

# 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.



## BISHOP ON BEHALF OF CROCELS COMMUNITY MEDIA GROUP V CHARITY COMMISSION FOR ENGLAND AND WALES

**First Tier Tribunal (Charity), General Regulatory Chamber, 18 July 2016**

This was an appeal brought on behalf of the Crocels Community Media Group (CCMG) against a ruling of the Charity Commission for England and Wales (the Commission) refusing CCMG registration as a charity.

**Key words: Advocacy, England & Wales, Registration, Charitable Purposes, Pressure Group, Promotion of Fraternity Between Nations, Political Purposes.**

1. On 20 July 2015 CCMG applied for constitution as a Charitable Incorporated Organisation (CIO) and registration as a charity under section 207 of the Charities Act 2011 (the Act). CCMG's governing document was presented in the Charity Commission's model form for a CIO. It had the following objects, stated to be for the public benefit:
  1. Improving fraternity between nations, including through:
    - The advancement of citizenship and community development
    - The advancement of the arts, culture, heritage and science
    - The advancement of amateur sport
    - The advancement of environmental protection and improvement
    - The prevention or relief of poverty
  2. Advancing the understanding and promoting the cause of peace through:
    - The advancement of education
    - The advancement of conflict resolution and reconciliation
    - The advancement of equality and diversity
    - The promotion of religious and racial harmony
  3. Innovating for the abolition or reduction of standing armies, including through:
    - The advancement of health and saving of lives
    - The advancement of human rights
    - The promotion of the efficiency of the armed forces of the crown
    - The promotion of the efficiency of the police, fire and rescue services and/or ambulance services
4. It will achieve these aims by:

- facilitating the publication of academic research
- facilitating the holding of academic and other conferences
- facilitating debate and discussion
- facilitating the creation and management of information sources, including libraries and search engines
- facilitating the development of hardware and software facilitating news gathering and reporting
- facilitating community regeneration multimedia education by attempting to persuade politicians and other decision-makers to adopt the charities [sic] values and policies.

2. The Charity Commission's reason for refusing to constitute CCMG as a CIO and register it as a charity was that it did not appear to be established for exclusively charitable purposes for the public benefit. In particular, the proposed objects of improving fraternity between nations, advancing the understanding and promoting the cause of peace, and innovating for the abolition and reduction of standing armies were not recognised charitable purposes and the fact that in each case these objects were intended to be furthered by means which consisted of descriptions of charitable purposes in the Act did not thereby make the objects themselves charitable.

3. Moreover, CCMG had a scattergun approach to fulfilling its objects stating in its submissions that CCMG's proposed activities would include: a community arts project; the development of a device to treat survivors of war (civilian and military) by re-programming their emotions using EEG signals; the development of a device to assist people with social difficulties with communication; the development of a device for monitoring and mentoring young or disabled people over the internet; the development of projects to assist the career prospects of young and disabled people through encouraging their participation in research and writing, access information if they are being cyber-bullied and to facilitate the distribution of opinion and cultural artefacts; facilitating the development of technologies used in warzones to reduce civilian casualties, for example a drone which can detect the emotional state of people on the ground, a drone which could assess material transmitted by wi-fi to determine whether it constitutes a threat to peace, and a CCTV system to help prevent crime; and promoting academic discourse on the subjects of war and peace through publications and conferences, educational courses and research. However, both the Commission and the Tribunal had no doubt that Bishop's underlying motivation was philanthropic.

4. On appeal, the Tribunal agreed with the Commission that incorporating the descriptions of charitable purposes set out in the Act as a means of furthering the objects does not by itself serve to make the objects charitable. The Tribunal agreed that the promotion of fraternity between nations was not a charitable purpose, following *Anglo-Swedish Society v IRC* (1931) 47 TLR 295, which was still good law, and by which the Tribunal was bound. The second object was a mixture of charitable and non-charitable purposes (at [19]):

...we are satisfied that, although the advancement of conflict resolution is listed as a description of a charitable purpose in the Act, this is a purpose quite distinct from advancing the understanding and promoting the cause of peace as described in the objects of CCMG. The object as drafted would appear to meld a potentially charitable purpose (advancing education on the subject of peace) with a political purpose, within the meaning given to that term by Slade J in *McGovern*, namely seeking to change Government policy by promoting a cause. We conclude that the second object is not a charitable purpose because it is not only a charitable purpose.

5. As to the third object, this was held to be a clear political purpose (at [20]):

...the purpose of innovating for the abolition or reduction of standing armies is, in our judgement, a clear political purpose within the meaning given to that term by Slade J in *McGovern*. We conclude that the third object does not express a charitable purpose because it necessarily involves seeking to change Government policy.

6. CCMG was more a pressure group than a charity (at [21]):

As noted above, CCMG has an express power, albeit within the objects clause, to attempt “to persuade politicians and other decision-makers to adopt the charities (sic) values and policies”. This provision would inevitably raise concerns even if the objects were exclusively charitable. As we have concluded that they are not, it would appear to permit CCMG to operate as a non-charitable pressure group rather than to undertake ancillary political activities as a means of furthering a charitable purpose.

7. Clear political purposes are not charitable purposes in England and Wales. As the objects were not charitable, the appeal was dismissed.

8. An application to appeal from this decision was refused on 3 August 2016 on the grounds that there was no error of law in the First Tier Tribunal’s decision. A further appeal to the Upper Tribunal (Tax and Chancery) was refused on the papers (unreported).

## IMPLICATIONS



The CCMG was held not to be a charity as a matter of law. Bishop argued in both his Tribunal submissions and in his appeal submissions that European Union law had been breached. This was rejected in both instances as not relevant. The objects of his CIO were not charitable, but the Tribunal, although unable to advise Bishop, helpfully pointed him in the right direction (at [24]):

However, we were struck by Mr Bishop’s submission that “the charitable pillar is intended to focus on a group of beneficiaries who are best described as young and disabled people” as this intention is not clearly expressed in the objects clause. We acknowledge Mr Bishop’s philanthropic intentions (as did the Charity Commission in its letter of 7 October 2015 and in its submissions to the Tribunal) and it seems to us that some of the proposed activities of CCMG may indeed be suitable to be taken forward by a charity. We can only suggest that Mr Bishop seeks specialist advice as to the technical formalities involved in establishing a charity and the responsibilities involved in administering it thereafter before deciding how to proceed.

## VIEW THE CASE



This case may be viewed at: <http://www.charity.tribunals.gov.uk/documents/decisions/crocels-v-charity-commission-decision-18july16.pdf>

The refusal to appeal ruling can be viewed at: <http://www.charity.tribunals.gov.uk/documents/decisions/crocels-v-charity-commission-PTA-Decision-03Aug16.pdf>

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