

GIFTS TO CHARITY – SOME PITFALLS

The law relating to charities has a long and unique history. Despite legislative changes the Courts have continued to refer back to the eclectic list in the preamble to the Charitable Uses Act 1601 for the definition of the term “charity”.

Despite popular belief the Charities Act 2005 (“CA”) did not change the definition of charity. The four classes remain:

- trusts for the relief of poverty;
- trusts for the advancement of education;
- trusts for the advancement of religion; and
- trusts for other purposes beneficial to the community not falling under any of the preceding heads.

A number of applications for registration under the CA have been declined by the Charities Commission and several appeals to the High Court are pending. When advising clients on gifts to charity or charitable trusts the following points should be remembered.

1. When drafting wills or trust instruments it is important to specify the correct name of the charitable organisation concerned. This sounds fundamental but some organisations are better known under slightly different names. For example a gift to the Westpac Rescue Helicopter should be made to the Life Flight Trust. Another example is that a gift to St John’s Ambulance should be made to The Order of St John. The New Zealand Charity and Legal Gazette contains clauses for many charitable organisations.
2. There are dangers in specifying the purpose for which a gift should be applied too narrowly. For example in *Alacoque v Roche* [1998] 2 NZLR 250 a gift to a convent which had closed 8 months before the deceased’s death failed.
3. Having said that, if a general charitable intention can be gleaned then despite directions which are indefinite, ambiguous or insufficient, the Court will have jurisdiction to approve a scheme to administer the charitable trust – see Garrow & Kelly’s *Law of Trusts and Trustees* 6th edition at paragraph 12.38.1. One expedient therefore is to draft the will or deed on the basis that the trust property is to be applied by the trustees for such charitable purposes as they shall from time to time think fit accompanied by the expression of a wish, though without imposing a binding trust, that the trustees will so far as they consider it practicable to do so, apply the trust funds for particular purposes nominated by the will-maker or settlor.
4. Another popular misconception is that trusts for political purposes or sport are charitable; often this is not the case. The Sensible Sentencing Trust has recently been told by the Charities Commission that its application is unlikely to be granted because its main purpose is political. In *Travis Trust v Charities Commission* (2009) 24 NZTC 23, 273 Joseph Williams J held that sponsorship of a Horse Race was not charitable.

One charity that has been successfully registered with the Charities Commission is the Victoria University Foundation which celebrates its 20th anniversary this year. Wellington practitioners especially those who have been educated at Victoria University are encouraged to consider the Foundation's work both in their personal donations and when advising clients. The Foundation's website provides the appropriate wording for a gift.

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