

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

The facts

1. Women in Film and Television (NZ) Incorporated (the Applicant) was incorporated under the *Incorporated Societies Act 1908* on 15 April 2009.
2. The Applicant applied to the Charities Commission (the Commission) for registration as a charitable entity under the *Charities Act 2005* (the Act) on 15 April 2009.
3. The Applicant's purposes and activities are set out in clauses 1.3 and 1.4 of its rules:

Objects

1.3 *The objects of the Society are:*

- 1.3.1 *to encourage, facilitate and support the involvement and advancement of women in the film, television and digital media industries of New Zealand;*
- 1.3.2 *to provide educational and other events to women and other industry members which promote the development of, and create opportunities for, the advancement of women in New Zealand film, television and digital media industries;*
- 1.3.3 *to develop the New Zealand film, television and digital media industries for the benefit of these industries and the general viewing audience.*

Activities

- 1.4 *Subject in every case to Rule 1.5 and Rule 1.6, the activities of the Society by which the charitable objects may be carried out include the following:*
 - 1.4.1 *Arranging and hosting seminars, meetings, events, prizes and awards and the like so as to support and develop the position of women in the film, television and digital media industries of New Zealand;*
 - 1.4.2 *providing information to women in the film, television and digital media industries of New Zealand on professional development matters;*
 - 1.4.3 *building relationships with industry organisations involved in the film, television and digital media industries of New Zealand;*
 - 1.4.4 *gathering and collating information relevant to women in the film, television and digital media industries of New Zealand;*
 - 1.4.5 *any associated activities that serve to advance the position of women in the film, television and digital industries of New Zealand, as determined by the Board.*

Restrictions on activities

- 1.5 *The Society may not carry out any activities or incidental activities other than those which further the advancement of the Society's charitable objects as outlined in Rule 1.3.*

Activities in New Zealand

- 1.6 *Notwithstanding any other term of this deed, the Objects for which the Society is established and the activities for which the Society Funds may be applied are limited to charitable purposes within New Zealand.*

4. The Commission analysed the application for registration and on 21 May 2009, sent the Applicant a notice advising that its application may be declined. The basis for this was that the wording of clause 1.3 indicated that the Applicant's primary purpose was to advance the interests of members of a profession, which was not a charitable purpose according to *Re Mason*.¹
5. On 24 June 2009, the Applicant responded to the notice, submitting the following:

*Membership is open to **any person** who is interested in supporting the objects of the society, and is the means by which financial support is ensured in order for the organisation to deliver its benefits to the industry.*

... [R v Mason] relates to professional organisations such as a Law Society or Society of Accountants etc. These organisations regulate the conduct of their members and are set up so as to ensure the members meet certain professional criteria...and tend to be 'exclusive' in nature.

WIFT on the other hand, allows any individual to join (albeit as a Friend in the event that they have no actual industry experience or are not female). ...

In short:

- 1. The purposes of WIFT NZ clearly fall within a charitable purpose, namely the advancement of education and other matters beneficial to the community;*
- 2. Its purpose is altruistic in nature;*
- 3. It is not a society that is primarily prescriptive and exclusive – such as a Law Society or other professional organisation;*
- 4. There is little or no difference between WIFT NZ and ..., which has been accorded Charitable status;*
- 5. Its activities benefit not only a section of the community (which is sufficient in itself), but also the public as a whole.*

6. The Commission considered the Applicant's response and on 21 December 2009, sent a second notice that may lead to decline on the basis that it had non-charitable purposes which did not provide sufficient public benefit.

¹ [1971] NZLR 714.

7. At the Applicant's request, Commission staff met with representatives of the Applicant on 27 January 2010.
8. On 18 February 2010, the Applicant proposed the following changes to its rules:

Objects

1.1 *The objects of the Society are:*

- 1.3.1 *to encourage, facilitate and support the involvement and advancement of women in the film, television and digital media industries of New Zealand;*
- 1.3.2 *to deliver educational and other activities and events to screen industry women, other industry members and all others interested in the screen sector, which promote the development of, and create opportunities in, the New Zealand film, television and digital media industries;*
- 1.3.3 *to participate in and promote the delivery of New Zealand screen work by New Zealanders for all New Zealanders.*

Activities

1.2 *Subject in every case to Rule 1.5 and Rule 1.6, the activities of the Society by which the charitable objects may be carried out include the following:*

- 1.4.1 *arranging and hosting seminars, meetings, events, prizes and awards and the like so as to support and develop the work of women in the film, television and digital media industries of New Zealand;*
- 1.4.2 *providing information to women and others in the film, television and digital media industries of New Zealand;*
- 1.4.3 *building relationships with industry organisations involved in the film, television and digital media industries of New Zealand;*
- 1.4.4 *gathering and collating information relevant to women in the film, television and digital media industries of New Zealand;*
- 1.4.5 *any associated activities that serve to advance the skills of the film, television and digital industries of New Zealand, the position of women in those industries, the creation of New Zealand screen work and the delivery of that work to the New Zealand public, as determined by the Board.*

9. The Commission analysed the proposed purposes and activities and on 1 March 2010, it informed the Applicant that these would not meet the requirements for registration because they were non-charitable and would not provide sufficient public benefit.

10. On 9 March 2010, the Applicant wrote to the Commission asking how it would be best to address the Commission's concerns. It also stated:

We are not a professional association ... in that we do not cover a particular profession and we don't have any powers to regulate or otherwise represent;...

... registration has been granted to a large number of organisations both similar and different to our own ... as a sample, we include here:

Screen Entities ...

Women's Associations ...

Public Benefit Arts Organisations ...

Leisure Activities ...

We contend that the activities of WIFT NZ as represented in both our current and draft objects cover the sectors of education, fundraising, research and training; and deliver benefit equally to women in the screen industry, others in the screen industry and the General Public in the same ways as many of the organisations already registered by the Commission.

11. On 16 March 2010, the Commission informed the Applicant that it was unable to provide any further assistance beyond the detailed written explanations that it had already given and the meeting that had been held with representatives of the Applicant on 27 January 2010. In support of its case-by-case approach to assessing applications, the Commission included the following quote from *Hester v Commissioner of Inland Revenue*:

The Commissioner is required to make assessments based on the application of the appropriate legal principles to a particular taxpayer. The fact the Commissioner has determined that the characteristics of another taxpayer led him to a different conclusion in respect of that taxpayer does not mean he is behaving in a discriminatory way. Rather, it means he is recognising what he perceives to be differences between the taxpayers that lead to a different outcome in respect of each of them. ... The mere fact the Commissioner has made a different assessment because he considers one taxpayer differs from another, does not amount to discrimination and does not affect the assessment.²

12. On 12 April 2010 the Applicant made the following submissions:

Whilst appreciating that the Commission takes a case-by-case approach to each application for registration as a charitable entity, it is not accepted that the fact that one particular entity has been registered by the Commission will have no bearing on any other applicant's eligibility for registration.

The case of Hester v Commissioner of Inland Revenue (2004) 21 NZTC 18,421, referred to in our letter is not, in fact, authority for this approach.

² (2003) 21 NZTC 18,182, 18,430. (Cited in *Hester v Commissioner of Inland Revenue* [2005] 2 NZLR 172, 188.)

The quote you have provided is obiter and, in any event, is to be read as only permitting different determinations where the examiner recognises what he perceives to be differences between [the two cases] that lead to a different outcome in respect of each of them.

If there are no perceptible differences, then a decision that is contrary to earlier decisions must be seen to be a breach of the Wednesbury principle, i.e. unreasonable. ...

Summary of WIFT NZ

WIFT NZ is an incorporated society set up to support the screen industry of New Zealand to continue telling NZ stories for the NZ public, with a particular emphasis on ensuring that women's stories and women's skills are part of that delivery. Support is primarily provided through educational activities which educate and inform those who work in the industry, those who are interested in working in the industry and those who are simply interested in film, television and digital media as creators or consumers.

The equal participation of women in cultural activities, and the representation of their stories in cultural capital, delivers a fundamental public benefit. In addition, a strong, highly skilled workforce ensures that New Zealand factual and fictional stories continue to be presented to the general public.

WIFT NZ relies on membership to support its work and strengthen delivery of its core educational activities. Membership is open to anybody who wishes to belong, although full membership, which brings with it the unique privileges of serving on the Board and voting at the AGM, is limited to women with more than two years experience in the industry.

WIFT membership is not restricted to and does not concentrate on any particular profession. Members include business and management executives, administration, reception, accounting, communications and marketing practitioners, creatives including writers, directors, actors and producers, technicians including lighting, sound, design, camera, composition and production staff, students across the spectrum and general public working in a myriad of other roles.

Educational activities, which are the primary activity for the organisation are, with a couple of exceptions, open to any WIFT NZ member or member of the public, although WIFT NZ members generally enjoy discounted access as a benefit of their financial support. Educational activities include a full annual programme of seminars, workshops, internships, mentoring, and presentations. Other activities, including relationship building, awards celebrations, screenings and networking, serve to strengthen the skills and profile of the screen industry for the benefit of the general public through the delivery of NZ screen work. All of these activities quite clearly fall within the ambit of the advancing education purposes . . .

Charitable Purpose

... WIFT NZ is clearly engaged in the advancement of education and in other matters beneficial to the community.

The three current objects of the Constitution, all of which are of equal merit and focus, quite clearly show this: ...

We submit that both the objects and activities encompass the delivery of education, the promotion of equal opportunities for women, the delivery of New Zealand cultural content and other matters of public benefit.

Not only do we provide activities beneficial to the general public; we provide activities that are beneficial to women per se. Women, who make up 51% of the population, have suffered traditional disadvantage and, as such, activities supporting them are by their very nature of general public benefit.

We refer the Commission to the vast number of registered organisations working with women ...

Clause 1.3.2

... does not limit its benefits to the members of the society. Educational events are open to all, members or non-members and nothing in Clause 1.3.2 states otherwise. ...

Re-drafted objects so that the language more directly reflects current activities

... We ... contend that they clarify and better represent our actual activities as they relate to our purposes and the Charities Act.

Professional Association

... R v Mason [1971] NZLR 714 ... is clearly distinguishable from the make-up, structure and purposes of WIFT. That case – and the reasoning therein relates to professional organisations such as a Law Society or Society of Accountants etc. These organisations regulate the conduct of their members and are set up so as to ensure the members meet certain professional criteria. They may provide benefits for their members, including the advancement of education, but they are established primarily in order to ensure certain codes of conduct are followed and tend to be ‘exclusive’ in nature.

WIFT on the other hand, allows any individual to join (albeit as a friend in the event that they have no actual industry experience or are not female). WIFT provides the advancement of education for all who choose to attend its seminars and workshops, and does not restrict the advancement of education to its members. ...

It is submitted that WIFT – unlike professional organisations such as law societies and accountants’ societies etc. which are properly covered by the R v Mason decision – is substantially, if not solely, altruistic in nature. Its primary and overriding purpose is to advance education across the board in respect of the world of film, television and digital media, with a recognition of and focus on women. ...

We also note that the Commission has granted registration to ... an organisation engaged in the professional development of screen writers, as stated in its objects and supported by its website. ...

Whilst we do not accept the classification of WIFT NZ as a professional organisation, we note that the Commission has granted the professional organisation, ... charitable status despite this being an organisation which far more clearly seems to have a professional organisation alignment.

Advancement of Education

... WIFT NZ does not have as its main object or any object, the protection and advantage of those practising in a particular profession because it does not represent a particular profession and it does not work to protect screen industry participants.

WIFT NZ delivers educational activities, open to all, which advance the development of screen work in New Zealand, the participation of anyone who wishes to be involved in it, and the presentation of New Zealand stories on screen for the benefit of all.

Public Benefit

... We contend that fostering public interest in film and television work, through the support of practitioners and the delivery of high quality screen experiences to the general public meets the same legal benchmark established by ...'s registration.

... WIFT NZ is supporting individuals and industries to enable them to deliver content, not for the benefit of simply those individuals and industries as providers, but to them and the general public as audiences / viewers of such content.

The trade, commerce and enterprise of the industry is not our primary objective. However, even were that to be the case, we note that the Commission has provided registration to ..., a screen body with whom we work closely. That organisation's purpose is to attract and support film production companies to bring their filming to Auckland locations for the economic benefit of the New Zealand screen industry and the region of Auckland. Likewise, ... has also received Commission registration and is engaged in the same activities with the same purposes, i.e. for the economic benefit of the New Zealand screen industry and the New Zealand economy.

We also note a number of commercial broadcasting enterprises who have achieved registration ...

Leisure Activities

... It is difficult to understand on what basis the Commission rejects film and television activities when it has registered a vast array of bodies associated with arts and leisure activities including sports clubs, cultural clubs, arts organisations etc. ...

Summary

In conclusion, WIFT NZ requests that the Charities Commission confirm WIFT NZ's registration as a charitable organisation on the basis of the following key points:

- 1. WIFT NZ is a not-for-profit society set up to provide educational, development and equal opportunity activities and services, in the employment and education sector, benefitting both women and*

the general public. These sectors, activities and beneficiaries mirror those of a large number of registered organisations and quite clearly sit within the ambit of charitable purposes delivered for public benefit.

2. *WIFT NZ is clearly altruistic in purpose.*
3. *Membership of WIFT is open to all with full membership restricted to women working in the screen industries who enjoy the extra privileges of eligibility for board service and voting privileges.*
4. *WIFT NZ is not a professional organisation as would be understood by the legal term professional organisation. It is not engaged in the business of regulating, protecting, advancing or representing a particular profession and does not represent any particular profession.*
5. *The primary purposes of WIFT NZ, as summarised in its objects and as evidenced by its activities, are the advancement of education, and the delivery of general public benefit through the delivery of New Zealand screen stories to the New Zealand public.*
6. *WIFT NZ's educational activities are broad, cover the spectrum of charitable purposes outlined in the Commission's own guidelines, and are available to the general public.*
7. *In comparing the objects and activities of existing entities given charitable status with the objects and activities of WIFT, it is demonstrably clear that there are no perceptible differences.*
8. *As a government body, the Commission is obliged to ensure that there is consistency of application of the requirements of the Act across screen industry, professional associations, bodies promoting trade, leisure groups and any other groups. ...*

The issue

13. 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) of the Act. In particular, 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.

The law on charitable purpose

14. Under section 13(1)(b) of the Act, to be registered as a charitable entity, 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.

15. 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.³ This means that the purpose must be directed at benefiting the public or a sufficient section of the public.
16. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.
17. In considering an application, section 18(3)(a) of the Act requires the Commission to have regard to the activities of the entity, the proposed activities of the entity, and any other information that the Commission considers relevant.

Charities Commission’s analysis

18. The Commission considers that the Applicant’s objects in clause 1.3 do not indicate an intention to advance religion. These purposes have therefore been considered in relation to the relief of poverty, the advancement of education, and other matters beneficial to the community. First, however, the Commission has considered the effect of clauses 1.5 and 1.6.

Effect of clauses purporting to limit objects and activities

19. Clauses 1.5 and 1.6 state:

Restrictions on activities

1.5 *The Society may not carry out any activities or incidental activities other than those which further the advancement of the Society’s charitable objects as outlined in Rule 1.3.*

Activities in New Zealand

1.6 *Notwithstanding any other term of this deed, the Objects for which the Society is established and the activities for which the Society Funds may be applied are limited to charitable purposes within New Zealand.*

20. In *M K Hunt Foundation Ltd v Commissioner of Inland Revenue*,⁴ Hardie Boys J cited with approval the comments Lawrence LJ made in *Keren Kayemeth le Jisroel Ltd v Commissioners of Inland Revenue*.⁵ In that case, the statute under consideration contained the phrase ‘for charitable purposes only’, and Lawrence LJ said in the Court of Appeal that “it is not enough that the purposes described in the memorandum should include charitable purposes. The memorandum must be confined to those purposes”.⁶ Hardie Boys J further wrote:

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

⁴ [1961] NZLR 405, 407.

⁵ [1932] 2 KB 465.

⁶ [1931] 2 KB 465, 481.

*In so holding, Lawrence L.J. makes it clear later in his judgment that he had in mind, not merely the phrase “charitable purposes only”, but also the cases which show that non-charitable objects will prevent recognition of the body in question as a charitable trust.*⁷

21. In *Commissioner of Inland Revenue v White*, the Court considered limitations in the constitution of the Clerkenwell Green Association. The Court noted that the constitution showed a clear intention that this object was exclusively charitable but went on to say:

*The charitable intention, clear as it is, is not conclusive in establishing charitable status, however, because clause 2(b) limits the field in which the charitable intention is to be effectuated. If the objects specified in clause 2(b) are of such a nature that there is not charitable purpose which will assist their achievement, then there is no charitable purpose within the specified field and the Association would not be entitled to registration as a charity. In other words, the mere insertion of the word “charitable” in clause 2(b) is not by itself enough to establish that the objects of the Association are charitable.*⁸

22. Finally, in *Canterbury Development Corporation v Charities Commission*, Young J held:

*... the mere fact that the constitution says that CDC’s objects are charitable does not make CDC charitable although such a declaration is relevant in assessing whether they are ... in the end the objects and operation of the organisations either support a charitable purpose or they do not.*⁹

23. The Commission does not consider that the inclusion of clauses 1.5 and 1.6 provides conclusive evidence that the Applicant’s purposes are exclusively charitable.

Relief of poverty

24. In order to be charitable under the relief of poverty, a purpose must be directed at people who are poor, in need, aged, or suffering genuine hardship and it must provide relief.¹⁰
25. “Poverty” is interpreted broadly in law and a person does not have to be destitute to qualify as “poor”.¹¹ People who are in need, aged, or who are suffering genuine financial hardship from a temporary or long-term change in their circumstances are likely to qualify for assistance. Generally, this will

⁷ [1961] NZLR 405, 408.

⁸ (1980) 55 TC 651, 653.

⁹ HC WN CIV 2009-485-2133 [18 March 2010] at para 56.

¹⁰ *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

¹¹ *Re Bethel* (1971) 17 DLR (3d) 652 (Ont: CA); affirmed sub nom *Jones v Executive Officers of T Eaton & Co Ltd* (1973) 35 DLR (3d) 97 (SCC) referred to in *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342. See also *Re Pettit* [1988] 2 NZLR 513.

include anyone who does not have access to the normal things of life that most people take for granted.¹²

26. To provide “relief”, the people who would benefit should have an identifiable need arising from their condition that requires alleviating and these people should have difficulty in alleviating that need from their own resources.¹³

27. The Applicant’s purposes in clauses 1.3.1 and 1.3.2 are:

1.3.1 *to encourage, facilitate and support the involvement and advancement of women in the film, television and digital media industries of New Zealand;*

1.3.2 *to provide educational and other events to women and other industry members which promote the development of, and create opportunities for, the advancement of women in New Zealand film, television and digital media industries;*

28. In its letter of 12 April 2010 the Applicant states:

We submit that both the objects and activities encompass the delivery of education, the promotion of equal opportunities for women, the delivery of New Zealand cultural content and other matters of public benefit.

Not only do we provide activities beneficial to the general public; we provide activities that are beneficial to women per se. Women, who make up 51% of the population, have suffered traditional disadvantage and, as such, activities supporting them are by their very nature of general public benefit.

29. The Applicant has not provided any evidence that the women it assists have an identifiable need that requires alleviating and that they would have difficulty in alleviating that need from their own resources. The Commission therefore considers that the purposes in clauses 1.3.1 and 1.3.2 do not amount to the relief of poverty.

Advancement of education

30. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. The modern concept of “education” covers formal education, training and research in specific areas of study and expertise. It can also include less formal education in the development of individual capabilities, competencies, skills, and understanding, as long as there is a balanced, and systematic process of instruction, training, and practice.¹⁴ In order to advance education, learning must be passed on to others.

¹² *Inland Revenue Commissioners v Baddeley* [1955] AC 572; [1955] 1 All ER 525, applied in *Re Pettit* [1988] 2 NZLR 513 and *Re Centrepont Community Growth Trust* [2000] 2 NZLR 325.

¹³ *Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney-General* [1983] 1 All ER 288. See also *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342.

¹⁴ *Re Mariette* [1915] 2 Ch 284. See also *Chesterman v Federal Commissioner of Taxation* (1923) 32 CLR 362; *Lloyd v Federal Commissioner of Taxation* (1955) 93 CLR 645;

31. Education does not include advertisements for particular goods or services or promotion of a particular point of view.¹⁵ If research is being conducted, it must be carried out in an objective and impartial way and the useful results made available, or accessible to the public.
32. In New Zealand in the case of *Re Collier (deceased)*, Hammond J set out the test for determining whether the dissemination of information qualified as charitable under the head of advancement of education:
- ... it must first confer a public benefit, in that it somehow assists in the training of the mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the work must reach some minimal standard. For instance, in Re Elmore deceased [1968] VR 390 the testator's manuscripts were held to be literally of no merit or educational value.*¹⁶
33. The Applicant's purpose in clause 1.3.2 is:
- 1.3.2 *to provide educational and other events to women and other industry members which promote the development of, and create opportunities for, the advancement of women in New Zealand film, television and digital media industries*
34. In New Zealand, *Re Mason (deceased)* is authority for the proposition that promoting education for particular individuals who do not represent a sufficient section of the community will not be charitable. In this case McMullin J held:
- The test of whether a library is a charity is whether it tends to the promotion of education and learning for the public or a sufficiently wide section of the public or whether it benefits only a more limited number of persons. If it is in the first class it will be charitable, if in the second class it will not be charitable.*¹⁷
35. In applying the test formulated in *Re Mason*, the Commission does not consider that the educational events in the Applicant's current clause 1.3.2 are charitable. This is because they are only provided for women and other members of the film, television and digital media industries, which is not a sufficiently wide section of the general public.
36. The Commission notes that in its email of 18 February 2010, the Applicant proposed extending the availability of the educational activities in clause 1.3.2 to "all others interested in the screen industry". In addition, in its letter of 12 April 2010 the Applicant states:

Chartered Insurance Institute v London Corporation [1957] 1 WLR 867; *Flynn v Mamarika* (1996) 130 FLR 218.

¹⁵ *In re Shaw (deceased)* [1957] 1 WLR 729; as interpreted in *Re Hopkins' Will Trusts* [1964] 3 All ER 46. See also *Re Collier* [1998] 1 NZLR 81.

¹⁶ [1998] 1 NZLR 81, 91-92.

¹⁷ [1971] NZLR 714, 722

WIFT NZ is an incorporated society set up to support the screen industry of New Zealand to continue telling NZ stories for the NZ public, with a particular emphasis on ensuring that women's stories and women's skills are part of that delivery. Support is primarily provided through educational activities which educate and inform those who work in the industry, those who are interested in working in the industry and those who are simply interested in film, television and digital media as creators or consumers. ...

Educational activities, which are the primary activity for the organisation are, with a couple of exceptions, open to any WIFT NZ member or member of the public, although WIFT NZ members generally enjoy discounted access as a benefit of their financial support. Educational activities include a full annual programme of seminars, workshops, internships, mentoring, and presentations. Other activities, including relationship building, awards celebrations, screenings and networking, serve to strengthen the skills and profile of the screen industry for the benefit of the general public through the delivery of NZ screen work. All of these activities quite clearly fall within the ambit of the advancing education purposes ...

WIFT NZ delivers educational activities, open to all, which advance the development of screen work in New Zealand, the participation of anyone who wishes to be involved in it, and the presentation of New Zealand stories on screen for the benefit of all.

37. This information indicates that the Applicant may be undertaking some educational activities for the benefit of the public which would be charitable, but this is not reflected in the current wording of its purposes.
38. In addition, the Commission considers that neither the current, nor the proposed, clause 1.3.2 is exclusively charitable under the advancement of education because these clauses include the provision of "other events". "Other events" is broad enough to include activities that do not come within the advancement of education, such as networking.
39. Overall, the main purpose of the Applicant appears to be to "promote the development of, and create opportunities for, the advancement of women in New Zealand film, television and digital media industries". This appears to be the promotion of a particular point of view, which does not amount to the advancement of education for the benefit of the public.
40. In light of the above, the Commission concludes that the purpose outlined in clause 1.3.2 is not exclusively charitable under the advancement of education.

Other matters beneficial to the community

41. 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)¹⁸, which are:

- 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.

42. In *Travis Trust v Charities Commission*, Joseph Williams J held:

But, as Lord Bramwell said in the same case “certainly every benevolent purpose is not charitable”. So in a deft circumlocution of legal logic, we are required in considering what is beneficial to the community under the last of the Pemsel heads to look back to the “spirit and intendment” of the preamble to the Statute of Elizabeth to assist in dividing between those purposes that are both beneficial and charitable, and those that are beneficial but not charitable. To make the division, regard must be had to the particular words of the preamble and, it has now long been held, any cases in which purposes have been found to be within the spirit and intendment of the preamble by analogy.¹⁹

*. . . 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.²⁰[Emphasis added]*

43. In *Inland Revenue Commissioners v Baddeley*²¹ Lord Reed held that providing entertainment and amusement is not a charitable purpose. Similarly, in *Canterbury Orchestra Trust v Smitham*, Richmond P held:

¹⁸ *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 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.

¹⁹ (2009) 24 NZTC 23,273, 23,276-77.

²⁰ (2009) 24 NZTC 23,273, 23,281.

²¹ [1955] AC 572.

*There can be no doubt since the decision of the Court of Appeal in England in Royal Choral Society v Commissioners of Inland Revenue [1943] 2 All ER 101 that a trust for the advancement of musical education is charitable. In his judgment Lord Greene MR recognised that the educative purposes of the trust could be found both in the education and training of musicians and also in the education of the public by raising the standard of musical taste and giving members of the public an opportunity of hearing and becoming familiar with a particular type of music (in that case choral music). . . . But it would seem to have been recognised by Lord Greene in the Royal Choral Society case that a society formed to promote music merely for the **amusement** of the members would not be charitable.²² [Emphasis added]*

44. The Applicant's purpose in the current clause 1.3.3 is:

to develop the New Zealand film, television and digital media industries for the benefit of these industries and the general viewing audience.

45. The Applicant's purpose in the proposed clause 1.3.3 is:

to participate in and promote the delivery of New Zealand screen work by New Zealanders for all New Zealanders.

46. The Commission concludes that neither of these clauses are restricted to purposes that would educate the public or which would be analogous to purposes which Courts have held to be charitable under "other matters beneficial to the community". These clauses could include non-charitable purposes which merely provide amusement or entertainment.

Public or private benefit?

47. 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.²³ 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.²⁴
48. In *Commissioners of Inland Revenue v Yorkshire Agricultural Society*, the Court said:

There can be no doubt that a society formed for the purposes merely of 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

²² [1978] 1 NZLR 787, 795.

²³ *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.

²⁴ *Gilmour v Coats* [1949] AC 426; *Re Blyth* [1997] 2 Qd R 567, 582; *D V Bryant Trust Board v Hamilton City Council* [1997] 3 NZLR 342, 350.

*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.*²⁵

49. 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 Athletic 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 the 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.*²⁶

48. In *Commissioner of Inland Revenue v Medical Council of New Zealand*²⁷ the Court of Appeal held that the principal function of the Medical Council was the registration of medical practitioners. The Court 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 therefore the council was an institution established exclusively for charitable purposes.
49. Applying the case law cited above, the Commission considers that while some public benefits may arise from the Applicant's purposes and activities, the private benefits arising from these purposes and activities cannot be regarded as incidental. In clauses 1.3.1 and 1.3.2 the benefits are for women in the film, television, and digital media industries and in clause 1.3.3 the benefits are for the film, television, and digital media industries themselves.

Applicant's submissions

50. In its email of 9 March 2010 and its letter of 12 April 2010, the Applicant has identified a number of entities which it considers are similar to itself, such as screen entities, women's associations, public benefit arts organisations, and leisure activities.
51. The Commission points out that it takes a case-by-case approach to each application for registration as a charitable entity. The Commission's

²⁵ [1928] 1 KB 611, 631.

²⁶ [1992] 1 NZLR 570, 582.

²⁷ [1997] 2 NZLR 297.

decisions are based on an assessment of the relevant case law and the applicant's specific purposes and activities as required by section 18(3)(a) of the Charities Act. For example:

- in *Victorian Women Lawyers' Association Incorporated v Federal Commissioner of Taxation*,²⁸ the Federal Court of Australia held that an association formed for the advancement of women in the legal profession was charitable because of the historical and persisting disadvantage of women in that profession.
- in *Canterbury Orchestra Trust v Smitham*²⁹ the New Zealand Court of Appeal held that a trust to encourage the training of musicians and the performance of orchestral compositions and concert works was charitable because of its educational value for both the musicians and the public.
- in *Travis Trust v Charities Commission*³⁰ the High Court held that leisure activities could be charitable if they demonstrated that a charitable purpose was being achieved.

52. The Commission has reviewed all of the registered charitable entities identified by the Applicant. Some of these entities have subsequently been removed from the Charities Register. In all other cases, the Commission has concluded that there are substantial differences between the purposes and activities of those charitable entities and the Applicant.

53. In its letter of 24 June 2009, the Applicant states that "its purpose is altruistic in nature" and in its letter of 12 April 2010 the Applicant states that it is "substantially, if not solely, altruistic in nature".

54. The Commission does not consider that such statements indicate that the Applicant has exclusively charitable purposes. In this regard, the Commission notes that the *Law of Charity* states:

Though there are judicial statements aligning the legal concept of charity to acts and purposes dictated by 'a spirit of charity or benevolence' or 'a desire to do good', these are misleading because ... what makes a purpose charitable at law is not motive but congruence with the legal concept of 'charitable'.³¹ [footnotes excluded]

Conclusion

55. The Commission concludes that the purposes in clauses 1.3.1, 1.3.2, and 1.3.3 are not exclusively charitable and do not provide sufficient public benefit.

²⁸ [2008] 170 FCR 318.

²⁹ [1978] 1 NZLR 787.

³⁰ (2009) 24 NZTC 23,273.

³¹ Gino Dal Pont, *Law of Charity*, LexisNexis Butterworths, Australia 2010, p 21.

Charities Commission’s determination

56. 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 for exclusively charitable purposes, as required by section 13(1)(b) 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

.....
Date