

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2017-485-775
[2018] NZHC 2273**

IN THE MATTER of an appeal under s 59 of the Charities Act
2005 from a decision of the Charities
Commission dated 21 August 2017

AND IN THE MATTER FAMILY FIRST NEW ZEALAND
Appellant

Hearing: 30 April – 1 May 2018

Counsel: P McKenzie QC and Ian Bassett
P Gunn and M McKillop for the Charities Registration Board

Judgment: 31 August 2018

JUDGMENT OF SIMON FRANCE J

[1] Family First New Zealand (Family First) is an organisation founded on the principle that society is a better place if the traditional family unit is accorded primacy and support. It seeks to convince others of this viewpoint in various ways – production of material, lobbying, organising themed conferences, seeking law change and generally taking any opportunity to have society move towards the model it favours.

[2] Shortly after it was formed, Family First sought and obtained registration as a charity. This status has considerable tax benefits. To not have such a status is to place the entity at a disadvantage in terms of pursuing public contributions.

[3] Recently, following a reconsideration of Family First’s purposes and activities, the Charities Registration Board (the Charities Board) decided to deregister it as a charity.¹ It was decided Family First did not exist solely for charitable purposes, a key requirement for a charity.

[4] This is the second deregistration decision the Charities Board has made in relation to Family First. Its first decision² was quashed due to the subsequent decision of the Supreme Court in *Re Greenpeace of New Zealand Inc.*³ Prior to *Greenpeace* there appeared to be a rule that political purposes were never charitable purposes,⁴ and this had featured significantly in the Charities Board’s initial deregistration decision. In *Greenpeace*, the Supreme Court rejected the proposition that advocacy or political purposes were always non-charitable, holding instead that a case by case assessment was required. Accordingly, since the Charities Board had relied on the previous rule, the matter was referred back for reconsideration.⁵ The Charities Board has reached the same decision and Family First again appeals.⁶

Relevant law

General

[5] Section 13 of the Charities Act 2005 (the Act) sets out the essential requirements for an entity to be registered as a charity. Under s 13(1)(a), in the case of trustees of a trust, an entity qualifies for charitable registration if “the trust is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes”.

¹ *Deregistration Decision: Family First New Zealand (CC10094)* Charities Board Decision D2017-1, 21 August 2017 [2017 *Deregistration Decision*].

² *Deregistration Decision: Family First New Zealand (CC42358)* Charities Board Decision D2013-1, 15 April 2013.

³ *Re Greenpeace of New Zealand Inc* [2014] NZSC 105, [2015] 1 NZLR 169.

⁴ See, for example, *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 (CA); and *Knowles v Commissioner of Stamp Duties* [1945] NZLR 522 (SC).

⁵ *Re Family First New Zealand Inc* [2015] NZHC 1493, (2015) 4 NZTR 25-014.

⁶ The High Court when referring the matter back had provided guidance or observations on some issues. Family First read these observations as a blueprint for registration and so contends the Charities Board has not given proper weight to the decision. I observe, however, whatever the intentions of the first decision (which I doubt was as directive as Family First read it), the task now is to consider an appeal by way of rehearing from the current Charities Board deregistration decision.

[6] Section 5(1) of the Act provides that a charitable purpose includes “every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community”.

[7] The following passage from a recent article by Jane Norton provides a helpful summary of the key principles:⁷

Generally speaking, an organisation can be registered as a charity if its purposes are exclusively charitable and it is for the benefit of the public. A charitable purpose is one that falls under the four heads of charity: the relief of poverty; the advancement of education; the advancement of religion; and any other matter beneficial to the community (Charities Act 2005, s 5(1)). For an organisation to fall under the fourth head of charity – a purpose beneficial to the community – it must be sufficiently similar (but not necessarily identical) to a purpose previously accepted as charitable. An organisation’s purposes may be identified from its statement of objects or inferred through its activities. A public benefit is one that is identifiable and defined and aimed at the general public or a sufficient section of it.

[8] The need to establish both public benefit and charitable purpose, and the route to establishing charitable purpose under the fourth head, were confirmed in *Greenpeace*:⁸

The language and structure of s 5(1) make it clear that, although “any other matter beneficial to the community” may qualify, the object must also be a “charitable purpose”. The method of analogy to objects already held to be charitable is also the safer policy since charitable status has significant fiscal consequences. Since the common law methodology is assumed in New Zealand by the Charities Act, we consider that it would not be appropriate for this Court to abandon the analogical approach in favour of the view that benefit to the public presumptively establishes the purpose as charitable.

[9] Public benefit has two aspects – the purpose must be one the attainment of which would be beneficial to the community, and it must benefit all of, or at least a significant section of, the public.

⁷ Jane Calderwood Norton “Controversial Charities and public benefit” [2018] NZLJ 64 at 64.

⁸ *Greenpeace*, above n 3, at [30] (footnote omitted).

Political purpose, advocacy, and Greenpeace

[10] It had been a long-standing rule that if a primary purpose of an organisation was political, that would preclude charitable status.⁹ This was because a charity's purposes must be exclusively charitable, and political purposes are not charitable. This remains the law of England.¹⁰ When one understands political to not be limited to the political party context, but to be a wider term covering advocacy for changes in legislation or government policy, the roadblock is better understood as being that a purpose of advocating for change to the law or government policy,¹¹ unless only incidental to the organisation's primary purpose, was not seen to be capable of being charitable.

[11] The existence of a fixed non-charitable status for advocacy was potentially reflected in s 5(3) of the Act:¹²

To avoid doubt, if the purposes of a trust, society, or an institution include *a non-charitable purpose (for example, advocacy)* that is merely ancillary to a charitable purpose of the trust, society, or institution, the presence of that non-charitable purpose does not prevent the trustees of the trust, the society, or the institution from qualifying for registration as a charitable entity.

[12] In *Greenpeace*, however, the Court differed on the significance of the meaning of this provision. The minority considered the italicised words to be legislative endorsement of the common law that advocacy, unless ancillary, was a non-charitable purpose.¹³ This had been the approach taken by the Charities Board in its first deregistration decision. By contrast, the majority considered that was reading too much into the subsection.¹⁴ Rather, its purpose was to make clear that non-charitable ancillary purposes did not prevent charitable status. The majority held that advocacy and political purpose did not automatically prevent charitable status.

⁹ The first New Zealand decision was *Perpetual Trustees Estate and Agency Co of New Zealand Ltd v League of Nations Union of New Zealand* [1941] NZLR 1065 (SC).

¹⁰ *Bowman v Secular Society Ltd* [1917] AC 406 (HL); *McGovern v Attorney-General* [1982] Ch 321; and *Southwood v Attorney-General* [2000] EWCA Civ 204. For a discussion see Juliet Chevalier-Watts "Shedding the shackles of *Bowman*: A critical review of the political purpose doctrine and charity law in New Zealand" [2015] NZLJ 108.

¹¹ Indeed, advocating for the status quo was similarly regarded as non-charitable: *Molloy*, above n 4.

¹² Emphasis added.

¹³ *Greenpeace*, above n 3, at [124].

¹⁴ At [55]–[58].

[13] *Greenpeace* took place against the backdrop of the High Court of Australia decision in *Aid/Watch Inc v Commissioner of Taxation*.¹⁵ There the High Court had also rejected the political purpose doctrine. Indeed, the majority held the opposite, namely that advocacy could in itself be a public benefit to the extent that it generated public debate and thereby enhanced the democratic process. Charitable status could thereby be established without the need to show that the goal being advocated for, if achieved, would be a public benefit. While agreeing on the rejection of the political purposes exception, the majority in *Greenpeace* did not accept this second proposition.¹⁶

Although, for the reasons given, a political purpose exclusion is inappropriately conclusive when considering charitable purpose, we consider that the promotion itself, if a standalone object not merely ancillary, must itself be an object of public benefit or utility within the sense used in the authorities to qualify as a charitable purpose. *As indicated above at paragraphs [59] to [71], such public benefit or utility may sometimes be found in advocacy or other expressive conduct. But such finding depends on the wider context (including the context of public participation in processes and human rights values), which requires closer consideration than has been brought to bear in the present case.*

[14] Concerning examples of advocacy that are charitable, the Supreme Court observed:¹⁷

[71] Just as promotion of the abolition of slavery has been regarded as charitable, today advocacy for such ends as human rights or protection of the environment and promotion of amenities that make communities pleasant may have come to be regarded as charitable purposes in themselves, depending on the nature of the advocacy, even if not ancillary to more tangible charity. That result was looked to as one that might well come about in relation to protection of the environment by Somers J in *Molloy*. In the present case the Board has accepted that Greenpeace's object to "promote the protection and preservation of nature and the environment" is charitable. Protection of the environment may require broad-based support and effort, including through the participatory processes set up by legislation, to enable the public interest to be assessed. In the same way, the promotion of human rights (a purpose of the New Zealand Bill of Rights Act 1990, as its long title indicates) may depend on similar broad-based support so that advocacy, including through participation in political and legal processes, may well be charitable.

¹⁵ *Aid/Watch Inc v Commissioner of Taxation* [2010] HCA 42, (2010) 241 CLR 539.

¹⁶ *Greenpeace*, above n 3, at [103] (emphasis added).

¹⁷ *Greenpeace*, above n 3 (footnotes omitted).

[15] Finally, however, and perhaps counterbalancing the gains advocacy groups may have sensed *Greenpeace* represented, is the following passage, the last sentence of which reinforces that the generation of public debate is not enough – the underlying purpose or cause of an entity must both be charitable and in the public benefit:¹⁸

[73] Advancement of causes will often, perhaps most often, be non-charitable. That is for the reasons given in the authorities – it is not possible to say whether the views promoted are of benefit in the way the law recognises as charitable. Matters of opinion may be impossible to characterise as of public benefit either in achievement or in the promotion itself. Thus in *Aid/Watch*, Kiefel J held that “reaching a conclusion of public benefit may be difficult where the activities of an organisation largely involve the assertion of its views”. She concluded that Aid/Watch had failed to establish that the views it asserted were correct and would in fact promote the delivery of aid. Furthermore, the ends promoted may be outside the scope of the cases which have built on the spirit of the preamble, so that there is no sound analogy on which the law might be developed within the sense of what has been recognised to be charitable. Even without a political purpose exclusion, the conclusion in *Molloy* (that the purpose of the Society for the Protection of the Unborn Child was not charitable) seems correct. The particular viewpoint there being promoted could not be shown to be in the public benefit in the sense treated as charitable.

[16] From all these passages, there emerges several matters of particular relevance to this case. First, examples are given of purposes, the very advocacy for which will be regarded as charitable – namely the promotion of human rights and the protection of the environment. They are assessed as both being in the public benefit, and analogous to a cause previously recognised as charitable – the abolition of slavery. It further emerges from these passages that these occasions where advocacy is itself a charitable purpose are likely to be rare, and finally an example is provided of when advocacy will not be charitable – *Molloy v Commissioner of Inland Revenue*.¹⁹

[17] *Molloy* concerned the charitable status of the Society for the Protection of the Unborn Child. The main purpose of the organisation was to lobby against mooted changes which would relax abortion laws. The Society sought to maintain the legislative status quo. This purpose was characterised as a political object and therefore not charitable as the law as then understood. Advocating for a legislative status quo could not sensibly be classified as different from advocating for a law

¹⁸ Footnote omitted.

¹⁹ *Molloy*, above n 4.

change, an activity consistently regarded as failing the public benefit limb of the charitable status inquiry. The Court of Appeal in *Molloy* observed:²⁰

But we are unable to accept that either their expressed reasoning or any implications to be drawn from them convey the present case to the terminus which the taxpayer must reach – that is that the public good in restricting abortion is so self-evident as a matter of law that such charitable prerequisite is achieved. The issue in relation to abortion is much wider than merely legal. And the fact, to which we have already referred, that this public issue is one on which there is clearly a division of public opinion capable of resolution (whether in the short or the long term) only by legislative action means that the Court cannot determine where the public good lies and that it is relevantly political in character.

[18] As noted the Supreme Court in *Greenpeace* considered the outcome in this case to remain good law, as it was not possible to demonstrate public benefit. Against that background it is necessary to consider the purposes of Family First in more depth.

Analysis of Family First

Policies and principles

[19] The objects of Family First are set out in the Trust Deed:

- A To promote and advance research and policy supporting marriage and family as foundational to a strong and enduring society.
- B To educate the public in their understanding of the institutional, legal and moral framework that makes a just and democratic society possible.
- C To participate in social analysis and debate surrounding issues relating to and affecting the family being promoted by academics, policy makers, social service organisations and media, and to network with other like-minded groups and academics.
- D To produce and publish relevant and stimulating material in newspapers, magazines, and other media relating to issues affecting families.
- E To be a voice for the family in the media speaking up about issues relating to families that are in the public domain.
- F To carry out such other charitable purposes within New Zealand as the Trust shall determine.

²⁰ At 697.

[20] In elaboration of these objects, Charities Services provided the Charities Board with a summary of Family First's policies and principles, sourced primarily from Family First's websites. Although Mr McKenzie QC was critical of some of the material sourced from the internet that was placed before the Court, he accepted that this summary was before the Charities Board in its decision-making process. It is properly part of the material to be considered.

[21] Family First promulgates a list of priorities and principles that guide its advocacy in pursuit of the objects. Its stated priorities are:²¹

- (a) promoting marriage and family;
- (b) promoting life; and
- (c) promoting community values and standards.

[22] In relation to family and marriage, Family First promotes the traditional view of family, and seeks to limit the concept of marriage to a union between men and women. It seeks to have the tax and welfare system amended "to eliminate disincentives" to marriage.²² It also advocates for the abolition of no fault divorce, and seeks to return the law to a situation where there is an onus on the person seeking to end the marriage.

[23] Family First believes stay at home parents are discriminated against, and seeks to encourage changes to enable parents to spend time with children. It also wishes to amend the law to allow "light smacking".²³ Other topics addressed under marriage and families include punishment for child abuse, a Ministry for Families, family economics, aged care, and sex education.

²¹ "Family Policy Priorities" Family First New Zealand <www.familyfirst.org.nz>.

²² "Policy Priorities", above n 21.

²³ "Policy Priorities", above n 21.

[24] Family First has released a set of detailed principles on family. The principles are sourced in a document developed by the World Congress of Families, entitled “The Natural Family: A Manifesto”:²⁴

- (a) We affirm the intergenerational family as fundamental to society.
- (b) We affirm the natural family to be the union of a man and a woman through marriage for the purposes of sharing love and joy, raising children, providing their moral education, building a vital home economy, offering security in times of trouble, and binding the generations.
- (c) The natural family cannot change into some new shape; nor can it be re-defined by social engineering.
- (d) We affirm that the natural family is the foundational family system, but we acknowledge varied living situations caused by circumstance or dysfunction.
- (e) We acknowledge the tremendous contribution made by single, adoptive and step-parents and extended whanau in society. We wish to ensure they receive appropriate levels of assistance, without denying the clear empirical evidence that the best environment in which to raise children is the biological two-parent, husband-wife family.
- (f) We affirm the marital union to be the authentic sexual bond, the only one open to the natural and responsible creation of new life.
- (g) We affirm the sanctity of human life from conception to death; each newly conceived person holds rights to live, to grow, to be born, and to share a home with his or her natural parents bound by marriage.
- (h) We affirm that the natural family is prior to the state and that the task of government is to shelter and encourage the natural family.
- (i) We affirm that the world is abundant in resources. The breakdown of the natural family and the consequential moral and political failure, not human “overpopulation,” account for poverty, starvation, and environmental decay.
- (j) We affirm that the complementarity of the sexes is a source of strength. Men and women exhibit profound biological and psychological differences. When united in marriage, the whole becomes greater than the sum of the parts.

²⁴ “Principles on Family” Family First New Zealand <www.familyfirst.govt.nz>, adapted from Dr Allan Carson and Paul Mero “The Natural Family: A Manifesto” (2007) World Congress of Families IV <www.worldcongress.pl>.

[25] There is a similar list of principles for marriage, the underpinning of which is that marriage consists of a permanent union of man and woman, which when functioning correctly delivers numerous benefits to society. A further core proposition is that the traditional marriage is the best model for delivering such benefits.

[26] The second broad policy heading is promoting life. Under this, law change is sought to prevent abortion. Further, any law change to allow for euthanasia is opposed. The third major priority is promoting community standards and values. Under this priority, the areas of focus are amendment of the Prostitution Reform Act 2003, reducing access to pornography and increasing the difficulty for children to access pornography, and advocating for a more family focused (rather than individual rights) approach to censorship.

Activities

[27] The list of areas concerning which Family First has been active consists of abortion, euthanasia, parent time with children, punishment of and publicity of offending against children, prostitution, gambling harm, pornography, censorship, marriage and alcohol reform.

[28] Family First has produced a number of booklets on topics associated with its principles. The pieces are written by persons with qualifications in the area, some of whom hold down academic posts. They are commissioned pieces in the sense that Family First has asked the author to write the piece. Topics include Young People and Alcohol; Mothers, Daycare, and Child Wellbeing; Sexuality Education in New Zealand; Media Use: An emerging factor in child and adolescent health; Making Sense of the Confusing New World of Gender Identity; and Euthanasia. The style of the publications varies, but generally they advance a particular viewpoint, gathering together existing research in support. They are informative to those without particular knowledge of the research in an area, but do not purport to summarise competing research or offer new research.

[29] Many of the authors have considerable status. Some examples suffice. The author of the 31 page booklet on Young People and Alcohol is Dr Aric Sigman. He is a Fellow of the Society of Biology, and an associate fellow of the British Psychological

Society. He has addressed a working group of the European Parliament studying the impact of media on children. One of his books won the Information Book Award proffered by The Times Educational Supplement. Dr Sigman is also the author of the booklet on Mothers, Daycare and Child Wellbeing. Concerning the publication on Gender Identity, Glenn Stanton is the author of seven books in the area. He is a director at a Family Institute in Colorado. There would seem little doubt he is committed to similar principles as underpin Family First. The author of the publication on euthanasia is Rex Ahdar who holds a Chair in Law at the University of Otago. He is published and taught widely in many areas, including two texts published by Oxford University Press – *Religious Freedom in the Liberal State*, and *Shari'a in the West*.

[30] Finally, it can be observed one of the publications is commissioned research undertaken by the New Zealand research and consulting body, NZIER.²⁵ The aim of NZIER is to be the premier centre of applied economic research in New Zealand. The paper addresses the financial benefits of marriage, and the financial cost of family breakdown. It represents original research.

[31] Family First also hosts an annual forum on the family. Its purpose is to generate discussion on whatever theme it takes. Across the years the forums have varied in the speakers proffered – some have consisted primarily of persons similar to those who have authored some of the publications. By that I mean persons with a sound publication record, some of whom hold or have held academic posts but whose research and writing in this area can be said to reflect a commitment to a particular viewpoint. That is not intended to devalue the work, but to merely describe it. On other occasions, such as in an election year, the forum has brought together speakers of significant seniority from political parties.

[32] Finally, it can be observed that it appears from the material that Family First often produce short opinion pieces on topics and lobby for law change. The exact detail of that is not apparent but this generalised description suffices.

²⁵ NZIER *The value of Family: Fiscal Benefits of Marriage and Reducing Family Breakdown in New Zealand* (Family First New Zealand, October 2008).

Deregistration decision

[33] The Charities Board concluded Family First did not advance exclusively charitable purposes.²⁶

The Board considers that Family First has a purpose to promote its own particular views about marriage and the traditional family that cannot be determined to be for the public benefit in a way previously accepted as charitable. Family First has the freedom to continue to communicate its views and influence policy and legislation but the Board has found that Family First's pursuit of those activities do not qualify as being for the public benefit in a charitable sense.

[34] The Board identified a three-step process taken from a recent High Court decision, *Re The Foundation for Anti-Aging Research and the Foundation for the Reversal of Solid State Hypothermia*:²⁷

- (a) whether Family First's stated purposes are capable of being charitable;
- (b) whether Family First's activities are consistent with or supportive of a charitable purpose; and
- (c) if Family First's activities are found not to be charitable, whether their activities can be said to be merely ancillary to an identified charitable purpose.

[35] It then asked these questions in relation to the two heads of charity on which Family First rely under s 5(1) of the Act – the fourth head of beneficial to the community and the third head of advancement of education.

[36] Concerning the fourth head, the most prominent analogous area previously held to be charitable was promoting the moral and mental improvement of society. Collins J in the first appeal decision had indicated there was force in the proposition that advocating for the traditional family is analogous to other bodies held to have advocated for the mental and moral improvement of society.²⁸ The Board identified

²⁶ 2017 Deregistration Decision, above n 1, at [2].

²⁷ *Re The Foundation for Anti-Aging Research and the Foundation for the Reversal of Solid State Hypothermia* [2016] NZHC 2328 at [88].

²⁸ *Re Family First*, above n 5, at [87].

three classes of case under this area –the temperance cases, the ethical or philosophical systems cases and the advocacy cases. Each was then distinguished.

[37] The temperance cases, having been identified as a group of moral improvement decisions, were in effect reclassified by the Board as being better seen as examples of advancement of religion, advancement of education, or promotion of public health in the sense of relieving addictions.²⁹ It was also noted there were tangible benefits associated with the purposes in those cases, such as the provision of facilities.

[38] Concerning the philosophical or ethical systems cases,³⁰ it is accepted that Family First has an ethical philosophy. However, its primary activity was not educating on the philosophy.³¹

but advocating its own point of view on issues it considers will promote and protect marriage and its definition of the traditional family. The Board does not consider that adopting an ethical philosophy, as then using it to advocate on specific positions is consistent with the public benefit promoted in the ethical or moral philosophical systems line of cases.

[39] The third group of cases were those concerning advocacy.³² The Board, while recognising the change *Greenpeace* had initiated,³³ placed weight on the Supreme Court's comments on the on-going correctness of the *Molloy* decision. The Board concluded that similarly Family First's advocacy concerned advocacy on issues where there were two sides to an argument on a topical social issue, neither of which can be determined to be for the benefit of the public.

[40] Concerning the advancement of education, the Board concluded that an organisation that promotes a cause, as opposed to advancing education objectively, is not advancing education within the charitable meaning. Likewise, if it is disseminating research solely to advance a point of view, then advancement of education is not established. Rather the point of view itself must advance a public

²⁹ These cases included *Re Hood* [1931] 1 Ch 240 (CA); *Re Scowcroft* [1898] 2 Ch 638; and *Commissioner of Inland Revenue v Falkirk Temperance Café Trust* [1927] SC 2651 (Scot).

³⁰ *Re Price* [1943] 1 Ch 422; *Re South Place Ethical Society* [1980] 1 WLR 1565 (Ch); and *Re the Grand Lodge of Antient Free and Accepted Masons in New Zealand* [2011] 1 NZLR 277 (HC).

³¹ *2017 Deregistration Decision*, above n 1, at [28].

³² *Molloy*, above n 4, *Aid/Watch*, above n 15; *Knowles*, above n 4, and *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31 (HL).

³³ *Greenpeace*, above n 3.

benefit in the charitable sense, at which point one returns to the fourth head of charitable purpose analysis. The Board concluded:³⁴

[43] The Board considers that in order for a purpose to advance education, the information must be presented in a balanced, objective and neutral manner, so that the reader can form a view themselves, rather than expressing one-sided perspective intended to persuade the public to a particular point of view. To summarise the relevant case law, in order to determine whether the research reports seek to promote Family First's point of view, or advance genuine, objective educational research, the appropriate areas of analysis are:

- a. the nature of the research to determine whether it is objective, neutral and balanced;
- b. whether it has been reviewed by objective third parties; and
- c. how Family First disseminates its views to the public, to determine whether it seeks to educate or persuade to a point of view.

[41] Family First's publications were analysed. Of the reports considered, only that based on the research by NZIER was considered capable of advancing education. It failed, however, because of the way the report was presented to the public by Family First:³⁵

[50] Although the Board accepts that the NZIER report is capable of advancing education, the Board does not accept Family First advances education through the report. As with the other reports, the media release accompanying the report does not present the results objectively, and instead uses them in a manner that advances Family First's views. Further, Family First does not acknowledge the gaps in research.

Appellant's submission

[42] Family First submits the Charities Board has wrongly applied *Greenpeace* and has ignored guidance provided by Collins J when referring the matter back. It is submitted that whilst noting the removal of the political purposes exception, the Charities Board has in effect reintroduced it. It is further submitted there is evidence on which a conclusion of public benefit can be reached:

- (a) the evidence shows the focus of Family First's activities is on advocacy for strengthening families, promoting life and community values;

³⁴ Footnote omitted.

³⁵ *2017 Deregistration Decision*, above n 1 (footnote omitted).

- (b) the centrality of the family to a healthy society is recognised in several international instruments to which New Zealand is a party; and
- (c) New Zealand domestic legislation also supports the central and beneficial role of the family in society. An example given is the Families Commission Act 2003.³⁶

[43] Family First recognises, I consider correctly, that the sticking point it encounters is its promotion of and advocacy for one view of family, that which it calls the traditional family. It is, however, submitted that promotion of the traditional family does not preclude the charitable status that would undoubtedly attach to a purpose of promoting the role of family in society.

[44] First, it is noted that the model supported by Family First is not individualistic to Family First but is termed the traditional model for good reason. It was for a long time the definition of marriage in legislation and human rights documents refer to “the natural family”. It is therefore incorrect to critique Family First’s model as being a product of its conservative Christian underpinnings. Its purposes are to promote a model of society which has in the past been seen as desirable, a label which empirical evidence supports.

[45] Family First submits there is broad-based support for its model. It accepts it is now a controversial position, but as is emphasised in *Greenpeace*, the fact that a purpose is controversial is not an automatic impediment to charitable status. Reference is made to s 29 of the Marriage Act 1955 which allows ministers to decline to solemnise a same sex marriage. This is submitted to reflect that there is more than one view, and charitable status should not be denied because a body advocates for one of those views. It is noted that Family First works within the changed environment that now exists and promotes the status of family generally as well as maintaining its promotion of one version.

³⁶ This Act has now been repealed as at 30 June 2018 by s 7 of the Families Commission Repeal Act 2018.

[46] Family First also challenges the decision on advancement of education submitting that the Charities Board unfairly undervalued its research and publications because those publications were commissioned. It is submitted the purpose is to advance knowledge and understanding, and there was no reason to go behind the presumption of public interest.

[47] Mr Bassett who argued this aspect went further and submitted that there was no basis to go behind the purposes as set out in Family First's deed. They were clear and accordingly reference to matters such as the entity's activities was not required. The purposes made it clear Family First exists to educate, and that is sufficient.

Decision

[48] Family First's primary activity is advocacy for a specific viewpoint. It gives effect to this purpose in many ways, including the holding of an annual conference (to which one must be invited) and publishing material that contains opinion and information supportive of its viewpoint. But in a broad sense advocacy is all it does. Any public benefit is not tangible. Despite originally being registered, in my view, without the recent removal of the advocacy exclusion, it does not meet the test for charity.

[49] *Greenpeace* opens the door to charitable status to the extent that the purposes of any organisation seeking charitable status must be examined, whether or not those purposes are to advocate for something. Whether, however, *Greenpeace* will lead to different outcomes is doubtful. Passages have already been cited in which the majority noted the difficulty still confronting advocacy organisations.³⁷ Likewise, the minority in *Greenpeace* observed that because of the on-going need to establish public benefit, the majority's approach "is not much different" from one which simply excludes advocacy.³⁸ The point being that after the analysis, it is very likely one will still get to the same point.

³⁷ At [8]–[10] of this judgment.

³⁸ *Greenpeace*, above n 3, at [126].

[50] If one returns to the judgment of Lord Simonds in *National Anti-Vivisection Society v Inland Revenue Commissioner*, his Lordship anchors charities law rejection of trusts created for the purpose of changing the law in the inability of the Court to say whether a proposed change in the law will or will not be for the public benefit.³⁹ *Greenpeace* opens this door to allow such organisations to try and establish public benefit, but the formidable, almost impossible, nature of the task remains unchanged. The examples proffered of protection of the environment and advancement of human rights serve more to illustrate the nature of the task than provide encouragement.

[51] The criticism Family First makes of the Charities Board is that its approach seems to ignore *Greenpeace*. I do not consider that is a fair assessment; the Charities Board undertook the analysis now required. The familiarity of its reasoning and outcome merely reflected the reality that establishing a public benefit has always been the hurdle for those whose primary purpose is solely to promote a cause, and still is.

[52] Mr McKenzie focused on the distinction between promoting the role of family in society, and promoting one form of family. He submitted the former would achieve charitable status, and then reasoned from that what is a narrower focus should not change the outcome. I accept there is a strong case for saying that promoting the role of family in society would be charitable. The areas identified in *Greenpeace* – protection of the environment and promotion of human rights – are high level and widely accepted goals (at least in New Zealand). That said, there would be still much within those goals that is disputed; for example, what threatens the environment and how it is to be best protected. Within those high end goals held by the Supreme Court to be charitable, the particular advocacy focus of an organisation could nevertheless be for a point of view that is subject to debate, and concerning which the specific achievement may not be able to be shown to be in the public interest. The point is that some level of controversy in an organisation's purposes, and arguably an inability to definitively conclude which side of the controversy is correct, would not seem to prevent an assessment of public benefit.

³⁹ *National Anti-Vivisection Society*, above n 32, at 62.

[53] Could promotion of the family unit as a crucial component of a healthy society be regarded in the same way as protection of the environment? The following statements from international treaties provide a powerful starting point in favour of the proposition. First:⁴⁰

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) *The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

And next:⁴¹

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, *which is the natural and fundamental group unit of society*, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

[54] And finally:⁴²

The States Parties to the present Convention,

...

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

[55] Each of these important international documents recognises the centrality of family to society, and declare it to be the natural environment for child raising.

⁴⁰ *Universal Declaration of Human Rights* GA Res 217A (1948), art 16 (emphasis added).

⁴¹ *International Covenant on Economic, Social and Cultural Rights* 993 UNTS 3 (opened for signature on 19 December 1966, entered into force 3 January 1976), art 10 (emphasis added).

⁴² *Convention on the Rights of the Child* 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990), preamble (emphasis added).

[56] Domestically, Family First points to the now repealed Families Commission Act 2003 which established a Families Commission with an advocacy function which included the obligation:⁴³

- (b) to increase public awareness and promote better understanding of matters relating to the interests of families, for example, the following matters:
 - (i) *the importance of stable family relationships* (including those between parties to a marriage, civil union, or a de facto relationship); and
 - (ii) the importance of the parenting role; and
 - (iii) the rights and responsibilities of parents:

[57] Leaving to one side any attempt to limit the definition of family, I consider a purpose of promoting the benefits of a stable family unit for society would likely be charitable. One of the research pieces commissioned by Family First was a study by NZIER into the fiscal cost to society of family breakdown and decreasing marriage rates.⁴⁴ It is independent, peer reviewed research that makes a case to say the cost may be upwards of \$1 billion a year. The report notes that its conclusions are necessarily based on a number of assumptions but it is an item of evidence supporting a public benefit claim. Many working in areas such as the criminal justice sector would also no doubt attest to the obvious societal cost when children and young people are not raised in a supportive environment. Indeed, the statements cited from the various international documents appear to come from an unarticulated recognition of that cost to society when the family unit breaks down. It follows therefore that if Family First's purposes were solely to promote the role of the family, there would be considerable strength to its claim for charitable status.

[58] It is well recognised that in determining charitable status, it is necessary to identify the true purpose of an organisation.⁴⁵ It is a question of fact. It may involve going beyond the objects in a trust deed. Disputing this, Mr Bassett referred to observations in *Re The Foundation for Anti-Aging Research and (FAAR)* advising

⁴³ Families Commission Act 2003, s 8(1)(b) (emphasis added).

⁴⁴ NZIER, above n 25.

⁴⁵ *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297 (CA) at 318 and 319; and *Molloy*, above n 4, at 693.

caution about going behind the stated purposes of an organisation.⁴⁶ In particular, it was noted in *FAAR* that activities were only evidence of charitable purpose and need not themselves be charitable. The fundamental purposes of an organisation remain the proper focus.

[59] *FAAR* concerned an appeal declining charitable status. In the context of a charitable status application, pursuant to s 18(3) of the Act, the Chief Executive is to have regard to the entity's activities at the time of registration. By contrast, the present case involves deregistration. The first ground for deregistration is that the entity no longer qualifies for the status.⁴⁷ To support this inquiry, s 50 of the Act authorises the Chief Executive to require information from the entity about its activities. At least in the context of a deregistration occurring because an organisation is no longer to be regarded as charitable, a focus on its activities since initial registration seems inevitable and proper. Most often the purposes, initially held to be charitable, will not have changed. It cannot be that an inquiry into whether the entity is still pursuing those charitable purposes can be constrained in the evidence able to be considered. To be charitable an entity must exist exclusively for charitable purposes, both initially and continuously.⁴⁸ Non-charitable activity is permissible only if such activity is ancillary to the core charitable purposes.⁴⁹

[60] Returning to the true purpose issue, I understand it is accepted by Family First that its purpose is to promulgate a singular view of family, called the traditional family. If I misunderstood this concession, I conclude it is the case, and plainly so, that Family First's purposes are first and foremost to promote the traditional family unit. While that expression does not appear in the objects, it is legitimate to explore the meaning of the terms that are used in the Deed – “marriage” and “family”. Family First's principles on family and marriage (see [18 to [19] above) make the meaning of these terms plain. Marriage describes the permanent union of a man and a woman. The traditional family unit consists of the children of that union, and the married parents. There is no doubt the main purpose of the entity is to promote the traditional family

⁴⁶ *Foundation for Anti-Aging Research*, above n 27, at [82]–[87].

⁴⁷ Charities Act 2005, s 32(1)(a).

⁴⁸ Sections 13 and 5.

⁴⁹ Section 5(3) and (4).

unit. Family First has other purposes, some of which may be fatal to the application, but I consider it appropriate to address the charitable status of this primary purpose.

[61] Further, to its submissions on the centrality of family, and in support of its contention for the charitability of its core purpose, Family First places weight on the label “traditional”, claiming it is a correct description of the model for which Family First advocates. It points out that until recently the Marriage Act defined marriage that way, and submits there is no evidence to suggest a large section of the community do not still see marriage and family in the way Family First does. Whilst it is acknowledged the formal law may have moved on, it is submitted charitable status cannot be so tightly tied to the views of the particular day. Further, as *Greenpeace* made clear, that the views may be controversial to some does not matter.⁵⁰ Finally, it is noted the NZIER research points to the superiority of the traditional unit.⁵¹

[62] Addressing first this research, I accept there are conclusions in the research supportive of Family First’s view, but as the authors acknowledge, there are cautions because of the lack of data, and the consequent need for assumptions. Within that research, now ten years old, there is also information that would seem to run counter to Family First’s claims. For example, it is noted that the rate of marriage per 1000 persons over 16 years declined from a high in 1971 of 45.5 per 1000 to the latest figure then available of 13.7 per 1000 in 2007.⁵² Those figures tend to at least raise doubts about a claim that marriage is still widely regarded as a cornerstone of the family unit.

[63] It is necessary to look at the outcome that Family First seeks. Based on its priorities and principles statement, it can be said Family First seeks recognition of the pre-eminence of the traditional family unit, and a legislative framework that supports and protects that unit, including making divorce more difficult. If that description is widened to encompass all Family First’s key priorities, it can be added that Family First advocates for changes to legislation concerning smacking, abortion, censorship and prostitution.

⁵⁰ *Greenpeace*, above n 3, at [75]–[76].

⁵¹ NZIER, above n 25.

⁵² At [2.1].

[64] The evidence does not establish that the achievement of these goals would be a benefit to the community in the sense required by charity. In relation to marriage, Family First's model, to the extent it involves law change favouring the traditional family unit, would on its face run counter to human rights law which prohibits discrimination on such bases.⁵³ Unless able to be shown to be a reasonable limit,⁵⁴ the position advocated for would be unlawful, an obstacle to charitable status.⁵⁵ Further, whilst there may be a cost to society – both fiscal and social – in divorce, the evidence presented does not attempt to address the other side, namely the cost to families and society of making the divorce process more difficult and costly, and of reintroducing blame as a key feature.

[65] I accept that some or many may agree with aspects of Family First's position, but just as controversy is not a block, nor is the fact that a significant number agree with its position a pathway to charitable status. The narrow issue in these advocacy cases is whether a body whose main or indeed sole function is to promote a viewpoint is a charity. The advocacy cases where charitable status has been acknowledged are scarce, and seem increasingly limited to purposes of almost universal acceptance. Here, it cannot be shown that Family First's promotion of the traditional family unit, though no doubt supported by a section of the community, if achieved would be a public benefit. If it is achieved at a cost to other family models, it could affirmatively be said not to be in the public interest.

[66] There are further obstacles to Family First's charitable status. Family First acknowledges one of its major priorities is to promote life, by which it means to advocate for a lessening of access to abortion and for rejection of any legislation enabling assisted death. The decision in *Molloy*, affirmed in *Greenpeace*, means these purposes are not charitable.⁵⁶

⁵³ Marital status is a prohibited ground of discrimination under s 21(1)(b) of the Human Rights Act 1993.

⁵⁴ *Catholic Care (Diocese of Leeds) v Charity Commission of England and Wales (No 2)* [2012] UKUT 395 (TCC), [2013] 1 WLR 2105.

⁵⁵ *National Anti-Vivisection Society*, above at 32.

⁵⁶ *Molloy*, above n 4; affirmed in *Greenpeace*, above n 3, at [73].

[67] *Molloy* cannot be distinguished in the way Family First suggests. Family First seeks to attach significance to the fact that the organisation in that case was seeking to uphold the status quo, whereas Family First advocates for change. This is not a distinction of significance – in terms of charitable status it logically makes no difference whether the advocacy is for a change in the law or resisting a change in the law. One would think public benefit easier to establish when the purpose was to uphold an existing law which has at least had the endorsement of the legislature at the time of enactment, but that did not assist in *Molloy*.

[68] Similar concerns can be raised about the other law changes which Family First promotes – the anti-smacking laws, the prostitution reform laws, and censorship laws. Each area plainly engages the difficulties that those seeking charitable status for their advocacy must confront – how to establish a public benefit in either the outcome or advocacy. The first two of these law changes are comparatively recent law changes and followed significant public debate. That is of course not to say organisations cannot continue to press a contrary view, but advocating for repeal or change is very unlikely to be regarded as in the public benefit in the sense used by charity. Accordingly, irrespective of the conclusion on the core purpose, I consider these other purposes are not charitable and therefore prevent that status being held by Family First.

The advancement of education

[69] Family First contends that the Trust's purposes, as stated in the Deed, place a strong emphasis on research, and on the provision of social analysis and debate relating to and affecting the family. The Charities Board held that with the exception of the NZIER research, the publications had the purpose of merely promoting Family First's views and therefore did not qualify as education.

[70] It is not necessary to address this issue in detail. Even if there was an educative aspect that qualified as charitable, as discussed it is not Family First's only purpose. The preceding discussion makes it plain Family First also advocates for law change in a variety of areas, some of which were at best contestably for the public benefit and some which authoritatively are not. These other purposes, and the activities consequent upon them, cannot sensibly be seen as ancillary to any education purpose. Indeed, the

reality is the opposite; such education as is undertaken is to persuade people to Family First's point of view and thereby garner support for its efforts to effect change. Despite contrary inferences that could be drawn solely from a perusal of the Trust objects, any educative purpose of Family First is in fact ancillary to these non-charitable advocacy aims.

[71] Although a different way of expressing it, the same assessment of the purpose of the publications underlies the Charities Board's rejection of charitable status under this head. The bulk of the papers do not constitute research; rather they advance a coherent viewpoint, buttressed by citation of published material. Such a description does not necessarily exclude the publication from meriting an education label, but the context is important. Leaving to one side the NZIER report, the body of work produced by Family First over 11 years can be taken to represent the best evidence to say this Trust is for the advancement of education. The publications, however, are all written with the same viewpoint. I accept the credentials of some of the authors, but as a body of work it cannot be seen as other than a series of publications promoting a cause. It has long been recognised this does not qualify for the advancement of education in a charitable sense.⁵⁷

[72] I accordingly agree with the conclusion of the Charities Board on this head of charity, although not with all of its reasoning. I consider the Board's analysis delved too much into an assessment of the merits of the publications. Other than a cursory check to ensure the published material is not nonsense, it is not the Board's task to assess the quality of the educative material. An illustration of this misfocus was the emphasis the Board placed on the absence of peer review.

[73] Finally, I observe Family First's reliance on the NZIER piece is misplaced. It is an example of sound research and therefore its promulgation is undoubtedly for the advancement of education. But it is one piece within a collection and cannot alter the overall characterisation of the publishing activity and what it says about Family First's purposes.

⁵⁷ *Re Collier (Deceased)* [1998] 1 NZLR 81 (HC) at 91.

Conclusion

[74] The appeal is dismissed. Family First has not satisfied me the Charities Board erred in its conclusion. Its core purpose of promoting the traditional family unit cannot be shown to be in the public benefit in the charitable sense under the Act. Further, it has other purposes some of which have previously been held to be non-charitable, and the rest of which present a weaker public benefit argument than the core purpose. Regardless of the charitable status of the core purpose, these other purposes prevent registration. Finally, the publication work of Family First is merely a method of presenting its advocacy to the public. It is not educational in the charitable sense.

[75] I did not hear from the parties re costs. Memoranda may be filed if required.

A handwritten signature in blue ink, reading "Simon France J", positioned above a horizontal line.

Simon France J