The Southland Christmas Parade Charitable Trust (New Zealand Charities Commission Registration Decision, Decision No 2012–06, 24 May 2012)

The Southland Christmas Parade Charitable Trust (the applicant) was originally incorporated as a charitable trust under the Charitable Trusts Act 1957 (NZ) in 1999, and subsequently registered as a charity by the Charities Commission (the Commission) in 2009. It was removed from the Register in 2010 for failing to file its 2009 Annual Return and financial statements.

The applicant reapplied for registration as a charitable entity on 14 September 2011, but on 8 February 2012 the Commission sent the applicant a letter stating that its purposes were not exclusively charitable. The Commission took the view that the applicant’s purposes were mainly to provide entertainment. The matter then came before the Commission for this formal decision.

Under the Charities Act 2005 (NZ) (the Act), section 13 requires that a trust requesting registration as a charity must be able to show that it is of a kind which generates an amount of income in trust for charitable purposes. Charitable purposes are defined in section 5(1). In addition to having a charitable purpose, there must be a public benefit involved.

New Zealand case law follows the older English line of authority which holds that in order to be charitable an entity must have exclusively charitable purposes: McGovern v Attorney-General [1982] 1 Ch. 321 at 341; Molloy v Commissioner of Inland Revenue [1981] 1 NZLR 688 at 691. The purposes of the applicant were contained in clause 3 of its Trust Deed, and followed the wording of section 38 of the Charitable Trusts Act 1957.

The Commissioner rejected the view that the applicant’s objects were entirely charitable, despite clause 3.12 excluding ‘non-charitable’ objects from the applicant’s activities. On this point, the Commission followed Canterbury Development Corporation v Charities Commission [2010] NZHC 331 where Young J said that the mere fact that an entity’s constitution states that its objects are charitable does not make them charitable in reality (at [56] of that decision).

One of the charitable purposes under the Act is the relief of poverty, but the Commission said that the applicant’s activities were not directed at the relief of poverty. They were directed at the provision of amusement. Although the parade conducted by the applicant was the means by which it collected money for charity, including for ‘less privileged children’, the Commission found that the parade was not aimed only at ‘the underprivileged’ but at ‘the whole community’ (at [28]).

On the issue of the charitable purpose of the advancement of education, the Commission said that in order to advance education the applicant would have to provide some form of education and to ensure that learning was advanced. It took the view that ‘education does not include advertisements for particular goods or services or promotion of a particular point of view’ (at [30]). The Commission concluded that education was not a primary focus of the parade, although there may have been some secondary educational benefits (making floats, volunteering, children’s activities) which were incidental to the main purpose of entertainment.
The Commission gave short shrift to the possibility of an advancement of religion purpose. A purpose to advance religion must be for the benefit of a religion. Despite clause 3 of the applicant’s Trust Deed referring to a ‘religious instruction’ purpose, the Commission found that the applicant’s own financial statements revealed that the topics covered in the parade in 2010–2011 were reindeer, Santa Claus, pirates, castles, Mary Poppins, Spiderman, Angels, the Flintstones and birthday cakes. The Commission stated that this showed ‘insufficient evidence’ of religious instruction (at [36]).

Charitable purposes can also include other matters beneficial to the community. The Commission said that in order to qualify under this head of charity, the purpose must be ‘beneficial to the community and must be within the spirit and intention of the purposes set out in the preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth)’ (at [37]). Clause 3 of the applicant’s Trust Deed referred to objects intended to benefit Southland and its community. The Commission agreed that this was a sufficient section of the community for the applicant’s purposes to be of public benefit. However, this did not advance the applicant’s cause if its objects were not charitable as a whole.

Organisations can benefit the community without being charitable. The Commission noted that charitable purposes as set out in the Statute of Elizabeth have been added to over time, since charitable purposes ‘must change to reflect current social and economic circumstances’ (at [42]). The wording of the applicant’s charitable purposes clauses came from section 38 of the Charitable Trusts Act 1957. The Commission took the view, based on case law, that not all these purposes were charitable. Purposes such as those relating to athletic sports, supporting individual losses from fires (no public benefit), and giving rewards for acts of courage (no public benefit) were not necessarily charitable. Based on this analysis, the Commission found that clauses 3.8 (encouragement of skills, industry and thrift) and 3.10 (rewards for acts of courage) of the applicant’s purposes were not charitable (at [45]).

Turning to the applicant’s activities, there was found to be only one, the holding of a Christmas Parade. New Zealand case law supports the view that sporting, entertainment, and social activities are not charitable in their own right. The Commission state that the applicant’s main purpose was to provide entertainment and that any link to an ‘underlying, deeper purpose that may be charitable’ was ‘too tenuous to be recognised’ (at [48]). Moreover, the applicant’s actual fundraising was ‘a minor activity’ (around 4% of its expenditure: $3338 in 2011, $2353 in 2010 and $2782 in 2009), and the parade itself ‘an independent purpose’ (at [52]).

Therefore the applicant’s purposes were not charitable. It was not a valid charitable trust under the Charitable Trusts Act 1957 either, since its objects were not exclusively charitable. Nor could it be saved under section 61B of that Act since its objects did not evince ‘a substantially charitable mind’ with an intention to create a charitable trust. The applicant was denied registration as a charity.

The decision may be viewed at:

Implications of this decision

Charitable purpose is defined in the Charities Act 2005 (NZ) (the Act) as relating to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community: section 5(1). This is the same definition as in the common law. Sections 5(3) and 5(4) provide that despite the requirement to be exclusively charitable, ancillary, non-charitable purposes may be present. Recognition as a charity is still possible under the Act if any non-charitable purposes are ‘merely ancillary to a charitable purpose of the... society’ (section 5(3) of the Act, emphasis added). Ancillary is defined as ‘ancillary, secondary, subordinate, or incidental to a charitable purpose’ and ‘not an independent purpose’: section 5(4). In this case, the applicant failed to show that it had any charitable purposes as defined. Although its activities had some public benefit, this was no help to its application if its purposes were not charitable.