

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

**CIV 2010-485-831**

**UNDER** the Charities Act 2005  
**AND IN THE MATTER** of an appeal pursuant to s59 of the Act

**BETWEEN** **LIBERTY TRUST** a registered charitable  
entity having its registered office at 261 The  
Strand, Whakatane, 3159  
**Appellant**

**A N D** **CHARITIES COMMISSION** a Crown  
Entity having its office at Level 8, 85 The  
Terrace, Wellington  
**Respondent**

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**SUBMISSIONS OF APPELLANT  
10 March 2011**

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**MAY IT PLEASE THE COURT:****1 INTRODUCTION****A. The Case**

1.1 Liberty Trust appeals the decision of the Charities Commission dated 15 April 2010 that it be de-registered as a charity. That de-registration decision (“**the Decision**”) is Document 1 in the Bundle. For convenience an extra copy is filed with these submissions.

1.2 Liberty Trust also seeks leave to adduce some additional evidence.<sup>1</sup> By consent it was agreed that this would be argued as part of the substantive hearing.<sup>2</sup>

1.3 The actual decision to de-register will be considered in more detail in Part 3. In brief the Decision was made on the grounds that:

(a) “*teaching financial principles derived from the Bible are, at best, conducive to religion, as opposed to advancing religion*”.<sup>3</sup> On this basis, at least in the eyes of the Charities Commission, Liberty Trust did not, therefore, even qualify as a charity under the limb “*advancement of religion*”;

(b) The Charities Commission then considered the issue of public benefit as a generic topic<sup>4</sup> rather than as a question under the charitable limb “*relief of poverty*” as it had done in the preliminary and statutorily required “*Notice of Intention to Deregister*”.<sup>5</sup> Nor did it consider this as an element of advancement of religion. It decided that there was not the requisite public benefit.

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<sup>1</sup> See application dated 4 October 2010.

<sup>2</sup> See the Consent Memorandum of 23 September 2010.

<sup>3</sup> See para 45 of the Decision.

<sup>4</sup> See paras 48 to 51 of the Decision.

<sup>5</sup> See Bundle, Tab 8 at p286.

1.4 Liberty Trust disputes both those conclusions. It further says that the first conclusion came as a surprise to it as that reason was not properly foreshadowed by the Charities Commission even although the Commission is bound to give proper notice of the grounds on which it is intended to remove an entity from the Register. Further, the second ground had previously only been raised under the head “Relief of Poverty”.

**B. An Overview of the Contentions of Liberty Trust**

1.5 Liberty Trust says that both its purposes and its activities are charitable.

1.6 In particular it exists for the advancement of religion. It is a Christian foundation that firmly believes in the teaching of the Bible **and the practical outworking of such teaching**. It does this by word and action, heeding the Biblical injunction “be doers of the word, not hearers only”.<sup>6</sup> Put colloquially, Liberty Trust and its supporters set out to practice what they preach.<sup>7</sup>

1.7 The activities of Liberty Trust **are** for the advancement of religion rather than merely being conducive to it. Its activities are the teaching and practical outworking of biblical principles as to money and the use of money (including not lending at interest) which teaching, very visibly, stems from a real faith in God and full acceptance of Christian doctrine.

1.8 Being for the advancement of religion there is a presumptive public benefit.

1.9 Public benefit does not exclude individual private benefit that is a necessary incident of the advancement of religion.

1.10 Given the need for Christian doctrine to be lived out by Christians any private benefits that are received here do not destroy the presumed public benefit that flows from the advancement of religion.

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<sup>6</sup> Epistle of St James 1.22 – see Dr Guy para 13.

<sup>7</sup> Note McDonald 26; Dr Guy, 13-14; Dr Grigg 35-37.

1.11 It is not a mutual benefit associations as the donations it receives are just that and significant numbers of outsiders are assisted. The Trust's purposes are altruistic.

**C. Order of Submissions**

1.12 It is proposed to first outline what Liberty Trust does to provide some context – **Part 2**.

1.13 The Decision will then be reviewed – **Part 3**.

1.14 The application to adduce evidence will then be dealt with – **Part 4**.

1.15 The substantive submissions will follow:

- (a) Law on Advancement of Religion - **Part 5**;
- (b) Law on Public Benefit in this context - **Part 6**;
- (c) Application of the law on advancement of religion to Liberty Trust – **Part 7**;
- (d) Application of the law on public benefit to Liberty Trust – **Part 8**;
- (e) Conclusion – **Part 9**.

**D. Procedural Matters**

1.16 That Bundle contains the record of the Charities Commission. Part of such record was printouts from the Liberty Trust website. That website is also expressly referred to, in a way allowing access, in the Decision itself<sup>8</sup>. Some additional printouts from that website are included under Tabs 25, 26 and 27.

1.17 It was clear from the correspondence from the Charities Commission that it had viewed the website but unclear until the record was received, post appeal, what exactly it had viewed. The record included the likes of the

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<sup>8</sup> See Decision para 5 and footnote 1.

document that appears at p45 but, surprisingly, not the application to join Liberty Trust which refers to it and is referred to in it. The record was, accordingly incomplete.

1.18 The appeal is by way of a hearing is de novo.<sup>9</sup>

1.19 Because de-registration (unlike an application for registration) is a process initiated by the Charities Commission and involves a change in status, the evidential onus must be on the Commission to justify such change in status.<sup>10</sup>

## 2 OVERVIEW OF THE OPERATIONS OF LIBERTY TRUST

2.1 The objects of Liberty Trust are set out in clause 1 of its founding trust deed<sup>11</sup> with its powers being, primarily, in clause 2.

2.2 Clause 1 provides:

1. TO use and employ the Trust Property and the income therefrom for any of the following objects within New Zealand:

- (a) For the undertaking of social welfare and outreach Christian ministries of the Whakatane Baptist church and Whakatane Christian Fellowship church or any other churches as may be determined from time to time (hereinafter called “The participating churches”)
- (b) For the demonstration of Christian care for the social, physical, emotional and spiritual needs of the community.
- (c) To assist those in financial need and to bring relief from financial pressures.
- (d) For the presentation of the Gospel of the Kingdom of God to the community through demonstrations of Christian compassion and care.
- (e) For the establishment of whatever centres, programmes and facilities that may be necessary to achieve the aforesaid objects.

<sup>9</sup> *In Re Education New Zealand Trust* (2010) 24 NZTC 24, 354, para [1].

<sup>10</sup> *Re Director of Civil Aviation v Paterson* (unreported, decision Wild J 23 June 2005 Wgn CIV 2005-485-606) at para [20(b)].

<sup>11</sup> Tab 2.

- (f) For such other charitable purposes as the Board shall determine.

2.3 Pausing here, those objects are charitable. The Charities Commission accepted that when it registered Liberty Trust as a charity. Its complaint appears to be more how Liberty Trust in fact operated.

2.4 To the extent relevant clause 2 provides:

2. FOR the objects aforesaid:

...

- (c) TO organise and conduct religious services, public meetings, missionary meetings, exhibitions and lectures.
- (d) TO publish or contribute to the publication of any periodical, journal or magazine and to print and circulate books, papers, pamphlets and information in the interest of the Board generally and to provide and circulate any annual or other report of the Board and its proceedings and work.

...

- (f) To assist to alleviate financial difficulties or pressure by the provision of the budgeting advice or such other assistance as the Board shall from time to time determine.

2.5 Clause 4 then provides:

4. THE profits and other income (if any) of the Board whensoever derived shall be applied solely in promoting the objects set forth in clause 1 hereof and none of the assets, income or profits of or in connection with the Trust property shall at any time go to or be distributed between or among or paid to the Trustees or associated persons of any of them PROVIDED HOWEVER

- (a) That the Trustees or associated persons may be paid reasonable out of pocket expenses incurred by them in connection with the Trust property or the administration thereof.
- (b) The Trust fund may pay to any person lending money to the trust fund at a reasonable rate of interest so lent.
- (c) The trustees or associated persons if they be professional persons shall be entitled to be paid for their rendering of professional services.

2.6 What happens on liquidation is dealt with in clause 16:

16. IF on the winding up or dissolution of the Board there remains after payment of all its debts and liabilities any property or assets whatsoever the same shall not be paid to or distributed amongst the members of the Board but shall be given or transferred to Trustees for carrying out charitable objects within New Zealand similar to those hereinbefore set forth or to be applied to such Christian and charitable objects within New Zealand as the Board may by resolution determined or in default thereof as may be determined by a Judge or of the High Court on application by any member of the Board.

- 2.7 It follows from clauses 4 and 16 that the funds of Liberty Trust have to be applied exclusively for the charitable purposes of the Trust.
- 2.8 Following a complaint (not seen), the Charities Commission, by letter dated 2 September 2009,<sup>12</sup> asked:
3. Please confirm whether the lending activity of the Trust is its major activity, and if yes what proportion does it bear to all other activities of the trust.
- 2.9 That question was answered by the Liberty Trust letter of 17 September 2009.<sup>13</sup> Although part of the answers appear at para 10 of the Decision, this was subject to rather selective editing. The totality should be referred to. The selective editing is dealt with further at para 3.5 below.
- 2.10 In relation to the “lending activity” Liberty Trust makes 2 types of loans:
- (a) A general loan to Ark Resources;
- (b) Direct non-secured high-risk welfare loans to needy persons.
- 2.11 Ark Resources Ltd (“**Ark**”), in turn, lends interest free to churches and to those needing housing loans.
- 2.12 Eligibility to interest free loans through Ark is connected to the receipt of donations by Liberty Trust. However:
- (a) What is received by Liberty Trust **is a non-refundable donation;**

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<sup>12</sup> Tab 6.

<sup>13</sup> Tab 7, at pp50-51.

- (b) Many make donations that will not translate into eligibility for a loan as that requires donations for at least 10 years (some give one-off donations, some give only for a limited period).
- (c) Many of those who do become eligible for a loan do not personally take up the loan. Rather this entitlement is assigned to other persons being persons in need or to churches.

2.13 The concept of interest free loans is seen as being required by Scripture. In particular there are various Biblical verses that say that interest should be not charged.<sup>14</sup> That was the view of the early Church.<sup>15</sup>

2.14 Such interest-free loans are seen as being part of the wider concept of the Christian attitude to money. In particular, and without being exhaustive, Christian (and Liberty Trust) teaching includes that:

- money should not be a god or end in itself;
- Christians should not burden themselves with a heavy debt load.

2.15 Quite apart from those who donate so that loans can be offered to others, there are various indicia that the donees do so out of Christian conviction rather than for personal gain recognising that the donation can be permanently re-cycled. This is discussed further in Part 8.

2.16 Although Liberty Trust claims charitable status under the “advancement of religion” limb, both its activities and those of Ark are very much directed at those who are in need.

2.17 They also have the end result of advancing the social objective of encouraging personal home ownership – something seen to be desirable by the Government.

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<sup>14</sup> Note Bundle Tab 7, p128; Tab 16, pp333 and 334.  
<sup>15</sup> See McDonald 13.

- 2.18 It also frees up those who are Christian, and who have been able to repay quickly their loans, to give more to their church in the future.
- 2.19 These issues are considered in more detail later.

### 3 THE DECISION

- 3.1 Para 1 of the Decision notes that Liberty Trust was registered as a charity under the Charities Act 2005 on 8 October 2007.
- 3.2 It appears that as a result of a complaint second thoughts arose within the Charities Commission as to whether it was indeed a charity. The complaint is not part of the record of the Commission (at least as released to Liberty Trust) and its content was, and remains, unknown.
- 3.3 It is clear from para 5 of the Decision that the Charities Commission had looked at the website for Liberty Trust to find out more information about the Trust. The Decision sets out the actual website. The inference is that this led to the letter of 2 September 2009 requesting information. The record subsequently revealed that such website was accessed by at least 31 August 2007, pre-letter.<sup>16</sup>
- 3.4 Para 7 selectively quotes from p1 of the Liberty Trust response of 17 September 2009.<sup>17</sup> The omitted words are (emphasis added):

Liberty's lending to Ark Resources Limited assists Ark to offer interest – free loans (based on the principles of the Christian religion) and ...

- 3.5 As already noted para 10 (when listing the activities of Liberty Trust) is also selective in its quote. The full text needs to be referred to.<sup>18</sup> The omitted comments include (emphasis added):

in (a):

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<sup>16</sup> See Tab 5 and the footer on pp40-46, including, in relation to the quoted document, p42.

<sup>17</sup> See Tab 7 p49.

<sup>18</sup> See pp50-51.

taking every opportunity to advance the Christian religion by publicising the Biblical financial principles on the radio, television, in magazines throughout New Zealand

in (b):

About 500 copies [of teaching articles on biblical financial principles free of charge] are sent to Liberty Trust past and present participants and about 1,800 go to churches and the general public. These newsletters and teachings are also available to the public on our website

in (c):

We have ... given away several hundred copies to ministries and church leaders free of charge

in (d) the statistics of “hits” on the website are omitted;

in (f):

One of our priorities is to assist those in financial need and bringing relief from financial pressures and also to demonstrate Christian care for the social, physical, emotional & spiritual needs of the New Zealand community

in (g) the giving of high-risk unsecured interest free loans was seen as outworking of that care.

3.6 As para 13 of the Decision notes, the “*Notice of Intention to Remove from the Register*” was because what was seen as **one** of the main activities (the lending activity) was thought not to be within the objects of the Trust and not to be charitable. Not stated is that the Notice **accepted** that the “*other*” main activity **was** charitable (that being for the advancement of religion).

3.7 At para 14 the Decision records that there was a response from the then solicitors for Liberty Trust which included a memorandum<sup>19</sup> from the Trust. Although it quotes from the memorandum, surprisingly, it ignores the matters advanced by the solicitors.<sup>20</sup> That letter provided a conceptual legal framework for the activities of Liberty Trust.

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<sup>19</sup> Tab 11, p294.  
<sup>20</sup> Tab 11, pp291-292.

- 3.8 The Decision then deals with some further exchanges. Although at para 17 it records the statement as to rebates it does not record that this practice was discontinued from 1 April 2008.<sup>21</sup>
- 3.9 At para 20 the Decision refers to a letter from the solicitors of Liberty Trust and a further supporting memorandum with a quote from the latter. The arguments in the solicitor’s letter (dealing with advancement of religion) are, again, not expressly acknowledged.<sup>22</sup>
- 3.10 At para 22 the Decision refers to statistics provided by Liberty Trust on 5 February 2010. It **incorrectly** says 57 people were offered loans as a result of “others **forfeiting** their right”. Although 57 had been mentioned earlier, the 5 February 2010 email pointed out that, in light of further research, the number was, in fact, 75.<sup>23</sup> The use of the rather loaded term “forfeiting” is also objected to. It implies an involuntary penalty incurred by the donor rather than what actually occurs, namely a voluntary sponsoring of others into a loan.
- 3.11 The Decision then commenced a legal analysis under the headings “*relief of poverty*”, “*advancement of religion*”, “*advancement of education*” and “*is there a public benefit?*” to conclude that:
- (a) The Trust was not for “*the advancement of religion*”; nor
  - (b) Was there public benefit.
- 3.12 The first such finding had not been previously foreshadowed.
- 3.13 The finding on advancement of religion is the conclusion of an analysis found at paras 40 to 45. The Trust objects are described in para 41 in a manner which is artificially narrow. Although it lists objects 1(b) and (d) it ignores their content and also ignores object 1(c) totally.<sup>24</sup>

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<sup>21</sup> Tab 14, p304.

<sup>22</sup> The letter is at Tab 16, pp330-331.

<sup>23</sup> Tab 17, p348.

<sup>24</sup> Refer Bundle Tab 2, p15.

3.14 At para 42 the Decision sets out its view of what Liberty Trust has stated its [the Trust's] activities to be. However, as noted at paras 3.5, 3.7 and 3.9 above, this view by the Charities Commission is selective, omitting as it does references to advancement of religion.

3.15 The crux of its analysis then comes in para 43:

43. However, the Trust has also advised that “The assistance is provided to people of all religious beliefs, without partiality.” The teachings take place largely in public places, where the emphasis is not on propagating the Christian doctrine but on educating people on the biblical financial principles relating to saving, wise spending and charitable giving.

3.16 Paragraph 44 cites from the Australian High Court decision Re Lawlor<sup>25</sup> where a distinction was drawn between activities conducive to religion and activities for the advancement of religion.

3.17 Para 45 then states (emphasis added):

45. On that basis, the Commission considers that teaching financial principles derived from the Bible are, at best, conducive to religion, as opposed to advancing religion.

3.18 The “on that basis” must refer back to para 43 as there is nothing in the quote from *Lawlor* or its facts that directly leads to the conclusion in para 45. (There the Catholic daily newspaper was intended to print ordinary news).

3.19 Coming back to para 43 the opening “however” is significant. It must be taken as being a gloss on or disagreement with the (partial) description attributed to Liberty Trust as to its activities.

3.20 The reference to “providing assistance to people of all religious beliefs, without partiality” is odd when viewed against the finding that Liberty Trusts’ activities were “*at best, conducive to religion*”. To have an organisation which is overtly Christian offering assistance to all people would appear to be quintessential of advancing religion. This is under the

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<sup>25</sup> (1934) 51 CLR 1.

old adage “actions speak louder than words”. This supports, rather than undermines, Liberty Trust’s statement noted in para 42 of the Decision that it seeks “*to demonstrate Christian care for the social, physical, emotional & spiritual needs of the New Zealand Community*”.

- 3.21 One would hardly say that the actions of the Salvation Army in providing assistance in the aftermath of the Christchurch earthquake was “*at best, conducive to religion, as opposed to advancing religion*”.
- 3.22 So too, the concept that its teachings were largely in public places appears at odds with this being merely conducive to religion rather than for its advancement. To advance religion it needs to be publicly proclaimed.
- 3.23 Then there is the very odd statement that “*the emphasis is not on propagating the Christian doctrine but on educating people on the biblical financial principles*”. It is submitted that statement is a non-sequitur – biblical financial principles are part of Christian doctrine. Importantly, they are part of the essential call to Christians to both believe (i.e., the Godwards or upwards dimension) and behave as believers (i.e., in their dealing with others or the outwards dimension). This is commonly encapsulated in the command “*Love God and love your neighbour*”. The two are or, at least should be, inseparable.
- 3.24 Para 45 also appears inconsistent with para 47 where the Commission accepted that educating people from all walks of life and religions on how to manage debt would amount to advancing education. It noted, however, that this was not a stated purpose.
- 3.25 In relation to public benefit the Charities Commission considered the scheme to be similar to a mutual fund or co-operative scheme for the benefit members. It did not overtly look at the connection between Biblical teachings and the need for Christians to live out their beliefs nor what the purpose of the scheme was nor did it consider what public benefit means in the context of advancement of religion.

- 3.26 Instead the Commission was focussed on what it perceived to be the motives of the donors. Note especially its comment “*Hence people who donate more can receive a larger benefit*”.
- 3.27 Finally, the Decision considered the Trust could not be saved by the application of s61B of the Charitable Trusts Act 1957.

#### 4 APPLICATION TO ADDUCE EVIDENCE

- 4.1 Liberty Trust seeks to have read five affidavits. They are from:
- (a) Mr Kelvin Deal, the Chair of Liberty Trust;
  - (b) Pastor Bruce McDonald, as to the origins of the Trust and its theological undergirding and how this advances religion;
  - (c) Dr Guy on the theological aspects and how this advances religion;
  - (d) Dr Grigg on the same topics;
  - (e) Professor Scrimgeour also on the advancement of religion due to the public benefit aspects of this.
- 4.2 Liberty Trust also seeks to have read some additional documents from the website (being exhibits to the affidavits of Mr Deal and Pastor McDonald). These are reproduced at Tabs 25, 26 and 27.
- 4.3 The application is under R20.16. It is acknowledged this requires “*special reasons for hearing the evidence*”.
- 4.4 Such special reasons flow from the process followed by the Charities Commission.
- 4.5 As noted, Liberty Trust **had** been accepted by the Commission as a charity. It follows that there had to be some good reason for a change of heart. The obligation lay on the Charities Commission to fully and fairly set out why it was contemplating that change.

- 4.6 At least as far as Liberty Trust was concerned, the first step taken by the Charities Commission was the request for information contained in its letter of 2 September 2009.<sup>26</sup> That request was pursuant to s50 of the Act. In fact we now know there had been a complaint (not seen even now) and some consideration by the Commission of the Liberty Trust website.
- 4.7 There is nothing in that letter of 2 September 2009 that suggests that de-registration was imminent. The internal file note for 2 September 2009 reveals a different primary focus.<sup>27</sup>
- 4.8 The next formal step was that taken on 6 October 2009. That was the Notice of Intention to Remove<sup>28</sup> which is required to be given under s33 of the Act. This clearly contemplates written notice.
- 4.9 No amended Notice was issued.
- 4.10 Under s33(2)(c)<sup>29</sup> the Commission is required to state, amongst other things:

the grounds on which it is intended to remove the entity from the register.

The entity must also give an opportunity to respond. Clearly the requirement to specify the grounds on which it is intended to remove a registered entity means setting out the anticipated reasons in a way that

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<sup>26</sup>

Tab 6.

<sup>27</sup>

Tab 24, p377.

<sup>28</sup>

Document 8, Bundle 283.

<sup>29</sup>

That section reads:

**33**

**Notice of intention to remove from register**

- (1) The Commission must, before an entity is removed from the register under section 32(1)(a) to (e), give notice of the matters set out in subsection (2) to the entity.
- (2) That notice must specify—
- (a) the name of the entity; and
  - (b) the registration number of the entity; and
  - (c) the provision of this Act under which, and the grounds on which, it is intended to remove the entity from the register; and
  - (d) the date by which an objection to the removal from the register must be received by the Commission, which must be not less than 20 working days after the date of the notice.

fairly and fully informs the entity of the case against it so it can properly respond. It should not be taken by surprise.

4.11 The Notice **accepted**, in relation to Liberty Trust that:<sup>30</sup>

The current activity of the entity align well with the above requirements for an entity to be charitable under the advancement of religion. The Trust can thus be said to have charitable purposes under the head “advancement of religion”.

4.12 That conclusion flowed from an analysis in these terms (emphasis added):

Clauses 1(a), (b), (d) and Clause 2(c) of the entity’s rules provided that one of the purposes of the entity is to promote the Christian faith, through means such as religious services, public meetings, missionary meetings, exhibitions and lectures. This is considered to be charitable under “advancement of religion”. The current activities of the entity provide adequate proof of its belief in the Christian faith, and promotion of the biblical financial principles by:

... [here followed examples]

The benefit of the biblical teachings of finance is available to all members of the society, as a demonstration of the Christian care, and for the advancement of the Gospel of the kingdom of God.

4.13 However it went on:<sup>31</sup>

The activity of providing interest free loans to people and the promotion of the teachings of Biblical financial principle are two independent activities and not ancillary to each other.

In order for an entity to be registered, it must have charitable purposes. The presence of but one main purpose that is not charitable presents the entity from being registered as a charity.

4.14 The Charities Commission had earlier, under the head of “Relief of Poverty”, considered interest free loans not to have the requisite public benefit.<sup>32</sup>

4.15 It proposed de-registration but, as required by s33(2)(d), gave an opportunity for response. The time period for that response was, in due course, extended.

<sup>30</sup> Document 8 at Bundle 287.

<sup>31</sup> Also at p287.

<sup>32</sup> See p286. Note this was the third of 3 questions under the underlined heading “Relief of Poverty” and before the underlined heading “Advancement of Religion”.

- 4.16 At no point after that Notice until the Decision did the Charities Commission give written notice indicating that it now considered there was an additional ground for de-registration.
- 4.17 In short, there was a failure of statutory process, and a breach of natural justice. The reasoning noted in para 4.12 above and the conclusion noted in para 4.11 are in direct contrast to paras 43 and 45 of the ultimate decision.
- 4.18 The analysis of lack of public benefit was also misleading as it was in the context of relief of poverty not advancement of religion and was coupled to a view that the Trust had two separate purposes. The statement that proof of public benefit was required, not merely a belief that it may occur, is not the law in relation to the limb of charities “advancement of relation”.
- 4.19 The concept in the Notice of two quite separate purposes, one relief of poverty (but not established and no public benefit) and the other, advancement of religion is further borne out by the statement in the Notice that the Commission accepted that the benefit of the biblical teachings of finance is available to all members of the society as a demonstration of Christian care.
- 4.20 That latter comment is consistent with the argument of Liberty Trust that:
- Biblical teachings of finance cannot exist in a vacuum:
- rather they have to be put into practice (the whole point of the teachings);
  - in so doing there is a demonstration of Christian care;
  - which advances religion.
- 4.21 Further, the analysis of public benefit in the Notice contained a red-herring which diverted attention. It is the reference:

Moreover there are no guarantees that every member will benefit from the arrangement, as the certainty of a benefit is heavily dependent on new members joining.

- 4.22 That comment was a public statement of the misconception that lay behind the original letter of 2 September 2009, as borne out by the internal file note of 2 September 2009,<sup>33</sup> that this was some sort of pyramid scheme. It reinforced oral comments made to Liberty Trust.<sup>34</sup> The efforts of Liberty Trust were then diverted into disproving that misconception and led Liberty Trust into a false impression.<sup>35</sup>
- 4.23 The Notice at p285 of the Bundle also states (emphasis added):
- However, evidence gathered from the entities [sic] financial statements and from briefs on their website ...
- 4.24 It is clear that the Commission had referred to the website.
- 4.25 That website had, in fact, been referred to in Liberty's letter of 17 September 2009 at para 3(d)<sup>36</sup> where Liberty Trust referred to over 3,000 pages of Bible teachings and testimonies.
- 4.26 The response to the Notice from Gaze Burt of 3 December 2009 also referred to testimonials<sup>37</sup> as did its letter of 3 February 2010 expressly saying that these appear on the website.<sup>38</sup>
- 4.27 Liberty Trust was not in a position to know what exactly the Commission looked at on the website.
- 4.28 Because the website was consulted by the Commission it is wrong that only selected portions that may support the Decision are included in the record but not the others that may have been viewed but not downloaded and to which generic references were made by Liberty Trust. This is particularly when the website with its access details are referred to in the Decision.

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<sup>33</sup> Tab 24, p377.

<sup>34</sup> Deal Interlocutory Affidavit para 8.

<sup>35</sup> Deal Interlocutory Affidavit para10 – 14.

<sup>36</sup> Tab 7, p50.

<sup>37</sup> Tab 11, p 293.

<sup>38</sup> Tab 16, p 331.

- 4.29 As noted, Liberty Trust was already registered as a charity. It was entitled to expect all arguments and matters that might be relied on as giving rise to a change in the status quo would be fairly and clearly put. Also, being a charity (albeit on notice), it ought not to have to divert what, at least at the time, are considered charitable resources, to providing a warehouse of information in order to create a record for any case of an appeal. That must apply with particular force where the information is available to the Commission and it is clear that the Commission has gone to that particular well and where it appeared that the Commission was starting from a fundamentally wrong premise (that this was some sort of pyramid scheme) thus directing attention away from what proved ultimately to be the crucial issues.
- 4.30 Given the focus on donors evidence in both the Notice and the Decision it would be remarkable if the Commission did not at least look on the website for the form the donors had to sign, which form was expressly referred to in the documents the Commission relies on.
- 4.31 Finally it is relevant that there has been no actual hearing – see in *re Education Trust NZ Ltd* at paras [60] to [63].<sup>39</sup>
- 4.32 The affidavits and additional website information (also annexed to the affidavits) should be admitted. Note the website information was all available pre-decision.

## **5 THE LAW ON ADVANCEMENT OF RELIGION**

### **A. Content of “Religion”**

- 5.1 “Advancement of religion” is one of the “per se” limbs of charity. It is expressly recognised as such in s5(1) of the Act. It is not defined. Accordingly, the common law (with its multiplicity of cases) applies.

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<sup>39</sup> (2010) 24 NZTC 24, 354.

- 5.2 Advancing the Christian faith, as Liberty Trust claims it does, quintessentially falls within this limb of charity. Most recent cases under this head have been concerned with whether non-Christian activities are, nevertheless, within the concept of a “religion”.
- 5.3 This case does not raise that difficulty. The Charities Commission Decision does not challenge that the activities of Liberty Trust are within the description of “religion” but, instead, described them as being conducive to religion and not for the advancement of religion.
- 5.4 Nevertheless, some of the comments in the cases on non-Christian activities are helpful in providing content to the concept of “advancement of religion”.
- 5.5 The leading New Zealand case is *Centrepoint Community Growth Trust v Commissioner of Inland Revenue*.<sup>40</sup> That case accepted that the trust there, which was based on the teachings of Mr Potter, **did have** as one of its principal purposes, the advancement of religion.<sup>41</sup> In the course of reaching that conclusion, at pp691 – 695 Tompkins J conducted a review of the authorities. He then concluded this section by accepting the tests he had referred to in the High Court of Australia *Scientology* case.<sup>42</sup> In so doing Tompkins J accepted that Court’s criticism of the narrowness of the test propounded by Dillon J in *Barralet v Attorney-General*.<sup>43</sup>
- 5.6 It is apparent that Tompkins J also adopted the comments of Plowman J in *Re Watson*.<sup>44</sup>

First of all, as Romilly MR said in *Thornton v Howe* (1862) 31 Beav at 20, the court does not prefer on religion to another and it does not prefer one sect to another. Secondly, where the purposes in question are of a religious nature – and, in my opinion, they clearly are here – then the court assumes a public benefit unless the contrary is shown ... And thirdly, that having regard to the fact that the court does not

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<sup>40</sup> [1985] 1 NZLR 673.

<sup>41</sup> See p698 1 25.

<sup>42</sup> *Church of the New Faith v Commissioner for Pay Roll Tax (Vic)* (1982) 154 CLR 120; (1983) 49 ALR 65.

<sup>43</sup> [1980] 3 All ER 918.

<sup>44</sup> [1973] 3 All ER 678, 688.

draw a distinction between one religion and another or one sect and another, the only way of disproving a public benefit is to show, in the words of Romilly MR in *Thornton v Howe*, that the doctrines inculcated are – ‘adverse to the very foundations of all religion, and that they are subversive of all morality.

- 5.7 Tompkins J expressly adopted various citations from the judgments in *Church of the New Faith*. The first of these was a passage from Mason ACJ and Brennan J<sup>45</sup> (emphasis added):

We would therefore hold that, for the purposes of the law, the criteria of religion are twofold; first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion. Those criteria may vary in their comparative importance, and there may be a different intensity of belief or of acceptance of canons of conduct among religions or among the adherents to a religion. The tenets of a religion may give primacy to one particular belief or to one particular canon of conduct. Variations in emphasis may distinguish one religion from other religions, but they are irrelevant to the determination of an individual’s or a group’s freedom to profess and exercise the religion of his, or their, choice...

- 5.8 Earlier,<sup>46</sup> in a passage not cited there but relevant to this case, Mason ACJ and Brennan J had stated (emphasis added):

What man feels constrained to do or to abstain from doing because of his faith in the supernatural is prima facie within the area of legal immunity, for his freedom to believe would be impaired by restriction upon conduct in which he engages in giving effect to that belief. The canons of conduct which he accepts as valid for himself in order to give effect to his belief in the supernatural are no less a part of his religion than the belief itself. Conversely, unless there be a real connexion between a person’s belief in the supernatural and particular conduct in which that person engages, that conduct cannot itself be characterized as religious.

The canons of conduct which are part of a religion reflect that religion’s set of beliefs, and thus a theistic religion typically includes the acceptance of a duty of ritual observance, as well as ethical practice.

- 5.9 Tompkins J next referred to Murphy J’s dicta that the law knows no heresy. He then cited from the judgment of Wilson and Deane JJ namely (with emphasis added):

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<sup>45</sup> See p136.

<sup>46</sup> See p135.

“One of the more important indicia of ‘a religion’ is that the particular collection of ideas and/or practices involves belief in the supernatural, that is to say, belief that reality extends beyond that which is capable of perception by the senses. If that be absent, it is unlikely that one has ‘a religion’. Another is that the ideas relate to man’s nature and place in the universe and his relation to things supernatural. A third is that the ideas are accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in specific practices having supernatural significance. A fourth is that, however loosely knit and varying in beliefs and practices adherents may be, they constitute an identifiable group or identifiable groups. A fifth, and perhaps more controversial, indicium (cf *Malnak v Yogi* (1979) 592 F 2d 197) is that the adherents themselves see the collection of ideas and/or practices as constituting a religion.”

5.10 Pausing here the following conclusions can be drawn:

- (a) The concept of “religion” includes moral or ethical standards of personal conduct if connected to a person’s belief in the supernatural;
- (b) The Courts do not put themselves into the position of judging between teachings nor do the Courts treat a particular emphasis on one aspect as invalidating a gift for the advancement of religion. This is as long as the code of conduct or emphasis is not adverse to the very foundations of religion or subversive ‘of morality’;
- (c) Because the Courts do not judge between religions, public benefit is assumed with the only way of disproving it being to show that it is adverse to religion or morality. (It is, however, accepted that particular gifts may still fail the public benefit test).

5.11 These conclusions are relevant here in relation to para 43 of the Decision where the Charities Commission purported to draw a distinction between “propagating the Christian doctrine” and “educating people on the biblical financial principles”. The Christians all take the Bible to be the source of their doctrine although the degree of emphasis on its reliability and the approach to Biblical interpretation will vary. It is not for the Commission or the Courts to say that a particular teaching, because it is perceived to be confined to biblical financial principles, does not advance religion.

- 5.12 Moreover, the biblical financial principles as espoused by Liberty Trust clearly fit within the concept of religion having a moral or ethical dimension.

**B. “Advancement”**

- 5.13 Although the issue in *Centrepont* was more whether or not Mr Potter’s teachings could be classified as a religion, early in his analysis Tompkins J adopted citations from prior cases on what constituted advancement of religion. In particular he cited Lord Hanworth MR in *Keren Kayemeth Le Jisroel Ltd v Inland Revenue Commissioner*<sup>47</sup> and Donovan J in *United Grand Lodge of Ancient Free and Accepted Masons of England v Holborn Borough Council*:<sup>48</sup>

- 5.14 Lord Hanworth MR defined the promotion of religion as (emphasised added here):

the promotion of spiritual teaching in a wide sense, and the maintenance of the doctrines on which it rests, and the observances that serve to promote and manifest it – not merely a foundation or cause to which it can be related.

- 5.15 Donovan J had this to say about the advancing of religion (again with emphasis added here):

To advance religion means to promote it, to spread its message ever wider among mankind; to take some positive steps to sustain and increase religious belief; and these things are done in a variety of ways which may be comprehensively described as pastoral and missionary.

- 5.16 Although not cited by Tompkins J (not being relevant to the case before him) Donovan J had earlier on the same page stated:

Accordingly, one cannot really begin to argue that the main object of Freemasonry is to advance religion, except perhaps by saying that religion can be advanced by example as well as by precept, so that the spectacle of a man leading an upright moral life may persuade others to do likewise. The appellants did not in fact advance this argument...

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<sup>47</sup> [1931] 2 KB 465 (CA) 477.

<sup>48</sup> [1957] 1WLR 1080 at 1090.

5.17 Donovan J in the *Grand Lodge* case recognised that religion can be advanced by **pastoral** means. An example of that is found in the *Presbyterian Church (New South Wales) Property Trust v Ryde Municipal Council*.<sup>49</sup> There the Court held that the provision of a rest home **was** for the advancement of religion. Likewise, in *Lawlor*,<sup>50</sup> Dixon J concluded that a gift advanced religion if made “*to religious bodies, orders, or societies, if they have in view the welfare of others*”.

5.18 In *re Hood*<sup>51</sup> there was a bequest in these terms (emphasis added):

Whereas I believe in the universality of the Christian religion and that the remedy for all the unrest and disorders of the body politic will be found in the application of Christian principles to all human relationships And whereas I believe the drink traffic to be one of the most subtle and effective forces in preventing the successful application of these principles and I therefore hope and trust that active steps will be taken to minimize and ultimately extinguish this enemy of my country’s welfare. Now therefore I declare it to be my wish that my general beneficiaries shall hold the whole of my residuary trust estate together with the income thereof in spreading the Christian principles before mentioned and in aiding all active steps to minimize and extinguish the drink traffic.”

That gift was challenged on the grounds that there were two separate and distinct spheres of activity within the gift – (1) the spreading of Christian principles; and (2) the aiding of active steps to minimise and extinguish the drink traffic. The latter was said to imply political and legislative steps which took it outside a charitable gift. Both the High Court and Court of Appeal upheld the gift. All accepted that a gift that provided for the application of Christian principles to all human relationships was a valid gift. On its true construction the gift was seen as being for:

The advancement of Christian principles, with a particular method by which that advancement may take place – namely, by gradually extinguishing the drink traffic.<sup>52</sup>

5.19 The promotion of a general knowledge of the teaching of the Bible in schools was considered charitable in *Re Williams*.<sup>53</sup>

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<sup>49</sup> [1978] 2 NSWLR 387 (NSW CA).

<sup>50</sup> Roman Catholic Archbishop of Melbourne v Lawlor (1934) 51 CLR 1 (HCA) at 32.

<sup>51</sup> [1931] 1 Ch 240 (CA).

<sup>52</sup> See Lord Hanworth MR at 249. See also Lawrence LJ at 252, Romer LJ at 253.

## 5.20 Religion can be advanced indirectly:

- (a) In *Re Charlesworth*<sup>54</sup> a bequest to officers of a society of clergymen to pay the expenses of an annual dinner was upheld as likely to encourage attendances at the meetings;
- (b) In *Re Strickland's Will Trusts*<sup>55</sup> a bequest to provide prizes at a Baptist Sunday School was valid;
- (c) In *Belfast City YMCA v Commissioner of Valuation for Northern Ireland*<sup>56</sup> the trust had the purpose to:

endeavour to promote the improvement of the spirit and mental and social condition of young men and the general extension of Christ's Kingdom

It held land which was used as a sports ground. This was held to be a charitable as advancing religion so that no rates were payable.

5.21 *Tudor on Charities* (9ed 2003) does not have a separate discussion on “advancement” in this context. However, the learned authors state at para 2-048 (omitting footnote references, but adding emphasis):

## THE ADVANCEMENT OF RELIGION

A gift for religious purposes has to satisfy two conditions in order to come within the meaning of Lord Macnaghten's third head of charity. First, the gift must contribute to the advancement of religion as that word is interpreted by the Courts. Secondly, the gift must promote the religious instruction or education of the public. It is well settled, however, that, because the advancement of religion is within Lord Macnaghten's first three heads of charity, a gift for religious purposes is prima facie charitable, the necessary element of public benefit being presumed unless and until the contrary is shown.

## 5.22 Against that background it is hard to understand why para 43 of the Decision begins with the word “however” and then, as if proving that Liberty is not an entity for the advancement of religion, refers to the

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<sup>53</sup> [1950] NZLR 854.

<sup>54</sup> (1910) 26 TLR 214.

<sup>55</sup> [1936] 3 All ER 1027

<sup>56</sup> [1968] NI 3 (CA)

assistance being provided to people of all religious beliefs, without partiality and to the teachings being largely in a public place.

**C. “Conducive to” v “Advancement of”**

5.23 As noted the Charities Commission held that Liberty Trust did not have, as a purpose, the advancement of religion, its purposes being “at best, conducive to religion”. It did this:

- (a) Without any apparent consideration of the authorities on what is meant by advancement as just discussed; and
- (b) By citing a passage from *Lawlor* without either:
  - examining its context or the facts of that case; or
  - how it actually applied; and
- (c) Apparently based on the illogical and obscure reasoning in para 43 which reasoning was not related to *Lawlor*.

5.24 Although *Lawlor* is a decision of the High Court of Australia, which decisions are entitled to respect, it is not, of course, binding in New Zealand. That comment applies with all the more force when it is recalled that, on the issue of whether a gift to “establish a Catholic daily paper” was for the advancement of religion, the Court divided 3:3 with the result that the decision of the Supreme Court of Victoria (Full Court) prevailed. Although the judgment was cited by the Court of Appeal in *Molloy v Commissioner of Inland Revenue* it was in the context of political activity not being charitable.<sup>57</sup> Importantly the facts were far distant from the present situation.

5.25 As noted, the bequest in *Lawlor* was to establish a Catholic daily paper. The paper was to report daily news but with a Catholic perspective. Of the three Judges who considered the bequest not to be charitable Dixon J

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<sup>57</sup> [1981] 1 NZLR 688 (CA) at 696

conducted the fullest examination of the issue and it is his judgment that is cited by the Charities Commission.

5.26 At p32 Dixon J stated (emphasis added):

In order to be charitable the purposes themselves must be religious; it is not enough that an activity or pursuit in itself secular is actuated or inspired by a religious motive or injunction: the purpose must involve the spread or strengthening of spiritual teaching within a wide sense, the maintenance of the doctrines upon which it rests, the observances that promote and manifest it. ... A gift for any particular means of propagating a faith or religious belief is charitable.

5.27 Dixon J did go on to say:

But, whether defined widely or narrowly, the purposes must be directly and immediately religious. It is not enough that they arise out of or have a connection with a faith, a church, or a denomination, or that they are considered to have a tendency beneficial to religion, or to a particular form of religion. The law has found a public benefit in the promotion of religion as an influence upon human conduct; but it has no standard by which to estimate what public benefit of that order is produced indirectly or incidentally by means which, although they may be considered to contribute to the good of religion, are not in themselves religious and do not serve directly a religious object.

5.28 However, that must be read with caution. Even in Australia the Court of Appeal of New South Wales in *Presbyterian Church v Ryde Council* distinguished *Lawlor* to hold that residential units for the elderly (who paid fees for the use and who were not necessarily Presbyterian) run by the Presbyterian Church advanced religion rather than being merely conducive to it.<sup>58</sup> As Mahoney JA stated (omitting the citations but with emphasis added):<sup>59</sup>

Those purposes which are religious purposes within the law of charities, therefore, comprehend, not merely the formulation of doctrine and its propagation and the winning of adherents to it, but also certain of the means by which the religion is practised, eg, the building of churches, the employment of ministers, and the holding of public services or ceremonies as prescribed by the religion. But the purposes of a church, may, and often do, extend beyond such purposes. They may extend, for example, to activities or rituals which lack the necessary public character and, therefore, fall outside the charity law by reason of the principle exemplified in *Gilmour v. Coats*; and *Leahy v. Attorney-General for New South Wales*. But,

<sup>58</sup> See [1978] 2 NSW LR 387 at 394 per Glass JA, Moffitt P concurring and Mahoney J at 410.

<sup>59</sup> At p403

more significantly for present purposes, it is now part of the activities of the church, not merely to define what are good or appropriate works and exhort its adherents to the performance of them, but also to undertaken itself the performance of them. Thus, if judicial knowledge be the knowledge of the ordinary wide-awake man: *Brisbane City Council v. Attorney-General of Queensland; Ex rel. Scurr*, it is now common experience that a church as such may have, as part of its activities, benevolent and philanthropic activities which are or may, in appropriate circumstances, not be charitable in the sense here relevant.

5.29 So too, in *Re Banfield*<sup>60</sup> the issue was whether a gift to the Pilsdon Community was valid. It provided for community living but, in addition to encouraging a pious life, was involved in practical outreach. It was held to be charitable. Goff J<sup>61</sup> stated:

The Pilsdon Community, as I see it, is much more than a place where social intercourse and discreet festivity, if festivity there be, go hand in hand with religious observance and instruction. It exists to dedicate everything to God, even the most humble workaday tasks, and to do the will of God in practical Christianity.

5.30 The facts here are a far cry from a bequest to establish a newspaper. Liberty Trust is involved in teaching and in doing the will of God in practical Christianity to thereby advance religion.

## 6 PUBLIC BENEFIT IN THE CONTEXT OF ADVANCEMENT OF RELIGION

6.1 As already noted in the previous section, in the context of advancement of religion public benefit is assumed<sup>62</sup>.

6.2 In *Berry v Marylebone Borough Council*<sup>63</sup> Romer LJ stated:

The organisation need not, in our judgment, prove that its objects, when carried at effect, do in fact advance religion, etc., for it is sufficient to show that being directed to that end, they may have that result.

6.3 This is unless:

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<sup>60</sup> [1968] 2 All ER 276

<sup>61</sup> At p279

<sup>62</sup> See para 5.6, 5.20.

<sup>63</sup> [1958] Ch 406 (CA) at 414.

- (a) The doctrines or practices are adverse to the very foundation of all religions and are subversive of all morality;<sup>64</sup> or
- (b) They lack the necessary public character.<sup>65</sup>

6.4 The Charities Commission held, at paras 48 and 49, that there will not be a public benefit if private benefits are an end in themselves and that mutual benefit arrangements are not charitable. But this finding:

- (a) Essentially was looking at the motivation of the donors and not at the purpose of Liberty Trust; and
- (b) Was based on cases that were **not** concerned with advancement of religion.

6.5 There was no recognition that different considerations apply to religious charities. Lord Somervell in *Inland Revenue Commissioners v Baddeley*<sup>66</sup> stated:

I cannot accept the principle submitted by the respondents that a section of the public sufficient to support a valid trust in one category must, as a matter of law, be sufficient to support a trust in any other category. I think that difficulties are apt to arise if one seeks to consider the class apart from the particular nature of the charitable purpose. They are, in my opinion, inter-dependent. There might well be a valid trust for the promotion of religion benefitting a very small class.

6.6 A degree of personal benefit is inevitable in most charitable purposes but this does not stop the purpose being charitable. This applies even where substantial funding comes from those in trade or a profession in return for which they receive substantial benefits. See, e.g:

- (a) *Incorporated Council of Law Reporting for England and Wales v Attorney-General*<sup>67</sup> where the law reports were purchased by

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<sup>64</sup> See para 5.6, 5.7

<sup>65</sup> See the citation at para 5.28.

<sup>66</sup> [1955] 1 All ER 525 (HL) at 549

<sup>67</sup> [1971] 3 All ER 1029 (CA).

lawyers and used for fee earning yet the Council was still charitable;

(b) *Commissioner of Inland Revenue v Medical Council of New Zealand*<sup>68</sup> where medical practitioners paid fees to the Council which maintained a register of medical practitioners with such registration entitling them to practice and thereby receive substantial fees;

(c) *Barclay v De Lacy*<sup>69</sup> which was a Construction Training Fund was held to be charitable being for the advancement of education even although the industry benefitted by reason of its enhanced efficiency.

6.7 No doubt religious adherents contributing to their Church would also consider that they are receiving private benefits, with both temporal and eternal significance.

6.8 Moreover, what would not be considered to be charitable on its own because of the benefit to members will, nevertheless, be charitable if it carries out the main purpose of a trust, etc., which is a charitable purpose. See, for instance *London Hospital Medical College v Inland Revenue Commissioners*<sup>70</sup> where a student union promoting recreational, social and cultural activities was held to be charitable because it furthered the educational purposes of the medical college. Brightman J (as he then was) adopted the comment of Aitken LJ in *Inland Revenue Commissioners v Yorkshire Agricultural Soc*:<sup>71</sup>

... if the benefit given to its members is only given to them with a view of giving encouragement and carrying out the main purpose which is a charitable purpose, then I think the mere fact that the members are benefited in the course of promoting the charitable purpose would not prevent the society being established for charitable purposes only.

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<sup>68</sup> [1997] 2 NZLR 297 (CA)

<sup>69</sup> [1996] 2 Qd R 122.

<sup>70</sup> [1976] 1 WLR 613.

<sup>71</sup> [1928] 1 KB 611 (CA) at 631, cited by Brightman J at 622.

6.9 The primary case relied on by the Charities Commission is *Hobourn Aero Components Ltd's Air-raid Distress Fund*<sup>72</sup>. That concerned employees of a particular company agreeing to subscribe a set amount per week from their wages to, mainly, help those in dire distress as the result of enemy action. There was no “need” criterion that would bring it within the “relief of poverty” limb of charities. It was held that the fund was not charitable as it did not have the requisite public benefit element. Of course the class of beneficiaries (all being employees of one company) did not have the requisite public element<sup>73</sup>.

6.10 Lord Greene MR stated<sup>74</sup> (emphasis added):

But it is quite clear that the paramount and principal object of this fund was to benefit subscribers and nobody else. That seems to me to stamp it with the character of a private arrangement, a private trust.

It is apparent that this was key to his finding in the case as at the end of his judgment<sup>75</sup> he again stated (emphasis added):

The private character of this trust is, to my mind, made clear beyond the possibility of doubt by the fact that the paramount purpose of the subscription was to provide benefit for the subscribers and for nobody else.

Morton LJ also noted that benefits were only available to subscribers and no-one else<sup>76</sup>.

6.11 However, even those views have still to be looked at in the context that the subscribers were hardly members of the public, all being employees of one relatively small company. That emerges from the comment of Lord Greene<sup>77</sup> at p507:

I must not be taken to be suggesting, for one moment, that the mere fact that the benefits of a fund are confined to members or

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<sup>72</sup> [1946] 1 All ER 501 (CA)

<sup>73</sup> This is especially so in light of the later case *Oppenheim v Tobacco Securities Trust* [1951] AC 297; [1975] 1 All ER 31 (HL) and would appear still to be so under the more liberal test in *Dingle v Turner* [1972] AC 601; [1972] 1 All ER 878 (HL)

<sup>74</sup> At 506

<sup>75</sup> Pp 509-510

<sup>76</sup> P511 A

<sup>77</sup> P507.

subscribers would be sufficient of itself to exclude a fund from the category of charity. It all depends on the facts of each individual case. For instance, to explain what I mean, if a number of charitably-minded individuals in a parish got up a subscription for the purpose of providing a parish nurse for inhabitants unable to pay for nursing, the fund so subscribed would not be any the less of a charitable fund because no person in the parish could obtain the services of the nurse unless he or she became a member of the association and paid, let me say, half a crown a year, or whatever it is villagers do pay in such circumstances. That would not turn what was in essence a charity into something which was not a charity. It is all a question, in these cases, of the real paramount and governing nature of the transaction. In the case I put, the elements which are present in the present case would, of course, not be present, because the paramount and primary purpose of this is, in my view, self-help and nothing else.

6.12 The other case directly relied on by the Charities Commission<sup>78</sup> is similar in that what was involved was a pension fund for employees of a particular company who had contributed to the fund.

6.13 Somewhat more relevant is the case of *Re Forster, Gellatly v Palmer*<sup>79</sup>. That concerned a bequest to a society to whose object was the relief of infirm, sick or aged Roman Catholic secular priests in a particular diocese. At issue was whether the society itself was charitable. The benefits administered by the society were only available to priests who themselves subscribed. Poverty was not a necessary condition before benefits were received. It was contended that this was not a charity at all but a mere friendly society but Bennett J held that it was a charity under the advancement of religion limb.

6.14 It is acknowledged that Lord Greene in *Hobourn* did have some difficulties with the case, saying<sup>80</sup>:

It is a decision which, I must confess, I have great difficulty in understanding. The judge found it possible there to hold that a fund for the relief of infirm, sick and aged Roman Catholic priests in particular diocese was for the advancement of to members. He did not deal with it as a case for the relief of poverty, which it clearly was not, but he laid stress on the fact that the funds were mainly derived from donations from non-members. It may very well be that the decision could be justified on the principle I suggested a moment ago that, if you find a number of charitable persons setting up a fund for

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<sup>78</sup> *Re Harris Scarfe Ltd* [1935] SASR 433.

<sup>79</sup> [1938] 3 All ER 767.

<sup>80</sup> At p509.

the benefit of a particular class, the fact that members of that class are required to join the fund and pay small subscriptions does not prevent it from being charitable. It may be possibly supported on that ground, but it is not a decision from which, with all respect, I find any help in the present case.

- 6.15 However *Re Forster* was, at about the same time, applied by MacDermott J (as he then was) in *Baptist Union of Ireland (Northern) Corporation v Commissioner of Inland Revenue*<sup>81</sup>. That case involved a superannuation fund for ministers of the Baptist Church in Northern Ireland. Only those who subscribed were entitled to benefits but funding also came from other sources as well. MacDermott J held the fund to be charitable. He stated<sup>82</sup>:

I think the cases show that the existence of a contractual or bargaining element between the management of a fund and its beneficiaries will not necessarily prevent the purposes of the fund from being truly charitable ...

I doubt if there is any single factor which can invariably settle the matter. I think what one has to do in these cases is to regard all the relevant facts, relationships and characteristics which the trust exhibits or implies and then to see whether or not, when duly marshalled and weighed, they reveal the presence of whatever is the mark of the truly charitable purpose. Thus, in cases such as this, it will be material to consider such matters as, for example, the terms of the contract binding the beneficiaries; the composition of the fund from which benefits are payable; whether the benefits are “as of right” or discretionary, and whether the beneficiaries control the fund or are merely attached contractually to a management in which they play no effective part ...

- 6.16 He then concluded that:<sup>83</sup>

... that the purposes of this Fund - managed, as it is, by the Baptist Union of Ireland to the exclusion of its membership, supported, as it is, in substantial measure by voluntary donations and aimed, as it is, at the advancement of religion through the benefits it confers on the Baptist ministry – are sufficiently altruistic in character to retain their *prima facie* nature and so remain charitable and only charitable, in point of law.

- 6.17 It is accepted that the law of charities in relation to superannuation of Ministers of religion and religious members is now in a rather special

<sup>81</sup> (1945) 26 TC 335. The reference to *re Forster* is at p349.

<sup>82</sup> At pp356-357. These passages were cited with approval by Danckwerts J in *Commissioner of Inland Revenue v The Royal Naval and Royal Marine Officers' Assoc* (1955), 36 TC 187 at 197.

<sup>83</sup> At p357.

class<sup>84</sup>. However, the very nature of superannuation funds is that the Fund is held in trust for the members who will receive all the assets if the fund is wound up. This is different to the situation here where the funds are not so held. Other differences will be discussed in Part 7.

- 6.18 In *Educational Fees Protection Soc v Commissioner of Inland Revenue*<sup>85</sup> three private schools formed an association which was to meet the school fees of a child if their parent died. The funding came from a compulsory per capita levy that was part of the school fees – that is parents had no option but to pay it if they sent a child to the relevant school. It was accepted that the purpose of the fund was to advancement of education but the Commissioner contended that there was no public benefit. The class was closed (being the children at set schools although other schools were free to join). The Commissioner argued that it was a business arrangement closely akin to life insurance which operated for the benefit of the parents and the schools themselves as well as the children of a parent who died. Gallen J held that it was still charitable. In part this was because advancement of education was a per se limb of charities (as of course, is advancement of religion). At p127 he ruled:

The primary purpose according to the evidence before me, is to ensure the continuation of education of children regardless of a change in their personal family circumstances. The fact that the parents and the school may also gain an advantage from this is secondary and even although that may smack of a business relationship, would not be sufficient to deprive the primary purpose of its charitable nature.

In that case there is no specific altruistic element in the funding as it came from compulsory levies. Yet the altruistic purpose of the fund prevailed.

- 6.19 In *Centrepont* the Court held that the community still had the requisite element of public benefit even although those who joined were provided

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<sup>84</sup> See *Hester v Commissioner of Inland Revenue* [2005] 2 NZLR 172 (CA). Leave to appeal declined by the Supreme Court at [2005] 2 NZLR 473n. *Hester limited Presbyterian Church of New Zealand Beneficiary Fund v Commissioner of Inland Revenue* [1994] 3 NZLR 363 to superannuation for clergy persons.

<sup>85</sup> [1992] 2 NZLR 115.

with accommodation and living requisites plus a small weekly allowance and those seeking its psychological healing help were also charged fees.<sup>86</sup>

6.20 It has similarly been held that it does not necessarily destroy the public benefits or charitable aspects that payment has to be made by the beneficiary such that the provision of benefit is on a contractual basis as a bargain rather than by way of bounty – or that the need to pay thereby means that the really poor may not be able to afford the service. The leading authority is *re Resch's Will Trusts*<sup>87</sup> where the bequest was in favour of a religious order to assist in the running of a private hospital which charged fees. That hospital was next-door to a general hospital run by the same Order. One contention was that poor people could not afford the fees of the private hospital. Lord Wilberforce delivering the judgment of the Privy Council stated:<sup>88</sup>

If the purposes of the hospital are otherwise charitable, they do not lose this character merely because charges are made to the recipients of benefits.

Then:<sup>89</sup>

It would be a wrong conclusion from [some authorities relied on by the appellants] to state that a trust for the provision of medical facilities would necessarily fail to be charitable merely because by reason of expense they could only be made use of by persons of some means.

6.21 In *Re Cottam's Will Trusts*<sup>90</sup> the provision of housing was still charitable although the occupiers had to pay an “*economic rent*” though Danckworts J also did consider the trust to be for the aged of small means. In *Joseph Rowntree Trust v Attorney-General*<sup>91</sup> again the provision of housing was held to be charitable even although the occupiers had to pay 70% of the cost of the premises and could make a gain on resale. In *Presbyterian*

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<sup>86</sup> See e.g., at pp 698-699, 700. Although reference was made to “*modest charges*” the weight of authority is that this qualification is not necessary.

<sup>87</sup> [1969] 1 AC 514 (PC).

<sup>88</sup> p541.

<sup>89</sup> P544.

<sup>90</sup> [1955] 3 All ER 704.

<sup>91</sup> [1983] 1 Ch 159.

*Church v Ryde Council* already referred to the units were constructed using a Government grant and a “donation” (the lower court decision specifically put that word in quotes<sup>92</sup>) from the original occupiers who then qualified for a lower service charge. See also *D V Bryant Trust Board v Hamilton City Council*.<sup>93</sup>

6.22 This issue was also considered in *McGarvie Smith Institute v Campbelltown Municipal Council*.<sup>94</sup> Having referred to:

the many authorities which have held that “a body or a purpose which is otherwise charitable does not necessarily lose that characteristic merely because payments are made by the recipients of the benefits”

and having dealt with some of those, Else-Mitchell J:

The anomalous results which would ensue from an acceptance of any general principle that payment of all or part of the cost of providing benefits is inconsistent with the legal character of a charity or the existence of a charitable trust seem to me to require the rejection of that principle. Rather should I be disposed to adopt the views expressed by the members of the Court of Session in *Inland Revenue Commissioners v Falkirk Temperance Café Trust*, [1927] S.C. 261, that the conduct of trade by a charitable trust does not derogate from its charitable character because any gain from the trading operations must be used in furthering the purposes of the trust. This appears to me at root the critical distinction which must be borne in mind in those cases where the benefits are of a character which can seldom be provided entirely free of charge or where the only mode in which the charity can be carried into effect is by the adoption of some commercial transaction. The conduct of educational institutions, hospitals and various other institutions has traditionally been accompanied, in Australia at any rate, by the payment of charges or fees and whilst one might not characterize these institutions as conducting trades or businesses it is plain that they engage in commercial activities, each student, patient or inmate being a party to a contract of some sort with the trustees or controlling body of the institution. The operations of each such institution thus consist of the performance of a series of contracts under which money is received in return for services rendered. It seems not material to the commercial character of the operations that the value of the services in some open market sense is more than the amount paid or that the difference between that value and the amount in fact paid is recouped by the income from some invested funded or by subventions from private or public sources including State subsidies. Each such institution, provided it is carrying out one of the four classes of public purposes which are regarded as charitable in a legal sense, is

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<sup>92</sup> [1977] 1 NSWLR 620 at 626.

<sup>93</sup> [1977] 3 NZLR 342, 349.

<sup>94</sup> [1965] NSW 1641 at 1646-1647.

none the less a charity and the fundamental reason why it is so treated is that there is no element or prospect of private profit.

- 6.23 In *Tribune Press (Lahore) v Income Tax Commissioner, Punjab Lahore*<sup>95</sup> the Privy Council upheld, as being of public utility, an endowment to run a newspaper that charged commercial rates to its readers and advertisers. The Board commented:

It cannot, in their Lordship's opinion, be regarded as an element necessarily present in any purpose of general public utility that it should provide something for nothing, or for less than it costs, or for less than an ordinary price.

An eleemosynary element is not essential, even on the strict English view of charitable uses.

- 6.24 Ironically here the objection appears to be that the loan recipients are **not** paying interest but do have to make donations. The exact arrangements will be considered in Part 7 but, of course, it should be pointed out that interest free loans are not necessarily gifts on behalf of the lender – see:

- *Commissioner of Stamp Duties v Card*<sup>96</sup>
- *Re Marshall*<sup>97</sup>

- 6.25 Finally, under this head, although Liberty Trust relies on the advancement of religion head, in assessing the utility of how that is done it is not irrelevant that, as the Charities Commission noted at para 33:

... in contemporary developed countries, poverty can be equated to lack of affordable accommodation.

- 6.26 In the New Zealand context personal home ownership is seen as desirable.<sup>98</sup>
- 6.27 Further the size of the assistance provided can be taken as an indicator of a degree of need.<sup>99</sup>

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<sup>95</sup> [1939] 3 All ER 469 (PC) at 475.

<sup>96</sup> [1940] NZLR 637 (CA).

<sup>97</sup> [1965] NZLR 851 (CA).

<sup>98</sup> Bundle Tab 16, p334. And see Prof Scrimgeour

<sup>99</sup> *Re Niyazi's Will Trusts* [1978] 3 All ER 785.

6.28 Finally, the Global Financial Crisis of 2008, caused by excessive debt taken on by home owners in the United States and financial institutions and Governments across the world, illustrates the public benefit of the Biblical truths espoused by the Liberty Trust.<sup>100</sup>

## **7 APPLICATION OF THE LAW TO THE FACTS – ADVANCEMENT OF RELIGION**

7.1 The Charities Commission, by registering Liberty Trust, accepted that the objects in its Trust Deed<sup>101</sup> were charitable, presumably being for the advancement of religion. Nothing in the Decision suggests the Commission changed its mind on this particular issue. Note in particular para 41.

7.2 Rather it appears that the Charities Commission, having looked at the content of the teachings and perhaps where it occurred (horror of horrors, in public places) considered the actual teachings were, at best, only conducive to religion rather than advancing it.

7.3 As noted<sup>102</sup> this conclusion is completely at odds with the Notice of Intention to De-register with no amended notice being given.

7.4 As to the content of its teaching, Liberty Trust says that educating people on biblical financial principles cannot be distinguished from propagating Christian doctrine. (Incidentally it would be difficult to obtain universal agreement amongst theologians on what is “*the Christian doctrine*”.)

7.5 Although there is an emphasis on biblical financial principles it is simply an aspect of the Christian faith propagated by Liberty Trust. Any reading of their teachings shows that this teaching is rooted in a profound belief in core Christian doctrine. This is evidenced by the very documents that the Commission downloaded from the Liberty Trust website. Refer:

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<sup>100</sup> Note the article by Kelvin Deal in *Daystar* December 2008, Tab 7, pp263-266.

<sup>101</sup> As to these, see Bundle Tab 2 at p15, also set out above at para 2.2.

<sup>102</sup> See Parts 3 and 4 above.

- Newsletter December 2006 - Bundle p23
- The testimony in the Newsletter of October 1994 - Bundle pp40-41
- Frequently Asked Questions, Question 1 - Bundle pp42-44
- “*A Better Way to Own a Home*” - Bundle pp45-46

7.6 The last two documents each refer to an application form. Remarkably the Commission record does not include that fundamental document. It has been included by Liberty Trust under Tab 25 together with the two documents which the applicants have to say they have read (one of which is a repeat (in updated form) of “*A Better Way to Own a Home*”).

7.7 In response to the first letter from the Charities Commission Liberty Trust provided other literature which it published. These included studies for various age groups:

- The first is for ages 8-12;
- The next for teens;
- The next for adults;
- Another is an actual bible study;
- The final one is a more general publication “*The Church of the Next Generation*” although it does have a money management orientation.<sup>103</sup>

Each proceeds on an underlying premiss that the God of the Bible is real, that His Word is true and that if His Word is obeyed liberty and blessings come. It is hard to see why this is **not** propagating Christian doctrine or useful in advancing the Christian faith.

7.8 In any event it is not for the Charities Commission or the Courts to judge between “*the Christian doctrine*” and educating people on “*the biblical*

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<sup>103</sup> Respectively, Bundle 129ff, 152ff, 186ff, 235ff, 241ff.

*financial principles*” nor is it for either to judge whether they are effective in advancing religion. They were clearly intended to do so. See:

- Gaze Burt letter of 3 December 2009 paragraphs numbered 1 and 3;<sup>104</sup>
- Gaze Burt letter of 3 February 2010 paragraphs numbered 1 and 2;<sup>105</sup>
- The accompanying memorandum.<sup>106</sup>

7.9 They were also born out of a clear belief that this was what God was calling them to do.<sup>107</sup>

7.10 In addition, to teaching Biblical principles, Liberty Trust seeks to put these principles in to action. That too must advance religion. Indeed, if religious teaching is **not** matched by conduct then it will be seen to be hypocritical and the Christian cause will be damaged.

7.11 Importantly, biblical teaching emphasises action. When someone becomes a Christian there is supposed to be a change in attitudes and in life style which will, in turn, attract others to the faith. As Liberty Trust points out<sup>108</sup> Martin Luther taught that three conversions were necessary, heart, mind **and** wallet.

7.12 In *Presbyterian Church v Ryde Council*<sup>109</sup> the Court found that religion was advanced by practical out workings of Christian concern. So too here.

7.13 If religion is indirectly advanced by meals for clergy attending meetings, by prizes at Sunday School, and by the provision of sports grounds,<sup>110</sup> how much more so if Christian teaching is put into practice.

7.14 The particular implementation here has these aspects:

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<sup>104</sup> Bundle Tab 11, pp 291, 292.

<sup>105</sup> Bundle Tab 16, p330.

<sup>106</sup> See especially pp334, 339-340.

<sup>107</sup> See Tab 26 “*Beginnings*” and “*Bruce McDonald*”. See also McDonald 5.

<sup>108</sup> See Bundle Tab 16, p333.

<sup>109</sup> See para 5.28.

<sup>110</sup> See para 5.20.

- (a) Outright donations to other Christian groups;<sup>111</sup>
- (b) Interest free high-risk loans to non-donors;<sup>112</sup>
- (c) Loans to Ark which, in turn, makes interest free loans to:
  - (i) Donors; and to
  - (ii) Others;
- (d) Budgeting assistance.<sup>113</sup>

7.15 The loans mentioned in subpara (c) are for housing. This is an area of need (even if not within the strict criterion of relief of poverty). It is also consistent with public policy to have people own their own homes and brings with it public benefit. See the memorandum from Liberty Trust sent on 3 February 2010<sup>114</sup> and the earlier memorandum sent on 3 December 2009.<sup>115</sup> See also Prof Scrimgeour.

7.16 The size of the loans also indicates that they are not aimed at the wealthy<sup>116</sup> and it is the stated aim of Liberty Trust to help low income households who have difficulty in borrowing from mainstream resources.<sup>117</sup>

7.17 The concept that the teachings and practice of Liberty Trust is fully supported by the theological experts – see the affidavits of Dr Guy, Dr Grigg and Pastor McDonald.

7.18 Pastor McDonald makes the point that there are more than 1,000 biblical references to matters concerning finance, a person's relationship with resources, giving and care of the poor and that over half the parables of

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<sup>111</sup> See Bundle Tab 7, at pp51-53, paras 3(h) and 6.

<sup>112</sup> See Bundle Tab 7, p51, para 3(g).

<sup>113</sup> See p50 para 3(f).

<sup>114</sup> Tab 16, at 334-339.

<sup>115</sup> Tab 11 at pp22, 299-300.

<sup>116</sup> See, e.g., the average loan year by year at Bundle Tab 14, p313 and the individual sponsored loans through Ark at Tab 17, p349.

<sup>117</sup> See Tab 11, p299, see also Tab 16 at p331, para 5.

Jesus had to do with attitudes to resources, stewardship of money and the care of others.<sup>118</sup> He was in no doubt that the teaching and practices of Liberty Trust advanced religion.<sup>119</sup> Given that it was such a central part of Christ's teaching, it is hard to see how educating people about it is **not** propagating Christian doctrine.

- 7.19 Dr Guy likewise deposes that the teachings and practices of Liberty Trust are rooted in traditional teachings of the Old Testament, the New Testament and the early Church. He sees such teachings and their practical application to be for the advancement of religion including by being an attractive example to others. Although some of the loan recipients may not be Christian he considered the recipient would be in no doubt that this loan was coming from a Christian organisation. Implicit in this is that this should make recipients more receptive to the Christian message.<sup>120</sup>
- 7.20 Professor Scrimgeour then confirms that there is a need for such housing assistance – ie the Christian outreach was occurring through meeting a basic human need.
- 7.21 Mr Deal in his affidavit also considers the work does advance religion.
- 7.22 One aim of interest free loans is so that, to the extent that Christians receive them (or recipients become Christians as a result), they will be freed up to give more to their Churches post repayment. This concept is clearly seen on the Liberty Trust literature.<sup>121</sup> And that has been fulfilled.<sup>122</sup>

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<sup>118</sup> See McDonald paras 7 and 8.

<sup>119</sup> See paras 15-24.

<sup>120</sup> See Guy 9-26.

<sup>121</sup> See e.g., Bundle pp23, 24, 45, 393.

<sup>122</sup> Deal para 13.

## 8 APPLICATION OR OF THE LAW TO THE FACTS – PUBLIC BENEFIT

- 8.1 As noted, public benefit is normally assumed in the context of advancement of religion. There can be no suggestion that the activities of Liberty Trust are within the qualifications to that rule.<sup>123</sup>
- 8.2 Rather the reasoning of the Charities Commission was that Liberty Trust was a mutual benefit arrangement like in *Hobourn*.
- 8.3 The first part to note is that in *Hobourn* the fund was restricted to employees of one company. Here membership is open to all, regardless of faith.
- 8.4 The second point is that Liberty Trust receives donations from other sources - \$20,535.85 in the 2009 year, not the first time received but the first time these have been separately identified.<sup>124</sup>
- 8.5 Very importantly, unlike *Hobourn* the benefits are not restricted to only those who contribute:
- (a) There are the significant annual donations made by Liberty Trust;<sup>125</sup>
  - (b) There are the 2-4 at a time high-risk unsecured loans made directly by Liberty Trust to non-donors;<sup>126</sup>
  - (c) There are a very significant number of “*sponsored*” loans the details of which were given a 5 February 2010.<sup>127</sup> These amount to 30% of all loans or, if the unsecured loans are excluded, 64 out of 241 or 27%.
- 8.6 It is important to recognise that the donations to Liberty Trust are precisely that. The donor does not receive the money back. As the

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<sup>123</sup> See para 6.3 above.

<sup>124</sup> See Accounts Tab 4, p36; Deal para 22.

<sup>125</sup> See Tab 7, pp 51-53.

<sup>126</sup> Tab 7, p51, para 3(g) and note Tab 17.

<sup>127</sup> Tab 17.

mortgages have to be repaid, the donation, after 5% is used in administration, remains available for continual reuse.<sup>128</sup> Unlike with a mutual benefit association even if Liberty Trust is wound up, the funds do **not** go back to these who contribute them.

- 8.7 Less drastically than a winding up, if Liberty Trust had, on 31 March 2009, ceased accepting any more donations it would still have had a permanent fund of about \$5.4m with which to advance its purposes including the making of interest free loans (now disconnected from any donation).<sup>129</sup>
- 8.8 The trustees of Liberty Trust are prohibited from receiving any benefit.<sup>130</sup>
- 8.9 Looking at *Baptist Church* criteria<sup>131</sup>, the benefits for the donors are **not** available as of right or by contract but only when funds are available with nothing to stop a delay in that because of the grant of welfare loans. The donors do not control the fund, there are substantial “*other*” donations to the Trust.
- 8.10 It is made clear to prospective members that their donations are exactly that. The Request to Join the Community of Liberty Trust<sup>132</sup> (a document referred to in both “*Frequently Asked Questions*” and “*A Better Way to Own a Home*”<sup>133</sup>) states:

I covenant to contribute \$\_\_\_\_\_ per week/fortnight/month, to be applied by the Trustees in furtherance of the Trust’s charitable objectives:

- To research and teach principles relating to finance from God’s Word; and
- To outwork these principles by practical ministries.

<sup>128</sup> See Tab 5 p42 Q5 and note Tab 7 at p128.

<sup>129</sup> See Tab 4, p37 the equity of Liberty Trust being \$5,398,394.

<sup>130</sup> See clause 4 of the Trust Deed and note Gaze Burt letter of 3 December 2009, para 2, Tab 11, p292.

<sup>131</sup> See para 6.15 above.

<sup>132</sup> See Tab 25, p392.

<sup>133</sup> See Tab 5, at pp44, 46.

I desire that my contribution to Liberty Trust be regarded as a non-refundable charitable donation.

- 8.11 That form also requires an affirmation that the prospective member has read “*God’s Financial Principles in Action*” which document emphasises the altruistic purpose of the donation.<sup>134</sup>
- 8.12 If a person was not at least partially motivated by altruism then joining Liberty Trust would not be appropriate:
- (a) Any entitlement to a loan is years away – between 10 and 12.<sup>135</sup> Few people can be sure where they will be in 10-12 years. They may not be alive, they may not have a home or be in need of a home or a mortgage;
  - (b) As noted the donations are not refundable. This means if, because of a change in circumstances, the donor ceases donating after 2, 4, 6 years, etc., no benefits results. This happens;<sup>136</sup>
  - (c) In the meantime the donor has that much less funding available to meet a deposit (being both the amount of the donation and the amount of interest that could be earned on it in the meantime) with house prices increasing due to inflation.<sup>137</sup>
- 8.13 The website of Liberty Trust lists testimonials that show that donors **are** actuated by altruism.<sup>138</sup>
- 8.14 That is also borne out by the behaviour of both donors and borrowers (many of the latter repay early which is remarkable when the loan is interest free).<sup>139</sup>

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<sup>134</sup> See Tab 25, pp 393-394.

<sup>135</sup> See Tab 5, p42, Q6.

<sup>136</sup> Note the chart, Tab 14, p312.

<sup>137</sup> See Liberty memorandum of 3 December 2009, Tab 11 at pp299-300 and note Deal para 27.

<sup>138</sup> See Tab 27 summarised at para 30 of Deal.

<sup>139</sup> See Deal para 24. See also Testimonials 12 and 17, Tab 16 pp 344, 345

- 8.15 In any event, as *Educational Fees* ruled, it is the purpose of trust which is relevant rather than that of the donors. The purpose remains the advancement of religion which is presumptively for the public benefit.

## 9 CONCLUSION

- 9.1 The Notice of Intention to Remove was right in one respect. The purpose of Liberty Trust was and is the advancement of religion and that is what it does. This is not merely conducive to religion but advances religion.
- 9.2 There is no independent object of providing interest free loans. To the extent this occurs this is simply putting into practice the biblical principles that are taught. Faith without works is no faith at all.<sup>140</sup> Christians are called to put the teachings of the Bible into action and that is what this part of the activities of Liberty Trust does. The advancement of religion is hampered by hypocrisy.
- 9.3 The purpose of the Liberty Trust is altruistic – and most of the donors acted from altruistic motives. None can be under any illusion that their donation is exactly that and that it is to be used for religious purposes.
- 9.4 Liberty Trust either directly or through Ark Resources provides significant support to non-donors.
- 9.5 Any member of the public is free to join and assistance is also available to them regardless of religious persuasion (although it is hoped that this will make the beneficiary more open to the Gospel).
- 9.6 This is consistent with mainstream Churches providing social service support which may not necessarily come within the strict criteria for relief of poverty yet is seen as charitable as being for the advancement of religion.

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<sup>140</sup> Epistle of St James 2.17.

9.7 It is not a mutual benefit society. The donations received are just that.  
They are not returned, not even on winding up.

**DATED** at Wellington this 10th day of March 2011

A handwritten signature in black ink, appearing to read "Ian Millard". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

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**Ian Millard QC**