Commission considers that the primary object of the Society, set out in the first sentence of clause 5, is not charitable because it is primarily aimed at benefiting the members of the Society personally, rather than the public or a sufficient section of the public.

² *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297; [1951] 1 All ER 31 (HL).

³ *Dingle v Turner* [1972] AC 601 cited in *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 (CA) and *Educational Fees Protection Society v Commissioner of Inland Revenue* [1992] 2 NZLR 115.

The Board has considered whether there is an argument that, by benefiting women in film and television, the Society is thereby providing a benefit to the community – ie because it is beneficial to society that women are encouraged to work in the film and television industry. However, taking the purposes as a whole and the Applicant's submission into account, the Commission is of the view that this is not the case.

The Commission is of the view that the intended benefits are primarily aimed at the professional support and development of women working in the film and television industry and that this is not within any of the categories of charitable purpose. The Commission also considers that any benefits flowing from the establishment of the Society primarily benefit the Applicant's members – who do not constitute a sufficient section of the public.

This is not considered sufficient to meet the requirement of section 13(1)(b)(i) of the Charities Act 2005.

Conferring a private benefit is only consistent with charitable purpose, where any private benefits are necessarily incidental to a public benefit. The courts have held that an organisation that exists primarily to advance the interest of its members, cannot be said to be charitable, because it confers private benefits, even where the carrying out of its objects also results in benefit to the community⁴.

In *Inland Revenue Commissioners v Yorkshire Agricultural Society*⁵ the Court said:

"There can be no doubt that a society formed for the purpose 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."

The degree of emphasis given to the interests of the members is such as to suggest strongly that the applicant was not established exclusively for charitable purposes. Rule 6 deals with the requirements for membership of the Society. Although membership is available on a 'friend of the society' and 'associate' basis, full membership is available only to women who have had a minimum of two years' experience in the screen industry.

The particular objects, set out in paragraphs 5(a), (b), and (d) are not charitable, they simply emphasise the focus of the aspirations of the Society as being for the enhancement of the professionalism of women in the screen industry.

⁴ *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380 at 405

⁵ [1928] 1 KB 611 AT 631

The Courts have required substantive public benefit to be demonstrated before holding that a professional body is charitable.

In the IPENZ case⁶ (*Institution of Professional Engineers New Zealand Incorporated v Commissioner of Inland Revenue*) Tipping J stated:

"... I consider that the following words of Lord Normand 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."

The Commission considers that paragraph 5(c) is charitable because it falls within the requirements for 'advancing education'. However, on its own this clause is insufficient to warrant a conclusion that the society has been 'established and maintained exclusively for charitable purposes'.

In *re Mason (deceased)*⁷ the Court held that an institution whose main object is the protection and advantage of those practising in a particular profession is not charitable. For object 5(c) to make the Applicant exclusively charitable, it would have to be the Applicant's main purpose, with the other purposes being ancillary to it. It is not considered that this is the case.

When considered collectively, the stated objects of the Applicant indicate that the main purpose of the Applicant is to benefit women members of the film and television industry rather than members of the public, and is therefore not charitable.

The Applicant's activities

The assessment of the Applicant's activities, ascertained from material supplied by the Applicant, confirms that the majority of the activities undertaken by the Applicant are primarily for its members and that these benefits do not confer a sufficient public benefit to be charitable.

Charities Commission's determination

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 exclusively for charitable

⁶ [1992] 1 NZLR 570

⁷ [1971] NZLR 714

purposes, as required by section 13(1)(b)(i) of the Charities Act 2005. The primary object of the society is to establish "a professional organisation to ensure that the interests of women are recognised and supported throughout the screen industry in New Zealand". This is not a charitable purpose as it does not fall within one of the four categories of charitable purpose recognised at law and is considered to be primarily aimed at furthering the interests of members of a professional group and not at benefiting the public or a sufficient section of the public.

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

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Sid Ashton
Chair



16-4-08
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Date