

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



FAMILY FIRST NEW ZEALAND V CHARITIES REGISTRATION BOARD [2018] NZHC 2273

High Court of New Zealand, Simon France J, 31 August 2018

Charities registration Board deregistered Family First as a charity as it did not exist solely for charitable purposes, a key requirement for charity.

Key words: Charitable Purposes, High Court of New Zealand, Registration, Lobbying, Political Purpose

1. Family First New Zealand (FFNZ) is an organisation that promotes the traditional family unit by producing publications, organising themed conferences, lobbying and seeking law changes which favour its position. Originally, it was a registered charity but had then been deregistered by the Charities Registration Board of New Zealand (the Board). The basis for the Board's decision was that FFNZ's purposes were held to be not solely charitable.
2. This deregistration decision was quashed because of the Supreme Court of New Zealand's decision in *Re Greenpeace of New Zealand Ltd* [2014] NZSC 105 (Greenpeace): see *Family First New Zealand* [2015] NZHC 1493. In Greenpeace, the Supreme Court rejected the long-held proposition in New Zealand that political and advocacy purposes of charities were always non-charitable. It was held that this sort of purpose had to be looked at on a case-by-case basis. Therefore, the original deregistration decision was referred back to the Board for reconsideration. Upon reconsideration, the Board again decided to deregister FFNZ. This case was an appeal against the second deregistration decision.
3. Charities in New Zealand must be for exclusively charitable purposes and for the public benefit: sections 5(1) and 13 of the *Charities Act 2005* (NZ) (the Act). Previously, political purposes, including advocacy and seeking changes in the law, were never charitable. However, section 5(3) of the Act allowed for advocacy purposes which were merely ancillary to the charitable purposes of a charity. This section was in question in Greenpeace, with the majority in that case holding that the section meant that political and advocacy purposes did not automatically prevent an organisation from being charitable. However, the proviso was that however much public debate was generated (which might be in some sense for the public benefit), the underlying purpose of the organisation must be both charitable and for the public benefit (at [73] of the Greenpeace decision).

Greenpeace illustrated that the instances of advocacy being a charitable purpose would be limited in New Zealand – examples were given of advocating for human rights or environmental issues. However, *Molloy v*

Commissioner for Inland Revenue [1981] NZLR 688 remained good law (at [71] of the Greenpeace decision). Did FFNZ meet the Greenpeace test?

4. FFNZ promotes 'marriage and family', 'life' and 'community values and standards'. Its objects include research, public education, taking part in public debate, and publication of relevant materials. It seeks to change the law to provide tax incentives for traditional family life, to abolish no-fault divorce, to allow 'light smacking', and to control prostitution and access to pornography.
5. It was held that FFNZ's primary purpose was advocacy for a particular viewpoint. Really advocacy was all it did, and any public benefit was not tangible (at [48]). The Greenpeace decision had not really changed the law in New Zealand (at [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... the majority noted the difficulty still confronting advocacy organisations. 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 [at [126] of the Greenpeace decision]. The point being that after the analysis one will still get to the same point.

6. The problem remains that the courts cannot know whether a change in the law advocated for will be good or bad. This is a 'formidable, almost impossible' obstacle for organisations to surmount ([50]). Establishing a public benefit has always been a 'hurdle for those whose primary purpose is to promote a cause, and still is' (at [51]).
7. FFNZ contended that a wider purpose of promoting family life would be charitable. The court agreed that the purpose of promoting a stable family life would be a charitable purpose (at [57]). However, FFNZ's purpose was to promote a 'singular view' of the family, the traditional family. This was not a charitable purpose, despite Greenpeace. Moreover, its views on smacking, abortion, euthanasia, prostitution, censorship and other related matters were not ever going to be regarded as charitable purposes because of the decision in Molloy.
8. Was there a charitable purpose to advance education? The court criticised the Board's approach on this issue, but agreed with its outcome. The Board had delved too deeply into the nature of FFNZ's publications to determine if they were educative, and this was not necessary. However, the publications did not fall within the charitable purpose of advancing education.
9. FFNZ's core purpose of promoting the traditional family unit was not charitable because it could not be shown to have public benefit. Further, FFNZ had other purposes which had previously been held to be non-charitable in cases which were still good law. This position had not changed. In addition, these purposes had an even weaker public benefit argument than FFNZ's core purpose. Regardless of the charitable status of the core purpose, the other purposes prevented the registration of FFNZ as a charity.

10. Therefore, the appeal was dismissed.

IMPLICATIONS



This case is under Appeal and its status should be checked before proceeding further. Refer Murray, I. (2019). Looking at the charitable purposes/activities distinction through a political advocacy lens: a trans-Tasman perspective. Oxford University Commonwealth Law Journal, 19(1). <https://doi.org/10.1080/14729342.2019.1588479>

VIEW THE CASE



This case may be viewed at: <http://www.nzlii.org/nz/cases/NZHC/2018/2273.html>

The decision of 2015 can be viewed at: <http://www.nzlii.org/nz/cases/NZHC/2015/1493.html>

The Greenpeace decision can be viewed at: <http://www.nzlii.org/nz/cases/NZSC/2014/105.html>

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