IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 79/2020
[2022] NZSC 80

BETWEEN	ATTORNEY-GENERAL Appellant
AND	FAMILY FIRST NEW ZEALAND Respondent

Hearing:	24 and 25 June 2021
Further submissions:	13 July 2021
Court:	Winkelmann CJ, William Young, Glazebrook, O'Regan and Williams JJ
Counsel:	P J Gunn and A P Lawson for Appellant I C Bassett for Respondent J J Batrouney QC and K G Davenport QC for Charity Law Association of Australia and New Zealand as Intervener
Judgment:	28 June 2022

JUDGMENT OF THE COURT

A The appeal is allowed.

B The declaration made by the Court of Appeal that the respondent qualifies for registration under the Charities Act 2005 is set aside.

C There is no order as to costs.

REASONS

	Para No
Winkelmann CJ, William Young, Glazebrook and O'Regan JJ	[1]
Williams J	[163]

WINKELMANN CJ, WILLIAM YOUNG, GLAZEBROOK AND O'REGAN JJ
(Given by O'Regan J)

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Introduction

[1] The Attorney-General, in his capacity as Protector of Charities, appeals against a judgment of the Court of Appeal in which it allowed an appeal to that Court by

Family First New Zealand (Family First) and made a declaration that Family First qualifies for registration under the Charities Act 2005.[1] The Court of Appeal also set aside the decision of the Charities Registration Board | Te Rātā Atawhai (Charities Registration Board) to remove Family First from the Charities Register.

[2] Family First gave notice under r 20A of the Supreme Court Rules 2004 of its intention to support the judgment of the Court of Appeal on grounds not relied on by that Court.[2]

[3] The Charity Law Association of Australia and New Zealand (CLAANZ) was given leave to intervene and its counsel made both written and oral submissions.

Background

[4] Family First was established by a trust deed entered into on 26 March 2006. We will call this the Trust Deed.[3] It was incorporated under the Charitable Trusts Act 1957 on 6 April 2006. It was originally known as "Family First Lobby", but changed its name to Family First New Zealand later in 2006. It applied for registration under the Charities Act in February 2007 and was registered on the Charities Register with effect from 21 March 2007. The Trust Deed provides that the trustees govern Family First, but there is also a Board of Reference, which is not referred to in the Trust Deed.[4] One of the founding trustees, Mr McCoskrie, is the National Director of Family First.

[5] On 15 April 2013, the Charities Registration Board resolved to de-register Family First as a charity under s 32(1)(a) of the Charities Act.[5] From the perspective of the Board, Family First no longer qualified for registration as a charitable entity for

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1 *Family First New Zealand v Attorney-General* [2020] NZCA 366, (2020) 5 NZTR ¶30-013 (Clifford, Gilbert and Stevens JJ) [CA judgment]. This Court granted leave to appeal, the approved question being whether the Court of Appeal was correct to allow the appeal to that Court from the High Court: *Attorney-General v Family First New Zealand* [2020] NZSC 151, (2020) 29 NZTC ¶24-087.

2 See below at [18](a) and [150]–[153].

3 The Trust Deed has been amended at various times, but not in a manner that is material to the issues in the appeal.

4 The evidence does not disclose what role the Board of Reference has, nor how its role relates to that of the trustees.

5 *Family First New Zealand (CC42358)* Charities Registration Board Decision 2013-1, 15 April 2013 [First deregistration decision].

three reasons. First, its main purpose was political and thus non-charitable — it sought to advance points of view about family life which had no self-evident public benefit as a matter of law. Second, its viewpoint expression was not a charitable purpose for the advancement of religion or education. Nor was it generally beneficial. Third, the Board considered Family First had an independent purpose of procuring governmental action consonant with Family First's own viewpoints.[6]

[6] On 27 May 2013, Family First appealed to the High Court. The hearing of that appeal was deferred until after the delivery of this Court's decision in *Re Greenpeace of New Zealand Inc*, which took place on 6 August 2014.[7] After delivery of the *Greenpeace* (SC) decision, Family First's appeal was heard by the High Court. The appeal was allowed and the matter was referred back to the Charities Registration Board for reconsideration.[8]

[7] The Charities Registration Board then reconsidered its earlier decision that Family First be de-registered, as directed by the High Court, but concluded again that Family First should be de-registered.[9] Family First appealed against the second deregistration decision to the High Court, but its appeal was dismissed.[10] That High Court judgment was reversed by the Court of Appeal in the decision under challenge in the present appeal.[11]

Statutory context

[8] As mentioned earlier, Family First was registered under the Charities Act. Section 13(1) sets out the essential requirements for registration which, in the case of a trust, is that it must be "of a kind in relation to which an amount of income is derived

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6 At [2].

7 *Re Greenpeace of New Zealand Inc* [2014] NZSC 105, [2015] 1 NZLR 169 [*Greenpeace* (SC)].

8 *Re Family First New Zealand* [2015] NZHC 1493, (2015) 27 NZTC ¶22-017. In that decision, Collins J summarised all of the steps taken by the Charities Commission and, later, the Charities Registration Board, prior to the deregistration of Family First: at [5]–[14].

9 *Family First New Zealand (CC10094)* Charities Registration Board Decision 2017-1, 21 August 2017 [Second deregistration decision].

10 *Re Family First New Zealand* [2018] NZHC 2273, [2019] 2 NZLR 673 (Simon France J) [HC judgment].

11 The majority of the Court of Appeal set out a summary of the decisions referred to above in their reasons: CA judgment, above n 1, at [13]–[40]. We do not repeat that here.

by the trustees in trust for charitable purposes”.[12] The term “charitable purpose” is the subject of an inclusive definition in s 5 of the Charities Act, which relevantly provides:

> **5 Meaning of charitable purpose and effect of ancillary non-charitable purpose**
>
> (1) In this Act, unless the context otherwise requires, **charitable purpose** includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.
>
> …
>
> (3) To avoid doubt, if the purposes of a trust, society, or an institution include a non-charitable purpose (for example, advocacy) that is merely ancillary to a charitable purpose of the trust, society, or institution, the presence of that non-charitable purpose does not prevent the trustees of the trust, the society, or the institution from qualifying for registration as a charitable entity.
>
> (4) For the purposes of subsection (3), a non-charitable purpose is ancillary to a charitable purpose of the trust, society, or institution if the non-charitable purpose is—
>
> (a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society, or institution; and
>
> (b) not an independent purpose of the trust, society, or institution.

[9] As this Court noted in *Greenpeace* (SC), the legislative history makes it clear that in enacting s 5, Parliament made a deliberate choice to retain the concepts of charity that had been developed in case law.[13] The Court noted that in referring to common law concepts in s 5, Parliament should be taken to expect the common law to continue to develop to meet fresh facts and changing perceptions of what justice requires, except where such developments would be inconsistent with the statute.[14]

[10] The Court then described the common law approaches as follows:[15]

> **Common law approaches to charitable purpose**
>
> [18] At common law, charitable status is recognised on a case by case basis, by analogy with previous common law authorities falling generally within the “spirit and intendment” of the preamble to the Statute of Charitable Uses 1601 (UK) 43 Eliz I c 4. Objects have been accepted to be charitable if

12 Charities Act 2005, s 13(1)(a).
13 *Greenpeace* (SC), above n 7, at [16].
14 At [17].
15 Some footnotes omitted.

they advance the public benefit in a way that is analogous to the cases which have built on the preamble to the 1601 Act.

[19] The Statute of Charitable Uses was legislation to reform abuses of charitable trusts which had not been employed "according to the charitable intent of the givers and founders". It was contemporary with the Act for Relief of the Poor 1601 (UK) 43 Eliz I c 2 and seems to have reflected in part the importance of private philanthropy in reducing the burden on parish ratepayers of poor relief. The preamble to the Statute of Charitable Uses alluded to the various objects for which settlements had been made by monarchs and by "sundry other well-disposed persons":

> some for relief of aged, impotent and poor people, some for maintenance of sick and maimed soldiers and mariners; schools of learning, free schools, and scholars in universities; some for repair of bridges, posts, havens, causeways, churches, sea banks, and high ways; some for education and preferment of orphans; some for or towards relief, stock or maintenance for houses of correction; some for marriages of poor maids; some for supportation, aid and help of young tradesmen, handicrafts men, and persons decayed and others for relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers …

[20] The touchstone of the "spirit and intendment" of the preamble does not require close focus on the specific purposes identified in it. The preamble itself set out purposes treated as charitable at the time. It was never regarded as an exclusive catalogue, but rather as "typical of the kind of charity which the State wished to encourage". In their original form, the examples given "were unified by their association with the financial obligations of, or contributions to, a parish government's purse strings."

[21] The "spirit and intendment" of the preamble is the "accepted test" only "in a very wide and broad sense". Rather the spirit of the preamble is looked to through the cases decided in the intervening centuries. The case-law "endeavoured to keep the law as to charities moving … as new social needs arise or old ones become obsolete or satisfied". In order to be within the "spirit and intendment" of the preamble, "one must find something charitable *in the same sense* as the recited purposes are charitable".

[22] In 1891 Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v Pemsel*[16] organised the cases into the classification which was adopted in earlier tax legislation in New Zealand and which is now expressed in s 5(1) of the Charities Act. In this, he drew on the four-fold classification earlier adopted by Lord Eldon in *Morice v Bishop of Durham*:[17]

> First, relief of the indigent; in various ways: money: provisions: education: medical assistance: etc; secondly, the advancement of learning; thirdly, the advancement of religion; and fourthly, which is the most difficult, the advancement of objects of general public utility.

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16 *Commissioners for Special Purposes of the Income Tax v Pemsel* [1891] AC 531 (HL).

17 *Morice v Bishop of Durham* (1805) 10 Ves Jun 522, 32 ER 947 (Ch) at 532.

> [23] Even though in popular understanding charity may have been principally associated with alleviating poverty, Lord Macnaghten in *Pemsel* considered that the technical legal meaning of charitable purposes had come to entail the four purposes: the relief of poverty; the advancement of education; the advancement of religion; and other purposes also beneficial to the community but not falling within the first three categories. Like all such common law restatements, and as the fourth category explicitly allows, the *Pemsel* classification itself is not set in stone. The law of charity has been acknowledged to be "a moving subject".

[11] The Court noted that some had suggested that any object of benefit to the public is automatically a charitable object for the purpose of the fourth head.[18] However, it rejected that proposition:[19]

> [29] The preponderance of authority since 1805 has required both public benefit and charitable object "in the same sense" as the cases developed from the preamble to the Statute of Charitable Uses. A single test may have the attraction of simplicity but loses the concept of charity which has always been essential. Identifying what is of public benefit without restriction to the kind of objects held to be charitable would set up a broad and less controlled assessment which could increase the entities entitled to charitable status. As was recognised in Canada by Iacobucci J when delivering the majority judgment of the Supreme Court in *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue*, adoption of a single test of "public benefit" would "constitute a radical change to the common law and, consequently, to tax law".[20]
>
> [30] The language and structure of s 5(1) make it clear that, although "any other matter beneficial to the community" may qualify, the object must also be a "charitable purpose". The method of analogy to objects already held to be charitable is also the safer policy since charitable status has significant fiscal consequences. Since the common law methodology is assumed in New Zealand by the Charities Act, we consider that it would not be appropriate for this Court to abandon the analogical approach in favour of the view that benefit to the public presumptively establishes the purpose as charitable.

[12] We follow that approach in the present case.[21]

[13] When an entity applies for charitable status, the application is first considered by the Chief Executive of the Department of Internal Affairs | Te Tari Taiwhenua, who must then make a recommendation to the Charities Registration Board as to whether

18 *Greenpeace* (SC), above n 7, at [24].
19 Some footnotes omitted.
20 *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue* [1999] 1 SCR 10 at [200] [*Vancouver Society*].
21 The relevance of tax law to this approach was challenged: see below at [18](b).

it should grant or decline the application for charitable status.[22] Section 18(3)(a) of the Charities Act provides that, in considering an application, the Chief Executive must have regard to:

> (i) the activities of the entity at the time at which the application was made; and
>
> (ii) the proposed activities of the entity; and
>
> (iii) any other information that it considers is relevant …

[14] This requirement to consider the activities of the entity has some significance in the present case because, as discussed below, Family First argued that the Court should limit itself to consideration of the objects of Family First set out in the Trust Deed.

Issues

[15] The lower Courts differed on whether Family First qualified for charitable status. To summarise, the High Court determined that Family First was not charitable under the fourth purpose identified in *Pemsel* (objects of general utility). Nor did Family First qualify under the second purpose (advancement of education). We call these the second and fourth heads respectively.[23] By majority, the Court of Appeal reversed the High Court decision in respect of both heads, making a declaration that Family First qualified for registration under the Charities Act.

[16] On appeal to this Court, there are three major issues for resolution:

(a) While the principal focus of the argument for Family First in the lower Courts was the fourth head, its case before this Court was firmly based on the second head. Therefore, the principal issue on appeal is whether Family First's objects qualify as being for the advancement of education. A related issue is whether what we will call "viewpoint expression" (dissemination of materials that adhere to a particular

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22 Charities Act, ss 18 and 19. We understand that. in practice, many decisions are made by Charities Services | Ngā Ratonga Kaupapa Atawhai (Charities Services), a unit of the Department of Internal Affairs | Te Tari Taiwhenua.

23 Family First did not argue that it had a purpose of the advancement of religion.

viewpoint) can legitimately qualify as charitable within the meaning of the second head.

(b) Regarding the fourth head, the question is whether Family First's object of promoting and supporting the institutions of family and marriage qualifies as advancing objects that are beneficial to the community.

(c) The appellant submits that even if Family First's objects come within either or both of the second and fourth heads, it has other non-charitable objects that are not ancillary to any purpose found to be charitable. On the appellant's view, this would be disqualifying. The issue is whether that contention is correct.

[17] Several preliminary issues were also raised by the parties. First, Family First argues that, in determining whether its objects meet the requirements of the second or fourth heads, only the objects set out in its constitutional document, the Trust Deed, should be considered. So a preliminary question is whether the inquiry should be confined in that way, or whether the Court can go beyond the deed to consider evidence of Family First's activities and publications. Second, the appellant's written submissions included a colour-coded table headed "Assessment of material in case on appeal" that summarised by category and number the material in the case on appeal regarding Family First's activities. Family First submitted that we should not take into account the information derived from this table, or its subsequent iterations. The question is whether that submission should be accepted (although, it largely turns on how this Court resolves the first preliminary issue).

[18] Finally, a number of other issues were raised, but were not ultimately the subject of extensive submissions, so we deal with them only briefly. These are:[24]

(a) whether the observation in *Greenpeace* (SC) that the decision of the Court of Appeal in *Molloy v Commissioner of Inland Revenue* seems

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[24] CLAANZ also raised the possibility that tikanga may be a relevant factor in assessing whether an entity's objects are charitable. But this was not pursued in argument and we think it is better to leave the point for consideration in a case where it may affect the outcome.

correct should be reconsidered (raised in Family First's r 20A notice);[25]

(b) whether the fiscal consequences of a finding that an entity has charitable objects should be ignored by decision-makers (a point raised by CLAANZ); and

(c) whether the withdrawal of charitable status from an entity that engages in political advocacy interferes with the entity's freedom of expression under s 14 of the New Zealand Bill of Rights Act 1990 (Bill of Rights) (also raised by CLAANZ).

[19] We will begin by dealing with the preliminary issues identified above at [17].

Considering activities as well as the constitution?

[20] As noted earlier, counsel for Family First, Mr Bassett, argued that the purposes of Family First should be determined primarily by reference to its Trust Deed, rather than by a process that included reference to its actual activities. Where a trust deed is ambiguous or where the stated objects are generally unclear, it may be legitimate to have recourse to evidence of the trust's activities. But otherwise, the ascertainment of a trust's purposes is a matter of construction. He relied on the decision of Ellis J in *Re The Foundation for Anti-Aging Research* in support of that proposition.[26] CLAANZ as intervener supported Mr Bassett's argument.

High Court and Court of Appeal

[21] The High Court Judge considered both the objects set out in the Trust Deed and Family First's activities in determining what its purposes were.[27] Family First argued in the Court of Appeal that this was an error of law.[28] That submission was

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25 *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 (CA), as discussed in *Greenpeace* (SC), above n 7, at [73]. The r 20A notice called for a reconsideration of *Greenpeace* (SC) itself, but that was not pursued.

26 *Re The Foundation for Anti-Aging Research* [2016] NZHC 2328, (2016) 23 PRNZ 726 at [84]–[89], referring to *Institution of Professional Engineers New Zealand Inc v Commissioner of Inland Revenue* [1992] 1 NZLR 570 (HC) at 572 per Tipping J. Counsel also referred in his written submissions to *Latimer v Commissioner of Inland Revenue* [2004] UKPC 13, [2004] 3 NZLR 157 at [29] per Lord Millett.

27 HC judgment, above n 10, at [19]–[32].

28 CA judgment, above n 1, at [42].

largely accepted by the Court of Appeal.[29] The Court of Appeal majority[30] cited the following extract from *Greenpeace* (SC):[31]

> The purposes of an entity may be expressed in its statement of objects or may be inferred from the activities it undertakes,[32] as s 18(3) of the Charities Act now makes clear.

[22] Relying on s 18(3) and *Greenpeace* (SC), the majority of the Court of Appeal reversed the approach taken by the High Court and affirmed what it termed the "orthodox view" that, as a rule, if stated purposes are clearly charitable, that is the end of the matter and an activities test is "not in order".[33]

Our assessment

[23] We can deal with this point in short order. Section 18(3) makes it clear that the Chief Executive must have regard to the activities and proposed activities of the entity seeking charitable status when considering an application from an entity for registration as a charity. That requirement is not restricted to situations where the objects in the constitutional document of the entity are ambiguous or there is a concern they do not represent the true purposes of the entity. The Court of Appeal majority's finding to the contrary was in error.[34]

[24] In the present case, s 18(3) is not directly engaged because the context for the case is deregistration, rather than registration. But it still applies indirectly. Section 32(1)(a) provides that the Board may direct that an entity be removed from the register if it is no longer qualified for registration as a charitable entity.[35] This necessarily

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29 At [88]–[89], citing Hubert Picarda *The Law and Practice Relating to Charities* (4th ed, Bloomsbury Professional, Haywards Heath, 2010) at 27.

30 CA judgment, above n 1, at [89].

31 *Greenpeace* (SC), above n 7, at [14].

32 *Molloy*, above n 25, at 693 per Somers J.

33 CA judgment, above n 1, at [86]–[88]. The "orthodox view" referred to is argued to be the position at common law. We do not need to discuss just what that position was, as the issues in this proceeding are to be determined by reference to the statutory scheme.

34 The Court of Appeal cited the judgment of Ellis J in *Anti-Aging* in support of its conclusion. Ellis J said the pre-2005 law was that the activities of an entity were relevant only where its constitutional documents were unclear or there was evidence the entity's activities were inconsistent with its purposes. She considered it was unlikely that s 18(3) was intended to change that position: *Anti-Aging*, above n 26, at [85]–[86]. We consider that, if that was the pre-2005 law, s 18(3) did change it.

35 As the High Court Judge pointed out, the reference to an entity "no longer" qualifying for registration means the focus will be on its activities since registration, because its purposes are unlikely to have changed: HC judgment, above n 10, at [59]. That indicates the inquiry relating

requires the Board to consider whether the entity meets the essential requirements in s 13, which is the same inquiry that must be made when an entity applies for registration.

[25] Moreover, under s 50 of the Charities Act, the Chief Executive is empowered to examine and inquire into any charitable entity. The Chief Executive exercised that power in relation to Family First as part of the process that led to the second deregistration decision. Section 50(2) provides in relation to such an inquiry:

> (2) The power to examine and inquire into any charitable entity or person under subsection (1) includes the power to examine and inquire into the following matters in connection with the charitable entity or person:
>
> (a) the activities and proposed activities of the charitable entity or person:
>
> (b) the nature, objects, and purposes of the charitable entity:
>
> (c) the management and administration of the charitable entity:
>
> (d) the results and outcomes achieved by the charitable entity or person:
>
> (e) the value, condition, management, and application of the property and income belonging to the charitable entity or person.

[26] We think it is clear that any decision-maker in relation to an application for charitable status must have regard to both the objects in the entity's constitutional document and also its activities and proposed activities. That being the case, a decision-maker in relation to the proposed deregistration of a charitable entity must also consider the activities and proposed activities of the entity in question. As Simon France J noted, it would be strange if an inquiry to determine whether an entity should retain charitable status was not able to take into account what the entity actually did in order to ascertain whether it continues to pursue one or more charitable purposes.[36]

[27] In short, we consider the approach adopted by the High Court in this case was correct and that the Court of Appeal majority erred.

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to both registration and de-registration must include consideration of the activities of the entity.

36 HC judgment, above n 10, at [59].

[28] CLAANZ advanced a further argument, highlighting the following statement from the majority judgment in *Greenpeace* (SC):[37]

> Where an entity seeking charitable status has objects or conducts activities that involve promoting its own views or advocacy for a cause, it may be especially difficult to conclude where the public benefit lies and whether the object or activities come within the spirit and intendment of the preamble to the Statute of Charitable uses.

[29] CLAANZ argued that this suggested that the Court is required to consider whether activities themselves are charitable. It said whether activities are charitable or not is irrelevant in charity law. It argued that we should depart from this aspect of the decision in *Greenpeace* (SC).

[30] We do not see any reason to revisit this statement. There was no suggestion in *Greenpeace* (SC) that the Court was applying anything other than the s 13 test, which focuses on charitable purposes as defined in s 5 of the Charities Act. Rather, the Court was indicating that promotion of the entity's own views or advocacy for a cause will pose the problem of identifying where the public benefit lies.

[31] In summary, we consider the approach adopted by the High Court in this case was correct and that the Court of Appeal majority erred by reaching its conclusion that Family First was a charity under the second head, education, before it gave any consideration to Family First's activities.[38]

Appellant's table of Family First's activities

[32] As mentioned earlier, counsel for the appellant's written submissions included a colour-coded table headed "Assessment of material in case on appeal", which summarised by category and number the material in the case on appeal about Family First's activities.[39] Counsel said this table summarised "[t]he various causes Family First advocates for or against, and the nature and extent of this advocacy". Mr Bassett pointed out a number of issues with this table in his written submissions,

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37 *Greenpeace* (SC), above n 7, at [32].
38 CA judgment, above n 1, at [97].
39 The categories were "Submissions on Bills, policy work etc", "Articles, posts, media releases", "Research reports" and "Opinion pieces in newspapers". The material in the case on appeal included evidence that was before the Charities Registration Board and additional evidence adduced in the High Court and the Court of Appeal.

supported by an affidavit from Mr McCoskrie which set out a detailed response to the table. We provisionally admitted this affidavit at the hearing and said we would rule on its admissibility later. The appellant objected to its admission on the basis that it addressed a matter that should have been the subject of submission rather than evidence. While there may be some truth in that, the material in the affidavit was part of the process leading to the refinement of the table and should be part of the record of the appeal. We therefore admit it.

[33] In response to the issues raised by Mr Bassett and Mr McCoskrie, the appellant filed a second, corrected version of the table just before the hearing. Mr Bassett was given leave to file further submissions on the second version after the hearing, which led to a third version being filed. The third version was a substantial modification of the original table, now without duplications and triplications of items and items that were not generated by Family First, but sourced from other entities (mainly mainstream and third-party media organisations).[40] Although the appellant removed from the table the items sourced from other entities, counsel for the appellant did not concede these were irrelevant in considering the nature and scope of Family First's activities.

[34] Much of the controversy about the table was resolved by this process, but Mr Bassett maintained his objection to it. First, he argued much of the evidence represented in the table was not generated by Family First and was not necessarily a representative sample of its activities. Much of the material was selected by Charities Services from a "web trawl" of Family First's website and was forwarded to the Charities Registration Board to assist in making the second deregistration decision. It therefore became part of the case on appeal in the High Court. Secondly, he said the table was produced for the first time in this Court, meaning the evidence was being used by the appellant to support its position as to the nature and scope of Family First's activities in a way that had not occurred in the Courts below. Thirdly, the table gives equal weighting to any item on the website, so a comprehensive research report is treated as equal to a short media op-ed piece. He said the result was a skewed picture

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40 The categories in the third version of the table are "Submissions on Bills, policy work etc produced by Family First", "Research reports produced or commissioned by Family First" and "Articles, media releases, videos and opinion pieces in newspapers ('op-eds') produced by Family First".

of Family First's activities. Fourthly, it includes items dating from well before the second deregistration decision of the Board and also after it.

[35] The table was not evidence, but rather a graphic representation of the evidence. That is, it is the method chosen by counsel to frame their submission about the evidence. We do not see any reason to interfere with the way counsel choose to present their case, subject of course to ensuring that the table does correctly represent the evidence it describes. While Mr Bassett's concerns about the shortcomings of the earlier versions of the table were justified, we see them as largely resolved by the third version. We agree with Mr Bassett that the equal weighting of items can lead to a skewed picture. Mr Gunn accepted this. But the use of colour-coded categories ameliorates this to some extent.

[36] We do not think Mr Bassett's complaint about who selected the items that were highlighted for the Charities Registration Board is valid. It was Family First that referred Charities Services to its website during the investigation. It made submissions to the Charities Registration Board and also adduced further evidence in both the High Court and Court of Appeal. It therefore could have corrected any misleading impression if necessary. It did not seek to adduce evidence in this Court to do so. Nor did it suggest at any stage that the evidence described in the table was inadmissible.

[37] We do not consider there is any need for the Court to confine its consideration to items that are dated before, but not well before, the Board's decision. The case on appeal includes evidence filed with leave in the High Court and the Court of Appeal, as well as the evidence considered by the Board. All of it is before this Court and counsel for the appellant is entitled to rely on it.

[38] Having said all that, we also acknowledge Mr Bassett's submission that the table should not be taken as representing Family First's activities with precision. There is a limit to the value of a quantitative analysis without also undertaking a qualitative analysis. But it does assist in getting an overall impression of the issues on which Family First focuses its attention, which can be considered alongside the more specific consideration of the individual research reports and other items.

Second head: Advancement of education

[39] As mentioned earlier, the case for Family First was advanced in this Court on the primary basis that it qualified as a charity under the second head, the advancement of education. Family First argued that this could be taken from the purposes in its Trust Deed. In the event that this Court determined the activities of Family First were also to be considered, Family First argued that its publication of 17 reports of educational value, its conduct of annual family forums and its provision of a virtual reading room on its website together substantiated its claim that its purpose was the advancement of education.

[40] Mr Gunn accepted that the 17 reports relied on by Family First as illustrating a purpose of advancing education meet the minimum standard set out in case law for what qualifies as being of educative value. But he argued they were, in truth, advocacy of a particular viewpoint or propaganda, which did not meet the requirements for a charity with the purpose of the advancement of education.

High Court

[41] Although a secondary ground of appeal in the High Court, Family First challenged the decision of the Charities Registration Board that it did not qualify for registration under the second head. The Board had found that the material disseminated by Family First was advocating a particular point of view, which was not an educational purpose.[41]

[42] The High Court Judge said he understood it was conceded by Family First that its purpose was to promulgate a singular view of family (the traditional family). And if the point was not conceded, the Judge concluded that it was plainly the case that Family First's purpose was to promote the traditional family unit.[42]

[43] The Judge said it was not necessary to address the education/advocacy issue in detail. This was because it was clear that Family First advocated for law change in a variety of areas, some of which were for the public benefit and some of which were

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[41] HC judgment, above n 10, at [40].
[42] At [60].

not. He saw those purposes as independent purposes rather than as purposes ancillary to an educational purpose. In fact, he thought the opposite was the case: education was undertaken to persuade people to Family First's point of view and garner support for its efforts to effect the changes for which it advocated.[43]

[44] The Judge considered that, apart from one report (prepared by the New Zealand Institute of Economic Research (NZIER), to which we will refer later) the publications of Family First, which were the best evidence that the trust was for the advancement of education, were all written from the same viewpoint, and promoted a cause favoured by Family First. This did not qualify for the advancement of education in a charitable sense.[44]

Court of Appeal

[45] The majority of the Court of Appeal, Clifford and Stevens JJ, approached their analysis on the basis that the purposes of Family First should be determined primarily from the Trust Deed, adopting the approach of Ellis J in the *Anti-Aging* case.[45] They saw a common thread of the advancement of education and research running through the objects in the Trust Deed.[46] The majority said the objects had a central theme, namely giving support to "marriage and family". They also noted that one object specifically refers to educating the public on the institutional, legal and moral framework of a just and democratic society.[47] Thus, they considered the objects on their face promoted the advancement of education by facilitating research on, and public understanding of, the roles of marriage and the family in society.[48] The majority Judges were satisfied that the answer to the fundamental question, namely whether the charitable purposes of promoting and disseminating research about the family are "for a public good", was yes.[49]

[46] The majority then analysed the reports commissioned by Family First and the manner in which Family First commissioned, distributed and promoted those reports.

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43 At [70].
44 At [71].
45 CA judgment, above n 1, at [86].
46 At [90]. The objects are set out below at [69].
47 At [91].
48 At [92].
49 At [97].

They concluded that Family First's clear purpose in relation to those reports was stimulating public debate and participating in public discourse on important social issues relevant to families.[50] They considered the research materials commissioned by Family First illustrated that its activities were broadly consistent with the objects in the Trust Deed.[51]

[47] The majority said the High Court Judge gave too much weight to the activities of Family First and too little to its objects in concluding that Family First's activities were aimed at promoting causes.[52]

[48] The majority concluded as follows:

> [122] The evidence we have reviewed establishes Family First recognised the importance of its objects and purposes to commission research on, and educate the public about, the importance of marriage and family life (including core family values) in New Zealand society. Such research is valuable in promoting public knowledge about marriage and families and the many issues that affect the family. Public discussion and debate about such important issues is desirable to encourage the development of related policies and laws. The NZIER report is but one of many examples showing how Family First went about fulfilling its education and research objects.

[49] Gilbert J, in dissent, said the High Court Judge was correct to deal with the second head (advancement of education) only briefly because the principal argument for Family First was that it qualified under the fourth head.[53] He noted Family First's response to an inquiry from Charities Services was that it spent 75 per cent of its time on advocacy for specific causes and 25 per cent on administration, fundraising and supporter/database management. The response did not mention education.[54] He also noted that in its 14 years of existence, Family First had published only 21 reports.[55]

Legal test to be applied

[50] Family First's essential case is that the objects set out in the Trust Deed include the promotion and advancement of research, educating the public and publishing

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50 At [109].
51 At [113].
52 At [121].
53 At [194]. He added that the critical issue in the case was whether Family First's advocacy purpose qualified under the fourth head, in light of the decision in *Greenpeace* (SC), above n 7, at [196].
54 At [195].
55 At [195]. We were told the correct number is 17.

material affecting families, all of which it says exhibit a purpose that falls within the advancement of education. This is assumed to be of public benefit unless the contrary is shown.[56] To evaluate this we will consider not only the objects set out in the Trust Deed but also the publications and activities of Family First.

[51] In *Re Collier*, Hammond J summarised the law in respect of the second head of charity as follows:[57]

> It seems to me that for a publication bequest of this kind to be upheld, it must first confer a public benefit, in that it somehow assists in the training of the mind, or the advancement of research. Second, propaganda or cause under the guise of education will not suffice. Third, the work must reach some minimal standard.

[52] This echoes the formulation outlined by Iacobucci J in the majority judgment of the Supreme Court of Canada in *Vancouver Society*:[58]

> … the purpose of offering certain benefits to charitable organizations is to promote activities which are seen as being of special benefit to the community, or advancing a common good. In the case of education, the good advanced is knowledge or training. Thus, so long as information or training is provided in a structured manner and for a genuinely educational purpose – that is, to advance the knowledge or abilities of the recipients – and not solely to promote a particular point of view or political orientation, it may properly be viewed as falling within the advancement of education.

[53] The formulation set out in *Vancouver Society* was endorsed in New Zealand by Ronald Young J in *Re Draco Foundation (NZ) Charitable Trusts*.[59]

[54] The Court of Appeal considered the *Vancouver Society* formulation was narrow and contrasted it to the comments of Wilberforce J in *Re Hopkins' Will Trusts*:[60]

> … the word "education" … must be used in a wide sense, certainly extending beyond teaching, and that the requirement is that, in order to be charitable, research must either be of educational value to the researcher or must be so directed as to lead to something which will pass into the store of educational

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56 *Greenpeace* (SC), above n 7, at [27]; and *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31 (HL) at 65 per Lord Simonds [*Anti-Vivisection*].

57 *Re Collier (deceased)* [1998] 1 NZLR 81 (HC) at 91–92.

58 *Vancouver Society*, above n 20, at [169].

59 *Re Draco Foundation (NZ) Charitable Trusts* (2011) 25 NZTC ¶20-032 (HC) at [75] [*Draco*], referring to *Vancouver Society*, above n 20, at [171] (which is in similar terms to [169], quoted above).

60 *Re Hopkins' Will Trusts* [1965] Ch 669 (Ch) at 680.

> material, or so as to improve the sum of communicable knowledge in an area which education may cover …

[55] We agree that education should not be interpreted narrowly, although we do not share the Court of Appeal's belief that the *Vancouver Society* test is necessarily narrower compared to the English position. In part, that is because Iacobucci J's judgment actually sought to widen the meaning of 'education' by reference to the "more expansive approach taken by the English courts".[61] Leaving that issue to one side, we consider that a helpful definition, endorsed by the majority in the Court of Appeal, is contained in *Law of Charity* as follows, and we are also content to adopt it:[62]

> Overall, the advancement of education may be taken to mean the "advancement of education for its own sake in order that the mind may be trained" or that it assists in the training of the mind or advances research, which can include obtaining a commercial education. It is also evident that "this branch of law is not confined to teaching in the conventional sense. It extends to all branches of human knowledge and its dissemination". This reflects the notion that "education", and its advancement is a broad concept.

[56] For the purposes of this appeal, however, the major question is whether Family First qualifies as advancing education in a charitable sense when its research reports, together with other supposedly educative material, put forward a singular viewpoint on the subject-matter. Charities law has long recognised a distinction between valid educational objects and merely political or propaganda-based objects. CLAANZ referred us to an article by Professor L A Sheridan, which illustrated the line between education and propaganda in these terms:[63]

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61 In *Vancouver Society*, Iacobucci J began the discussion of education by highlighting how "'advancement of education' has been given a fairly restricted meaning" in Canada, traditionally being limited to "formal training of the mind" or the "improvement of a useful branch of human knowledge": at [161]. However, he later commented that such limitations are "unduly restrictive" when compared to the English position, and that there is "much to be gained by adopting a more inclusive approach to education for the purposes of the law of charity": at [168]. For that reason, he considered the law under the second head "should be modified" and that it was "worth considering the slightly more expansive approach taken by the English courts": at [166]. To that end, he referred approvingly to the decisions in *Re Hopkins' Will Trusts*, above n 60 and *Inland Revenue Commissioners v McMullen* [1981] AC 1 (HL) at 15, both of which take a broad view of charitable education. The approach in *Vancouver Society* is therefore reconcilable with the approach followed by the English authorities.

62 Juliet Chevalier-Watts *Law of Charity* (2nd ed, Thomson Reuters, Wellington, 2020) at 141 (footnotes omitted), endorsed by the majority of the Court of Appeal: CA judgment, above n 1, at [82].

63 L A Sheridan "The Political Muddle – A Charitable View?" (1977) 19 Mal L R 42 at 70, cited with approval in *Attorney-General for NSW v The NSW Henry George Foundation Ltd* [2002] NSWSC 1128 at [52].

> There is a thin line, difficult to discern and possibly without great legal significance, but there all the same, between trying to convert people to a point of view and informing them of its existence and of the reasons for it – between propaganda and education.

[57] Later, Professor Sheridan added:[64]

> Nevertheless there is a valid distinction between a trust whose funds are to be spent converting people to a specified political objective and one whose funds are to be used to make knowledge of the arguments for a specified political objective more readily available.

[58] Before elaborating on that distinction, it is first necessary to determine what effect (if any) this Court's judgment in *Greenpeace* (SC) may have on what qualifies as "education" within the meaning of the second head. As we will come to later when discussing the fourth head, in *Greenpeace* (SC), this Court decided that the political purpose exception (which meant advocacy for political purposes was, of itself, a disqualifying factor for an applicant for charitable status) should no longer apply in New Zealand.[65] Although that case concerned the fourth head rather than the advancement of education, it raises the question as to whether the hard-and-fast distinction between education and propaganda or political advocacy should still apply in relation to the second head. To the extent that the distinction was solely based on the political purposes exclusion, there may have been grounds for reconsideration. However, we consider the better view is that the distinction is not solely founded on the former exclusionary rule. Rather, the distinction exists because propaganda does not provide the public benefit that comes from education (to which we revert below).[66] Consequently, the distinction between education and propaganda remains relevant following *Greenpeace* (SC) and is not substantially affected by it.

[59] Having resolved that preliminary issue, we turn to discuss the test governing the line between education and propaganda. For the most part, the case law illustrates a significant degree of confusion about how best to delineate between those objects.

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[64] At 72.

[65] See below at [125]–[130].

[66] Support for this proposition can be found in *Tudor on Charities*, which explains that propagandist material might not be charitable under the second head for either or both of the following reasons: (a) because it is not educational; or (b) because it runs afoul of the 'political purposes' exclusionary rule: William Henderson, Jonathan Fowles and Julian Smith *Tudor on Charities* (10th ed, Sweet & Maxwell, London, 2015) at [2-036], n 146 [*Tudor on Charities*].

The line has become blurred. In *Public Trustee v Attorney-General of New South Wales*, Santow J observed:[67]

> The cases on charities also involve some confusion between means and ends when it comes to their persuasive activities. There is a range of activity from direct lobbying of the government, to education of the public on particular issues, in the interests of contributing to a climate conducive to political change. The line between an object directed at legitimate educative activity compared to illegitimate political agitation is a blurred one, involving at the margin matters of tone and style.

[60] This echoes Professor Sheridan's comment about the thin line between education and propaganda. It also brings to mind this Court's observation in *Greenpeace* (SC) (in relation to the fourth head) that determining whether advocacy qualifies as charitable will depend on a consideration of the end that is advocated, the means promoted to achieve that end and the manner in which the cause is promoted.[68]

[61] Part of the disagreement between the lower Courts turned on whether putting forward a singular viewpoint is compatible with education. To summarise, on the High Court's view, a second-head charity will ordinarily be disqualified where its educative materials are all written from one viewpoint. Expressing a view (or promoting a cause) will typically constitute advocacy, bringing the charity beyond the contours of the second head. The Court of Appeal's reasoning allows more room for expressing a view, so long as the objects stated in the trust's constitutional document are sufficiently education-focused.

[62] We think it is too simplistic to say that expounding a particular viewpoint on a topic will, of itself, rule out an educational purpose. As the majority in *Greenpeace* (SC) remarked in relation to the fourth head of charity, a blanket exclusion based on whether a trust's objects are characterised as political or advocacy obscures focus on the true question — that is, whether the entity's purposes qualify as charitable in the sense generally understood by law.[69] For second head charities, therefore, the relevant inquiry is whether the entity's purpose is capable of securing the public benefits said to accrue from education *even though* the entity expresses a view on the

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67 *Public Trustee v Attorney-General of New South Wales* (1997) 42 NSWLR 600 (SC) at 621.
68 *Greenpeace* (SC), above n 7, at [76], set out below at [130].
69 At [69].

subject-matter. As Professor Sheridan said in the article referred to earlier, "[e]xpounding important points of view, religious and otherwise, is part of the advancement of education".[70] Similarly, Professor Dal Pont noted that a trust propagating reports containing a viewpoint may still be capable of educating the intended audience by increasing learning, understanding, skills or capabilities where the material allows recipients to "make up their own minds" on the subject-matter.[71]

[63] In *Vancouver Society*, the Supreme Court of Canada (as mentioned above) held that so long as information or training is provided for a "genuinely educational purpose" and not "*solely* to promote a particular point of view", the entity may qualify as charitable under the second head.[72] Later in its decision, the Court clarified that viewpoint expression will disqualify an entity where its true object is "persuasion or indoctrination".[73] In addition, where the entity's purpose is educational there must be a "coherent relationship" between the means and the end, that is the activities undertaken to further the purpose and the purpose itself, "such that the activity can be said to be furthering the purpose".[74] Similarly, the Federal Court of Appeal in Canada has ruled that educating from a "particular political or moral perspective" can qualify as charitable where the teaching does not cross into true advocacy.[75] The authors of *Tudor on Charities* summarise the means required in these terms:[76]

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70 Sheridan, above n 63, at 70.

71 G E Dal Pont *Law of Charity* (2nd ed, LexisNexis, Chatswood (NSW), 2017) at 187 and 198–199.

72 *Vancouver Society*, above n 20, at [169] (emphasis added).

73 At [171], noting that educating people about a particular viewpoint in a "manner that might more aptly be described as persuasion or indoctrination" will not qualify as charitable education.

74 *Vancouver Society*, above n 20, at [52] and [62] per L'Heureux-Dubé, Gonthier and McLachlin JJ. The majority (comprising Cory, Iacobucci, Major and Bastarache JJ) reached a different answer on the merits of the case, but followed a similar approach in assessing how direct the connection between the entity's activities and purposes are, and whether those activities legitimately further the entity's charitable purposes or not. Both the minority and majority agreed that activities must be assessed by reference to the purposes they are said to further and whether the relevant activities in-fact have the effect of furthering those purposes (see, for example, at [53]–[62], [152] and [199]).

75 *The Challenge Team v Revenue Canada* (2000) DTC 6242 (FCA) at [1], referring to the comments in *Vancouver Society*, above n 20, at [169] that an activity is not educational in the charitable sense when it is undertaken *solely* to promote a particular point of view, rather than as part of a genuinely educational purpose which otherwise meets the requirements of the second head.

76 *Tudor on Charities*, above n 66, at [2-036] (footnotes omitted), referring to *Re Bushnell (deceased)* [1975] 1 WLR 1596 (Ch) at 729 per Goulding J. For other expressions of the test, see for example *Alliance for Life v Minister (National Revenue)* [1999] 3 FC 504 (FCA) at [57] per Stone JA (students should "be in a position to weigh the viewpoints so advanced against opposing viewpoints in making up their minds one way or the other"); *The Challenge Team*, above n 75, at [1] (listeners must be able to make an "informed and critical choice"); *Greenpeace of New Zealand Inc v Charities Registration Board* [2020] NZHC 1999, (2020) 29 NZTC ¶24-071 [*Greenpeace 2020*] at [116(a)] ("objective, neutral and balanced"); *Vancouver Society*, above n 20, at [164]

> The public must be presented with neutral information so that they can choose for themselves and not be presented with slanted and selective information in support of a pre-conceived point of view.

[64] Professor Dal Pont also focuses on the requirement of objectivity. Reaching a viewpoint on the subject-matter can still legitimately further a charitable educational purpose where the relevant information is:[77]

> … researched and presented in a balanced way that encourages awareness of different points of view, where appropriate, that it consider the arguments in an appropriate way related to the evidence, *and if it reaches conclusions, that those conclusions be based on evidence and analysis*.

[65] Propagating general views on the subject-matter to help provoke study has also been found to be charitable in Australia.[78] In her dissenting judgment in the *Aid/Watch* case, Kiefel J commented that asserting one's views may be "capable of being characterised as for the advancement of education" where the trust's ultimate object is to advance education, not to persuade.[79] The distinction between education and propaganda was also discussed by Heydon J in his dissenting judgment in *Aid/Watch*. He described the function of the entity in that case as "not educative, but polemical" given that its main objective was to persuade people into a particular frame of mind.[80]

[66] In summary, we consider that expounding a viewpoint will not necessarily disqualify an entity from charitable status. Viewpoint expression is not fundamentally incompatible with legitimate education — entities that expound a viewpoint may nevertheless have the purpose of bringing about the benefits generated by education, to which the presumption of charitability attaches. For example, they can "advance the knowledge or abilities of the recipients" per *Vancouver Society*,[81] or achieve the

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(material exhibiting a "strong" bias will "in most cases … disqualify" an entity under the second head); and *Re Estate of Murphy* [2005] NSWSC 104 at [37] ("neutral information so that they can choose for themselves").

77 Dal Pont, above n 71, at [9.27] (emphasis added and footnote omitted).

78 See *Royal North Shore Hospital of Sydney v Attorney-General for New South Wales* (1938) 60 CLR 396 at 427, as discussed in Dal Pont, above n 71, at [9.27], n 183.

79 *Aid/Watch Inc v Commissioner of Taxation of the Commonwealth of Australia* [2010] HCA 42, (2010) 241 CLR 539 [*Aid/Watch*] at [69]. See also at [84] where Kiefel J commented that the "views of the appellant are published on its website, but this is part of its campaign to persuade others of its views, not to educate them".

80 At [62]. The majority found that *Aid/Watch* qualified as a charity under the fourth head and did not therefore consider whether it had a purpose of the advancement of education: at [47]. See also the cases mentioned below at n 83 for further examples.

81 *Vancouver Society*, above n 20, at [169].

public benefit of what Professor Dal Pont refers to as the "value to society of having an educated population".[82] However, where an entity which espouses a particular viewpoint claims an educative charitable purpose, the following principles will assist in assessing that claim:

(a) The entity's purpose must genuinely be to educate rather than advocate for a cause. Where an entity's direct purpose is to advocate not educate, its ends will not qualify as charitable under the second head. The cases recognise that persuasion is a feature common to both education-based and advocacy-based purposes. However, the question for the court will always be whether the relevant purpose crosses the line between mere education *about* the existence of a viewpoint and the case for it (with the hope that people may reach their own view on the merits to agree with the disseminator) and propaganda actively seeking to persuade, indoctrinate or "convert" the recipient to the disseminator's view. Propagating a single viewpoint will be a strong indicator that the entity seeks to advocate not educate, but it is not an automatic disqualifier.[83]

(b) The means adopted will typically be the most helpful guide to assessing whether the relevant purpose is to educate or advocate. They must bear a coherent relationship to the purpose of providing charitable education. Where the means by which education is said to be advanced do not involve balance or general objectivity but are instead characterised by bias towards a particular outcome, that may indicate that the line between education and advocacy has been crossed. If it has, the entity will not qualify for registration as a charity under the second head, either because the means do not legitimately support any

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[82] Dal Pont, above n 71, at [9.18], citing *R (Independent Schools Council) v Charity Commission for England and Wales* [2011] UKUT 421 (TCC), [2012] Ch 214 at [111].

[83] Other cases which have found purposes to be on the wrong side of the education/advocacy line include: *Buxton v Public Trustee* (1962) 41 TC 235 (Ch) at 242–243 ("the creation of a climate of opinion"); *Webb v O'Doherty* [1991] TLR 68 (Ch) at 68 ("[c]ampaigning, in the sense of seeking to influence public opinion"); *Aid/Watch*, above n 79, at [62], referring to *Re Collier*, above n 57, at 93 (attempts to "influence public opinion" and "persuade people into a particular frame of mind" are not education); and *Vancouver Society*, above n 20, at [171] ("persuasion" or "indoctrination"). In *Greenpeace 2020*, above n 76, Mallon J observed at [113] that "advocacy aimed at persuading the public to adopt a particular attitude on some broad social question and 'advancing education' … are not the same".

educative purpose, or because they illustrate the entity's true purpose is advocacy.

[67] Where a purpose runs afoul of the above principles, it does not automatically follow that the entity cannot qualify for registration as a charity — rather, it means its qualification or otherwise will be determined under the fourth head, as recently modified by this Court's decision in *Greenpeace* (SC).

[68] We now turn to the application of the law to the present case.

Trust Deed and statement of principles

[69] We begin our analysis by considering the objects of Family First that are set out in the Trust Deed. They are:

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

[70] Trustees are required to sign a Statement of Faith in the form set out in the Trust Deed as a condition of their appointment as a trustee.

[71] Family First encapsulates its views on the significance of family and marriage in two statements of principles which appear on its website.[84] Mr Bassett argued these should not be considered because they are not constitutional, but we consider they are relevant to understanding what the objects of Family First are in fact. The statements of principle are:

PRINCIPLES ON FAMILY

1. We affirm the intergenerational family as fundamental to society.

2. We affirm the natural family to be the union of a man and a woman through marriage for the purposes of sharing love and joy, raising children, providing their moral education, building a vital home economy, offering security in times of trouble, and binding the generations.

3. The natural family cannot change into some new shape; nor can it be re-defined by social engineering.

4. We affirm that the natural family is the foundational family system, but we acknowledge varied living situations caused by circumstance or dysfunction.

5. We acknowledge the tremendous contribution made by single, adoptive and step-parents and extended whanau in society. We wish to ensure they receive appropriate levels of assistance, without denying the clear empirical evidence that the best environment in which to raise children is the biological two-parent, husband-wife family.

6. We affirm the marital union to be the authentic sexual bond, the only one open to the natural and responsible creation of new life.

7. We affirm the sanctity of human life from conception to death; each newly conceived person holds rights to live, to grow, to be born, and to share a home with his or her natural parents bound by marriage.

8. We affirm that the natural family is prior to the state and that the task of government is to shelter and encourage the natural family.

9. We affirm that the world is abundant in resources. The breakdown of the natural family and the consequential moral and political failure, not human "overpopulation," account for poverty, starvation, and environmental decay.

10. We affirm that the complementarity of the sexes is a source of strength. Men and women exhibit profound biological and

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[84] Those statements of principle are said to be adaptions, respectively, of material from:
(a) World Congress of Families "The Natural Family: A Manifesto"; and
(b) Witherspoon Institute "Ten Principles on Marriage and the Public Good".

> psychological differences. When united in marriage, the whole becomes greater than the sum of the parts.
>
> **PRINCIPLES ON MARRIAGE**
>
> 1. Marriage is a union of husband and wife, intended to be permanent.
>
> 2. Marriage protects and promotes the wellbeing of children.
>
> 3. When marriage weakens, children suffer from the disadvantages (economic, emotional, educational, social, spiritual) of growing up in homes without committed mothers and fathers.
>
> 4. Marriage elevates and protects our sexual nature.
>
> 5. Marriage sustains civil society and promotes the common good.
>
> 6. Marriage is a wealth-creating institution[.]
>
> 7. The laws that govern marriage should reflect the principles above[.]

[72] As can be seen, the underpinning of these principles is that marriage consists of a permanent union of man and woman, which when functioning correctly delivers numerous benefits to society. A further core proposition is that the traditional marriage is the best model for delivering such benefits.

[73] Looking at the objects set out in the Trust Deed, the only explicit reference to education is in object B. However, object A refers to promoting and advancing research and policy supporting marriage and family and object D refers to producing and publishing relevant material, all of which have potential application to the education ground of charity. All of these provisions are focused on the role of the family and the institution of marriage, which is referred to in neutral terms in the Trust Deed itself. However, the principles of family published by Family First make it clear that it is the "natural family", being "the union of a man and a woman through marriage", that is the family referred to in the Trust Deed.

[74] This is confirmed by the "Family Policy Priorities" set out on the Family First website.[85] These are said to be the policies Family First will promote for all political

[85] Family First New Zealand "Family Policy Priorities" <www.familyfirst.org.nz>. These policy priorities were set following a survey of Family First supporters in 2011. We were told that, in 2015, the agency responsible for administering the Charities Act, Charities Services, asked Mr McCoskrie to describe how Family First reaches decisions on which causes it advocates. He responded that Family First's strategy was a continuation of what it had been doing for the past 10 years as per its Trust Deed and based on surveys and feedback from supporters.

parties to adopt. The policies are listed under these headings:

(a) Promoting marriage and families;

(b) Promoting life; and

(c) Promoting community values and standards.

[75] The focus of the first of these on the traditional marriage is confirmed by some of the specific measures said to be policies advocated by Family First, such as:

(a) amending the tax and welfare systems to eliminate disincentives to marriage together with marriage penalties;

(b) protecting marriage in law as one man – one woman; and

(c) abandoning the concept of no-fault divorce and placing the weight of the law on the side of spouses seeking to defend their marriage.

[76] Family First's position is that the natural family as described above is the "foundational family system" and that it cannot change into a new shape or be redefined by social engineering.[86] Thus, its position is that families other than the natural family are inferior and that marriage should be limited to a man/woman union.

[77] The second broad policy heading is promoting life. Under this heading, Family First advocates for a law change to prevent abortion, amongst other things, and opposes any law change to allow for euthanasia.[87]

[78] The third major priority is promoting community standards and values. Under this priority, amendments to the Prostitution Reform Act 2003 are advocated for, as is the reduction in access to pornography both generally but also specifically in respect

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86 Principles on Family, above at [71]. The principles do, however, acknowledge other forms of family.

87 Presumably this will now be a policy of seeking repeal of the End of Life Choice Act 2019.

of children, and a more family-focused (rather than individual rights-based) approach to censorship.

[79] For Family First, Mr Bassett supported the position of the majority of the Court of Appeal, that objects A–D of the Trust Deed promote the advancement of education by facilitating research on, and public understanding of, the roles of marriage and the family in society. Mr Bassett pointed out that the family is described as "the natural and fundamental group unit of society" in a number of international conventions to which New Zealand is a party.[88]

[80] The appellant disputed the Court of Appeal's view that objects A–D of the Trust Deed had a common thread of education and research. He argued the real object was advocacy.

[81] We do not consider it is clear that the objects in the Trust Deed exhibit a purpose of the advancement of education. Object A refers to research, but makes it clear that such research is for the purpose of supporting its views in relation to marriage and the family. Object C refers to participation in social analysis and debate, which, on its face, is not an educative purpose. Object D refers to publishing relevant material relating to issues affecting families. That could potentially have educative value or it could be advocacy. It is not self-evidently educational. Object B refers explicitly to education but is expressed in the broadest of terms. Again, we see this as potentially, but not self-evidently, educational.

[82] We next consider whether the activities of Family First (that is, the means by which Family First is said to advance an educational end) support the proposition that it exists for the purpose of the advancement of education.

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[88] Article 23 of the International Covenant on Civil and Political Rights 999 UNTS 171 (opened for signature 16 December 1966, entered into force 23 March 1976) [ICCPR]; the Preamble to the Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990); art 10 of the International Covenant on Economic, Social and Cultural Rights 993 UNTS 3 (opened for signature 16 December 1966, entered into force 3 January 1976); and art 16(3) of the *Universal Declaration of Human Rights* GA Res 217A (1948). In all cases, however, the term "family" is not defined in the narrow terms adopted by Family First, though art 23 of the ICCPR and art 16(1) of the Universal Declaration of Human Rights both refer to recognition of the right of men and women of marriageable age to marry and to found a family.

[83] Family First argues that it advances education through its dissemination of research reports, generation of public debate (in particular through its Forum on Families events), provision of a virtual reading room on its website, and the promotion of and participation in public discourse. We address each in turn.

Research reports

[84] Family First points to 17 research papers, which it commissioned in the period between 2006 and 2018, exemplifying its educational purpose. The topics of these reports are:

(a) The fiscal benefits of marriage and reducing family breakdown in New Zealand;

(b) Should euthanasia be legalised?

(c) An analysis of New Zealand's 2007 Anti-Smacking Law;

(d) Child poverty and family structure;

(e) Gender identity;

(f) Screen time;

(g) Teenage sex education;

(h) Mothers, day care and child wellbeing in New Zealand;

(i) 21 reasons why marriage matters;

(j) Young people and alcohol;

(k) Child abuse and family structure;

(l) Abortion and the physical and mental health of women;

(m) Imprisonment and family structure;

(n) Why mothers matter;

(o) Why fathers matter;

(p) The effect of regular family dinners on family life; and

(q) Childhood gender dysphoria.

[85] Family First distributed these papers to people on its database, and released them publicly, accompanied by a media release. Copies are kept on Family First's website. Some reports were also distributed in schools and churches.

[86] As mentioned earlier, the appellant accepted that these reports are of educative value and meet the minimum standards in *Re Collier*.[89] However, the appellant argues that the reports are tendentious. They were commissioned and disseminated to support Family First's point of view, which means they are not genuinely educative. They are used not to educate, but to advocate for, and persuade the reader to, Family First's point of view.

[87] The High Court Judge described these reports as generally advancing a particular viewpoint, gathering together existing research in support. He did, however, acknowledge the academic credentials of some of the authors of these publications, particularly Dr Aric Sigman, a British psychologist, the author of the reports on young people and alcohol and on mothers, day care and child wellbeing;[90] Glenn Stanton, a director of a Family Institute in Colorado, the author of the paper on gender identity;[91] and Professor Rex Ahdar, a Professor of Law at the University of Otago | Te Whare Wananga o Otāgo, who prepared the report on euthanasia.[92] He also considered that

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89 See above at [40]. See also the test from *Re Collier* quoted above at [51].

90 Aric Sigman *Young People & Alcohol: What does the medical evidence tell us about the legal drinking age in New Zealand?* (Family First New Zealand, 2011); and Aric Sigman *Who Cares? Mothers, Daycare and Child Wellbeing in New Zealand* (Family First New Zealand, 2012).

91 Glenn Stanton *Boys, Girls, Other: Making Sense of the Confusing New World of Gender Identity* (Family First New Zealand, 2015).

92 Rex Ahdar *Killing Me Softly: Should Euthanasia Be Legalised?* (Family First New Zealand, 2014).

the report commissioned from the NZIER addressing the financial benefits of marriage and the financial cost of family breakdown was original research by a recognised research and consulting body.[93]

[88] The majority in the Court of Appeal described the authors of these research reports as varying from employed academics working in a professional capacity, qualified professionals working as self-employed researchers and articulate laypersons without formal qualification relevant to the report they authored.[94] They highlighted another paper prepared by Dr Sigman entitled, *We need to talk: Screen time in New Zealand*.[95] They said this was a good illustration of Family First's purpose of stimulating public debate and participating in public discourse on important social issues relating to families. The paper highlights problems arising from children having excessive discretionary screen time and proposes measures that can be taken to place limits on the amount of screen time children experience.

[89] Additionally, the majority of the Court of Appeal referred to Professor Ahdar's paper on euthanasia, the NZIER report on the cost to society of family and marital breakdown and a paper by a bioethicist, Dr Gregory Pike, on the mental and physical risks of abortion for women.[96] They saw these reports as resembling a journal article in the relevant field. The majority also described the way in which these papers were commissioned by Family First.[97] In most cases, this involved Mr McCoskrie approaching authors to inquire whether they would produce a "New Zealand version" of a report written by a similar "family values" organisation overseas.

[90] To determine Family First's continued eligibility for charity status, the Court must be satisfied Family First has a purpose of advancing education, having regard to the activities it undertakes. We begin by recording that we see the method by which

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93 New Zealand Institute of Economic Research *The Value of Family: Fiscal Benefits of Marriage and Reducing Family Breakdown in New Zealand* (Family First New Zealand, October 2008) [NZIER Report].

94 CA judgment, above n 1, at [103].

95 At [110], referring to Aric Sigman *We need to talk: Screen time in New Zealand* (Family First New Zealand, 2015).

96 At [106], referring to Gregory Pike *Abortion and the Physical & Mental Health of Women: A review of the evidence for health professionals* (Family First New Zealand, 2018).

97 At [102].

Family First commissions its research papers as being consistent with the appellant's contention that the papers were written from a particular viewpoint.

[91] While that is not necessarily fatal to a claim to charitable status if the papers are written in an objective and balanced way, we do not consider that requirement is met in relation to the Family First papers. It is not the Court's role to evaluate the merits behind the positions taken in the 17 research papers and, as mentioned earlier, the appellant accepted the papers met the "minimum standard" limb of the test set out in *Re Collier*. We do however observe that some of them are papers providing an analytical basis for a position adopted by Family First or data supporting that position. In that sense, they can be seen as potentially coming within the category of advocacy or, to use the word adopted by Hammond J in *Re Collier*, propaganda, which means those papers are not giving effect to an object of advancing education. Putting it another way, having reviewed the 17 papers relied on by Family First, we conclude that many of them fall on the "trying to convert" side of the line identified by Professor Sheridan. We agree with the High Court Judge that much of the material seeks to advocate for, and persuade people to, Family First's point of view and garner support for its efforts to effect (or resist) change in the law or policy in the area to which the publication relates.[98]

[92] Mr Bassett argued that material that has educational value does not cease to be educational merely because it is underpinned by a viewpoint. For example, he said education provided to pupils in Christian schools, reflecting a Judeo-Christian world view of family, was still education.

[93] We have already accepted that education underpinned by a viewpoint can still be education. But we do not accept the Christian schools analogy. A Christian school provides education in accordance with a particular curriculum, and for many subjects there is no difference between what is taught in a Christian school and what is taught in any other school. In the present case, the argument made by the appellant is that producing otherwise educational material for the purpose of validating and promoting

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[98] HC judgment, above n 10, at [70]. The papers most obviously in this category are the papers on euthanasia, the anti-smacking law, gender identity, sex education, mothers and daycare and alcohol (increasing the legal drinking age).

a particular cause means the resulting product is not educational but is advocacy of the cause.

[94] That brings us to the means by which Family First claims to advance education. We have already discussed the general requirement for an entity's materials to be both balanced and objective to qualify under the second head. At the hearing, Mr Bassett referred to both Professor Ahdar's paper and that of Dr Pike as examples of papers where an even-handed approach is taken. It is true that Professor Ahdar's paper has sections on the case for euthanasia and the case against euthanasia, but in relation to the former, each argument is countered by the contrary view, so the section dealing with the case against begins with a statement that the points against have been largely covered in rebutting the points for. The conclusion is emphatic in opposing liberalising the law in relation to euthanasia. The examples from Dr Pike's paper are references to a division of views in various studies as to whether, and if so, by how much, three specified physical or mental health risks are elevated by abortion. We see the reports as not being written in the neutral or balanced way that would support a claim to be advancing education, albeit from a particular viewpoint.

Forum on the Family

[95] Family First holds annual conferences hosted by Mr McCoskrie, to which politicians and public figures are invited, which feature speakers from both New Zealand and overseas. These are known as the New Zealand Forum on the Family.[99] The evidence in the record about the Forum on the Family are the flyers advertising them, which set out the names and credentials of some speakers, in some case the names of politicians and others invited to attend and the topics to be addressed by the highlighted speakers. These forums appear to be a combination of informing Family First's followers who attend and publicising and promoting Family First's position on issues such as euthanasia.[100]

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[99] In one year, the forum was a "road show" involving Mr McCoskrie touring the country speaking in many towns and cities.

[100] For example, the 2008 and 2009 forums are described as, "bring[ing] together a national network of pro-family, pro-marriage and pro-life organisations, scholars, lobby groups and leaders that seek to promote and protect the well-being of families, the role of parents, and the welfare of our children".

Virtual reading room

[96] Family First posts on its website articles from both international and domestic media commentators and others, making those articles accessible to those interested in them.

[97] Mr Bassett argued this could be equated with the provision of a reading room: he called it a virtual reading room. He said the purpose of this was to educate and generate debate. He referred us to the decision of *In re Scowcroft* in which a gift of a building containing a reading room was found to be charitable.[101] He argued this could be applied by analogy to a virtual reading room.

[98] Mr Bassett emphasised that some of the material that is accessible from the Family First website is sourced from organisations that do not share the policy positions of Family First and from mainstream media. Such articles reflect a diversity of viewpoints, including those opposed to the viewpoints of Family First. The appellant's response to this was that such articles represent a small proportion of Family First's activities and are not used to present a balanced view, but to reinforce Family First's view on various topics. We agree that is true of much of that material.

[99] Mr Bassett argued that provision of a virtual reading room was regarded as educational in *Greenpeace 2020*.[102] In her judgment in that case, Mallon J observed that the internet can be a forum through which members of the public are educated, depending on the information provided.[103] We accept that provision of a virtual reading room could potentially have an educational purpose if the material that is made available is educational in nature. In *Greenpeace 2020*, Mallon J was considering the educational value of a research report that was "objective, neutral and balanced" and had been peer-reviewed, which Greenpeace had made publicly available on its website. We do not see that as analogous to the virtual reading room described by Mr Bassett in this case for the reason set out above at [98].

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101 *In re Scowcroft* [1898] 2 Ch 638 (Ch) at 641–642. The building was to be maintained "for the furtherance of Conservative principles and religious and mental improvement". The decision does not categorise the purpose of the gift as the advancement of education.

102 *Greenpeace 2020*, above n 76.

103 At [116(a)].

Participation in public discourse

[100] Family First regularly makes submissions to Parliamentary Select Committees and participates in debates about issues relating to family and marriage and other issues such as abortion, euthanasia, gender dysphoria, prostitution, anti-smacking law, censorship, availability of alcohol and child poverty. This complements the research reports and virtual reading room.

[101] Mr Bassett referred to this observation of Kiefel J in *Aid/Watch*:[104]

> The submission by the appellant, that its purposes are for the public benefit because it generates public debate, cannot be accepted at a number of levels. Its assertion of its view cannot, without more, be assumed to have that effect. Its activities are not directed to that end. *If they were directed to the generation of a public debate about the provision of aid, rather than to the acceptance by the Government and its agencies of its views on the matter, the appellant might be said to be promoting education in that area.* But it is not. Its pursuit of a freedom to communicate its views does not qualify as being for the public benefit.

[102] Mr Bassett relied on the italicised sentence in that observation. In essence, therefore, he was saying the submissions and papers generated by Family First are directed to generating debate and not to persuading others to accept its views. We do not consider that to be the case, based on the material before us.

[103] There are some similarities between the present case and that before the Federal Court of Appeal of Canada in *Alliance for Life v Minister of National Revenue*.[105] Alliance for Life had objects including to educate "on human development, human experimentation, reproductive technologies, adoption, abortion, chastity, euthanasia and similar issues affecting human life".[106] But the means by which it set out to achieve those objects were such that the Court concluded that despite the objects stated in Alliance for Life's constituting document, its true mission was advocating its strongly held convictions on important social and moral issues in a one-sided manner to the virtual exclusion of any equally strong opposing convictions.[107] For that reason, the Court held that Alliance for Life sought to

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104 *Aid/Watch*, above n 79, at [86] (emphasis added).
105 *Alliance for Life*, above n 76.
106 At [17].
107 At [69].

advocate its views in a manner befitting the labels "indoctrination" or "persuasion" per *Vancouver Society*.[108] That meant it did not qualify under the second head.

The appellant's table

[104] We now return to the appellant's table.[109] In the third version of the table, there are two subjects where there are more than 20 items, being euthanasia and censorship and media (there are 30 plus items for censorship and media), and 12 subjects where there are 10 or more items (pornography, parental smacking, parental leave, gambling, gay marriage, punishment of offences, drugs, Easter trading, abortion, sex education, prostitution and brothels and "gender roles, transgender"). Of these, those related to family and marriage are parental smacking, parental leave, gay marriage and sex education. Others are public issues on which Family First advocates for particular positions that reflects its values but which cannot be said to be advancing its core purpose of supporting its view of traditional family and marriage.

Are Family First's non-charitable purposes ancillary to its charitable purposes?

[105] The appellant argues that even if the objects and activities of Family First in relation to family and marriage were charitable, its advocacy of its viewpoint on matters such as the law relating to abortion, euthanasia, smacking, prostitution and other issues are non-charitable and are more than ancillary to any charitable purposes. We will address that issue in more detail later when we consider Family First's status under the fourth head but we signal now that we accept the appellant's submission.

Comparing this case to Greenpeace 2020

[106] Mr Bassett argued that there was no basis to distinguish this case from *Greenpeace 2020*. In that case, Mallon J found that Greenpeace was advancing education by commissioning independent scientific research and making it publicly available on its website. The fact that Greenpeace then used this research as part of its advocacy for the environment (also found to be a charitable purpose under the fourth head) did not undermine that conclusion.[110] The research referred to was

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108 At [69], referring to *Vancouver Society*, above n 20, at [171].
109 Discussed above at [32]–[38].
110 *Greenpeace 2020*, above n 76, at [116]–[117].

described as "independent scientific research, objective, neutral and balanced, based on industry-standard modelling techniques" and was "peer-reviewed by an appropriately qualified, independent person".[111] Thus, the means by which education was said to be advanced was demonstrably unbiased and neutral. We do not consider this can be said of much of the material on which Family First relies in this case.

Conclusion

[107] We conclude that Family First does not qualify as a charity for the advancement of education. While the objects set out in the Trust Deed do not exclude an educational purpose, they are equivocal. The activities of Family First do not support the proposition that its purpose is educational. Although the appellant accepted the research reports have some educative value, most of the material put forward by Family First suggests its primary object is to advocate rather than to educate. In particular:

(a) Many of the papers lack the balance or neutrality needed to legitimately further an educative purpose in circumstances where the papers express a clear viewpoint on the subject-matter. Rather, the papers seek to persuade people to Family First's point of view and seek support for its efforts to bring about (or resist) a change of policy or law.

(b) The method of commissioning the papers, with the objective of creating a local version of an overseas publication supporting Family First's view on an issue, supports the above conclusion.

(c) Family First's forums combine informing its followers with promoting its public policy positions.

(d) Family First's reading room contains materials promoting its policy position, as well as some materials expressing a contrary view. But in the latter case, much of this is presented in a way that reinforces Family First's position.

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[111] At [116(a)].

(e) Family First's submissions to Parliamentary Committees and participation in public debates on policy issues cannot be said to have the objective of generating debate but rather of attempting to persuade others to its views.

(f) Family First's advocacy activities are not merely ancillary to its objects and activities relating to family and marriage.

[108] We turn therefore to the alternative argument advanced by Family First (and its primary argument in the Courts below): does Family First qualify under the fourth head, any matter beneficial to the community?

Fourth head: Beneficial to the community

[109] Family First's alternative argument is that it qualifies for registration under the fourth head, a matter beneficial to the community. It says its objects of supporting the family and marriage as foundational to a strong and enduring society is a purpose beneficial to the community that is charitable by analogy with other cases. It says its advocacy for or against legislative changes in relation to issues of public controversy is not inconsistent with a charitable purpose, citing this Court's decision in *Greenpeace* (SC).

High Court judgment

[110] Leaving to one side any attempt to limit the definition of family, the High Court Judge considered that a purpose of promoting the benefits of a stable unit for society would likely be charitable.[112] He noted that the NZIER research into the fiscal cost of family breakdown and decreasing marriage rates estimated a cost of upwards of $1 billion a year. Reiterating the qualification regarding Family First's purpose, the Judge said the NZIER report was independent, peer reviewed research, highlighting various societal problems associated with family breakdown — this lent considerable strength to Family First's claim to charitable status.[113]

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112 HC judgment, above n 10, at [57].
113 At [57].

[111] However, the Judge ultimately considered that the true purpose of Family First was to promulgate a singular view of family, which it called the "traditional family".[114] The Judge did not consider that the evidence established that the achievement of the objective of promoting the traditional family would be a benefit to the community in the sense required by charity, particularly if it came at the expense of other forms of family.[115] He observed that the advocacy cases where charitable status had been acknowledged were scarce, and seemed to be limited to purposes of almost universal acceptance. He did not consider promotion of the traditional family unit, if achieved, would be a public benefit, meaning it did not fall into this category.[116]

[112] The Judge also considered that Family First's purpose of promoting life by reducing access to abortion and opposing euthanasia was a non-charitable purpose that disqualified Family First from achieving charitable status, even if its main purpose could be said to be charitable. In this respect, he relied on the decision of the Court of Appeal in *Molloy*.[117] In *Greenpeace* (SC), this Court observed that the decision in *Molloy* "seems correct".[118] He did not consider that *Molloy* could be distinguished.[119] And he considered that similar concerns could be raised about other law changes promoted by Family First in relation to parental smacking, prostitution reform and censorship.[120]

Court of Appeal

[113] The majority of the Court of Appeal said the assessment of whether there is a public benefit in a charitable sense requires consideration of the end being promoted and the means and manner of that promotion, referring to this Court's decision in *Greenpeace* (SC).[121] It considered the effect of supporting the role and importance of families and marriage was self-evidently beneficial in an analogously charitable sense

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114 At [60].
115 At [64].
116 At [65].
117 *Molloy*, above n 25, at 697, as cited in HC judgment, above n 10, at [66]–[67].
118 *Greenpeace* (SC), above n 7, at [73].
119 HC judgment, above n 10, at [67].
120 At [68].
121 CA judgment, above n 1, at [134] and [136].

as a public good.[122] It drew support for that conclusion from the international instruments referred to earlier.[123]

[114] Unlike the High Court Judge, the majority of the Court of Appeal considered the focus on the "traditional family" did not mean that Family First lost the necessary advancement of a public, charitable benefit. In this respect, they took judicial notice of the fact that by far the larger part of the social groups constituting families in contemporary New Zealand, at least in the nuclear family sense, are those based on civil or religious marriages between men and women.[124] They saw this conclusion as consistent with the progressive approach taken to the question of charitable benefits under the fourth head and also as analogous with the moral and mental improvement cases referred to it in Family First's submissions before that Court.[125]

[115] The majority then turned to consider whether Family First had purposes of a non-charitable nature that were more than merely ancillary. They said this question had not been considered in any detail by the Charities Registration Board or the High Court because both had found the "traditional family" focus of Family First disentitled it to charitable status. They considered remitting the matter to the Board but decided not to.[126]

[116] The majority considered that Family First's engagement in the deliberations of the community on issues such as abortion, euthanasia, anti-smacking laws, prostitution reform and censorship "is properly characterised as part of its broader purpose of supporting marriage and family as being foundational to a strong and enduring society".[127] They accepted that Family First's advocacy activities in relation to divorce, prostitution, abortion, smacking, cannabis reform and euthanasia were also related to specific issues where reasonable and informed views may differ so that no one position could self-evidently be said to be in the public interest.[128] However they

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122 At [138].
123 See above at [79], n 88.
124 CA judgment, above n 1, at [146].
125 At [150]–[151].
126 At [156].
127 At [164].
128 At [169]–[170].

did not see this as precluding charitable status, particularly in light of *Greenpeace* (SC).[129]

[117] Having said that, the majority did, however, observe that there are issues on which Family First advocates for particular positions, which, while consistent with the values which underpin its support of the institutions of marriage and family, are ones that may fall outside the penumbra of the advocacy of the public goods of family and marriage as currently recognised. They said that Family First needs to bear this in mind when determining its priorities and activities for the future.[130]

[118] In his dissenting judgment, Gilbert J rejected the majority's conclusion that the institutions of the family and marriage are self-evidently beneficial as a "public good".[131] On his reading, the majority conflated two separate limbs required under the fourth head. The first is that the purpose must be such as to confer a benefit on the public or a section of the public (the benefit component). The second is that the class of persons eligible to benefit must constitute the public or a sufficient section of the public (the public component).[132] Supporting traditional families is the public component, not the benefit component. He considered that Family First's advocacy provided no tangible benefit to families, and thus it was necessary to consider whether in advocating its specific viewpoints or causes, the ends promoted, or the means and manner of promotion, were of public benefit in a charitable sense.[133]

[119] Gilbert J noted the endorsement of *Molloy* by this Court in *Greenpeace* (SC). He considered that if the entity in issue in *Molloy* did not qualify under the fourth head even after *Greenpeace* (SC), it was hard to see how Family First could do so, given the obvious parallels.[134] He questioned the majority's conclusion that Family First's advocacy on issues of the day was merely ancillary to its main purpose, highlighting also that the majority appeared to accept that such advocacy was non-charitable.[135] He

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129 At [171]–[174].
130 At [176].
131 At [197].
132 At [197].
133 At [198], citing *Greenpeace* (SC), above n 7, at [76] and [102].
134 At [200]–[201].
135 At [201]–[203].

concluded that Family First's cause advocacy was not of self-evident or established public benefit such that it qualified under the fourth head of charity.[136]

Self-evident benefit?

[120] In the present case, the end of Family First is support of the traditional family and marriage as foundational to a strong and enduring society.[137] It argues this is self-evidently a purpose beneficial to the community. It supports the view of the majority of the Court of Appeal to that effect. It also refers to Object B of the Trust Deed, which refers to educating the public on, among other things, the moral framework of society. It says this is analogous to the decision of the Court of Appeal in *Latimer v Commissioner of Inland Revenue*, where supporting the machinery and harmony of civil society (in that case by assisting Māori in relation to Treaty of Waitangi claims) was found to be a charitable purpose,[138] and analogous with the cases on mental and moral improvement.

[121] The appellant argues there is no analogy with *Latimer*. There, the purpose was to provide tangible research assistance to claimants, which produced wider public benefits to society. There is no such tangible assistance in this case. We agree the analogy is flawed.

[122] In relation to the mental and moral improvement cases, the appellant argues the Court of Appeal majority and Mr Bassett in his submissions are wrong to rely on an obiter observation by Dixon J in *Barby v Perpetual Trustee Co (Ltd)* to the effect that an object of "raising moral standards or outlook" would be charitable.[139] The majority of the Court of Appeal considered object B of the Trust Deed (education about the moral framework of a just and democratic society) had a clear common character with the tangible public benefits broadly classified under the "moral and mental improvement" banner. They considered Family First sought to fulfil that purpose by engaging in issues relevant to the role of families in society and core family values.[140]

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136 At [204].
137 Object A of the Trust Deed, reproduced above at [69].
138 *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 (CA).
139 *Barby v Perpetual Trustee Co (Ltd)* (1937) 58 CLR 316 at 324, cited by the Court of Appeal majority: CA judgment, above n 1, at [65] and [151].
140 At [152].

[123] In contrast, Gilbert J saw object B as involving Family First promoting its particular viewpoints, including its view that the traditional family (as opposed to other forms of family) is the fundamental social unit.[141]

[124] When object B is considered in light of the research papers published by Family First and the evidence of its activities, it becomes clear that the means by which this object is put into effect is by Family First advocating for its viewpoint on a number of moral issues, to achieve outcomes in policy or legislative terms that reflect its values. We do not consider that is analogous with the mental and moral improvement cases relied on by Family First.[142] To that, we add that leading commentators have questioned the correctness of the mental and moral improvement cases, describing *Scowcroft* as "almost certainly wrongly decided"[143] and the other judgments as failing to provide a "reasoned argument for the promotion of mental and moral improvement as a general charitable purpose".[144] Rather, we will address the question of whether advocacy of this kind comes within the fourth head, applying the approach outlined by this Court in *Greenpeace* (SC).

Legal test to be applied: Greenpeace *(SC)*

[125] This Court's decision in *Greenpeace* (SC) addressed the position of an entity seeking charitable status that undertakes advocacy of particular causes. As we have found that Family First's activities fall on the advocacy side of the division between education and advocacy, its claim for charitable status under the fourth head requires the application of the approach outlined in *Greenpeace* (SC) in relation to advocacy.

[126] An entity claiming charitable status under the fourth head (any other matter beneficial to the community) must establish both that there is a public benefit (or, to

141 At [192], in the context of his discussion of the advancement of education.
142 In addition to *Barby*, above n 139, Family First referred to *In re Scowcroft*, above n 101; *In re Hood* [1931] 1 Ch 240 (CA) (spreading Christian principles); *In re Price* [1943] Ch 422 (Ch) (carrying on the teachings of Rudolph Steiner); and *In re South Place Ethical Society* [1980] 1 WLR 1565 (Ch) (study and dissemination of ethical principles).
143 Picarda, above n 29, at 221.
144 *Tudor on Charities*, above n 66, at [2-264], referring to *South Place Ethical Society*, above n 142; *Scowcroft*, above n 101; *Hood*, above n 142; and *Price*, above n 142.

use Mr Bassett's term, a benefit to the community) and that the purpose is charitable by analogy with objects already held to be charitable in earlier cases.[145]

[127] In *Greenpeace* (SC), this Court determined by a majority that the political purpose exception should no longer apply in New Zealand. Formerly, this rule meant advocacy for political purposes was, of itself, a disqualifying factor for an applicant for charitable status or already registered entities. The majority in *Greenpeace* (SC) determined that s 5(3) of the Charities Act did not have the effect of confirming by statute the common law political purpose exception.[146]

[128] The majority considered that it was difficult to construct any adequate or principled justification for the political purposes exception.[147] They did not consider that political purposes and charitable purposes were mutually exclusive. They also considered it was difficult to justify the promotion of legislative reform as being disqualifying, when advocacy will in some cases constitute a public good analogous to other good works considered charitable.[148] They considered a strict exclusion "risks rigidity in an area of law which should be responsive to the way society works".[149] The majority continued:[150]

> Just as promotion of the abolition of slavery has been regarded as charitable, today advocacy for such ends as human rights or protection of the environment and promotion of amenities that make communities pleasant may have come to be regarded as charitable purposes in themselves, depending on the nature of the advocacy, even if not ancillary to more tangible charity. … Protection of the environment may require broad-based support and effort, including through the participatory processes set up by legislation, to enable the public interest to be assessed. In the same way, the promotion of human rights (a purpose of the New Zealand Bill of Rights Act 1990, as its long title indicates) may depend on similar broad-based support so that advocacy, including through participation in political and legal processes, may well be charitable.

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145 *Greenpeace* (SC), above n 7, at [27]–[31] per Elias CJ, McGrath and Glazebrook JJ (where the majority rejected the alternative view that charitable status can be presumed if self-evident public benefit is established). See also at [120] per William Young and Arnold JJ.
146 At [55]–[58].
147 At [69].
148 At [62].
149 At [70].
150 At [71] (footnotes omitted).

[129] The decision to move away from a blanket political purpose exception was, however, qualified as follows:[151]

> Advancement of causes will often, perhaps most often, be non-charitable. That is for the reasons given in the authorities – it is not possible to say whether the views promoted are of benefit in the way the law recognises as charitable. Matters of opinion may be impossible to characterise as of public benefit either in achievement or in the promotion itself. … Furthermore, the ends promoted may be outside the scope of the cases which have built on the spirit of the preamble, so that there is no sound analogy on which the law might be developed within the sense of what has been recognised to be charitable. Even without a political purpose exclusion, the conclusion in *Molloy* (that the purpose of the Society for the Protection of the Unborn Child was not charitable) seems correct. The particular viewpoint there being promoted could not be shown to be in the public benefit in the sense treated as charitable.

[130] The majority concluded as follows on this issue:[152]

> Instead, assessment of whether advocacy or promotion of a cause or law reform is a charitable purpose depends on consideration of the end that is advocated, the means promoted to achieve that end and the manner in which the cause is promoted in order to assess whether the purpose can be said to be of public benefit within the spirit and intendment of the 1601 Statute.

Application to Family First

[131] The end that is advocated by Family First is the promotion of traditional (man/woman) marriage and the fundamental nature of the traditional family. And, as just discussed, it has an end of education about the moral framework for a just and democratic society. We do not consider that advocacy for these ends is analogous with the ends described in *Greenpeace* (SC) as ends that have come to be regarded as charitable purposes in themselves (advocacy for such ends as human rights or protection of the environment and promotion of amenities that make communities pleasant).[153]

High Court and Court of Appeal

[132] The High Court Judge observed that Family First's end of seeking recognition of the pre-eminence of the traditional family unit also involves seeking a legislative

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[151] At [73].
[152] At [76].
[153] At [71].

framework that protects that unit, including making divorce more difficult.[154] He said this would not be a benefit to the community in the charitable sense and could be seen to run counter to anti-discrimination provisions in human rights law.[155] This was rejected by the majority of the Court of Appeal on the basis that a policy that was in tension with human rights law was not illegal.[156]

Appellant's submission

[133] Mr Gunn argued for the High Court position. He said the majority of the Court of Appeal misunderstood the High Court Judge's position, which did not turn on whether the purpose was illegal. He said promoting the heterosexual married family as the only authentic sexual bond or the best environment to raise children illustrates the issue. An object that involves advancement of the proposition that single, unmarried or homosexual parents are not "authentic" or optimal cannot be considered charitable. He said this ran counter to advocacy for human rights, which *Greenpeace* (SC) suggested might be a charitable purpose.

Family First's submission

[134] Mr Bassett noted that the Marriage Act 1955 accommodates legitimate differences of view about marriage.[157] And he argued that support of the traditional family as foundational to a strong and enduring society is a public benefit to the sectors of the public that affirm the traditional family and man/woman marriage and wish to receive educative materials about them, underpinned by Judeo-Christian values.

Our assessment

[135] We agree with the High Court Judge that an object of promoting the family as foundational to a stable society could be a charitable object. But we do not agree with the Court of Appeal majority that Family First's advocacy of the role and importance

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[154] HC judgment, above n 10, at [63].
[155] At [64].
[156] CA judgment, above n 1, at [180].
[157] Marriage Act 1955, s 29(2), which says that no celebrant who is a minister of religion recognised by a religious body listed in sch 1 and no celebrant who is nominated to solemnise marriages by an approved organisation is obliged to solemnise a marriage if doing so would contravene the "religious beliefs of the religious body or the religious beliefs or philosophical or humanitarian convictions of the approved organisation".

of this particular version of the family and of marriage between a man and a woman is self-evidently beneficial in a charitable sense.

[136] As we see it, pursuing support for the traditional family by advocating against law reform which would recognise or support other forms of family can be seen as discriminatory. That is problematic for the reasons advanced by the appellant. It is true, however, as the Court of Appeal majority noted, that advocating such changes is not illegal.[158]

[137] However, Family First's purposes are themselves discriminatory. As is made clear in its Principles on Family, Family First affirms the traditional man/woman family to be "the natural family"; that this natural family "cannot change into some new shape" or be "re-defined by social engineering"; and that the marital union is "the authentic sexual bond, the only one open to the natural and responsible creation of new life". As the High Court Judge noted, Family First advocates for measures to prefer the traditional family and disadvantage others, such as amending tax and welfare law to eliminate disincentives to marriage. It also advocates a fault-based law for dissolution of a marriage, placing the weight of the law on the side of the spouse resisting dissolution.

[138] None of this is self-evidently beneficial. Nor do we consider that Family First can establish benefit. As Professor Dal Pont observes, where the putative benefit is intangible, a court will need to be convinced that the entity exhibits sufficient public benefit to be characterised as charitable.[159] And any benefits must be weighed against any detrimental effects.[160] We consider it is highly debatable that the benefits outweigh the detriments in this case.

[139] We also consider the High Court Judge was correct when he took into account the discriminatory aspects of Family First's purposes. He was not just referring to Family First's advocacy for law changes that would, if enacted, be discriminatory, as the majority of the Court of Appeal seemed to think. Rather, he was noting the fact

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158 CA judgment, above n 1, at [180].
159 Dal Pont, above n 71, at [3.40].
160 *Anti-Vivisection*, above n 56, at 67 per Lord Simonds.

that a purpose to discriminate (or a purpose that includes discriminatory elements) is not compatible with a charitable purpose.[161] We agree with his analysis.

[140] For these reasons, we are not persuaded that Family First's purposes are charitable under the fourth head. Even if we had not reached that view, we would still have found against Family First, as we now explain.

[141] Turning to the means and manner used to promote Family First's end, we come to a different view from that of the majority of the Court of Appeal. The majority of the Court of Appeal considered that Family First's engagement in the deliberations of the community on issues such as abortion, assisted dying, prostitution reform and censorship is properly characterised as part of its broader purpose of supporting marriage and family as being foundational to a strong and enduring society.[162] We disagree. We do not see engagement with those issues (or others such as alcohol reform and gambling) as merely ancillary to that broader purpose. That means that, in order to maintain its charitable status, Family First must establish that advocating for or against reform of the law relating to abortion, euthanasia and the like is, itself, charitable.

[142] It cannot do this. These are free-standing political issues. To use the words of the majority in *Greenpeace* (SC), a standalone object that is not merely ancillary "must itself be an object of public benefit or utility within the sense used in the authorities".[163] These are issues on which there are differing views: they involve the advancement of causes. It is not possible to say whether the views that are promoted are of benefit in the way the law recognises as charitable; they are matters of opinion. Nor is it possible to characterise their promotion or even the achievement of what is advocated for as charitable.[164]

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[161] This view is supported by *Canada Trust Co v Ontario Human Rights Commission* (1990) 74 OR (2d) 481 (ONCA) at 495–496. See also Adam Parachin "Public benefit, discrimination and the definition of charity" in Kit Barker and Darryn Jensen (eds) *Private Law: Key Encounters with Public Law* (Cambridge University Press, Cambridge, 2013) 171 at 174–175.

[162] CA judgment, above n 1, at [164].

[163] *Greenpeace* (SC), above n 7, at [103].

[164] See above at [129]; and *Greenpeace* (SC), above n 7, at [73].

[143] Unlike the situation discussed in *Greenpeace* (SC), advocacy of these causes is not advocacy for ends that are themselves charitable, like human rights, the protection of the environment or public amenities.[165] That is an important difference between the present case and *Greenpeace* (SC).

[144] The quantitative information in the appellant's table illustrates the focus of Family First on activities that are not pursuit of the advancement of traditional families.[166] While the shortcomings of this information are acknowledged, the table illustrates that topics which, in our assessment, are not ancillary to the advancement of the traditional family and marriage are a significant part of Family First's activities. This was the conclusion also reached by Gilbert J in the Court of Appeal, the High Court Judge and the Charities Registration Board, none of whom had before them the appellant's table.

[145] The majority of this Court in *Greenpeace* (SC) said they considered that the decision of the Court of Appeal in *Molloy* "seems correct", notwithstanding the fact that the political purpose exception was no longer good law.[167] The entity in issue in that case was the Society for the Protection of the Unborn Child (SPUC). It opposed any change in the law to make abortion more freely available. It claimed charitable status, but the Court of Appeal ruled that it did not qualify.

[146] There is some similarity between the objects of SPUC and those of Family First. The objects of SPUC included to "encourage and promote study and research and the collection and dissemination of information on the moral, medical, legal, political and social implications of pregnancy" and to "inform and educate the public on the need for legal and other safeguards for protecting and preserving the rights of unborn children".[168]

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165 At [71].
166 See above at [104].
167 *Greenpeace* (SC), above n 7, at [73], referring to *Molloy*, above n 25.
168 *Molloy*, above n 25, at 692.

[147] As Gilbert J noted in his dissenting judgment, *Molloy* is the New Zealand case that is most closely analogous to the present case.[169] Even the majority in the Court of Appeal in the present case acknowledged this position. They said:[170]

> … there are issues on which Family First advocates for particular positions which, whilst consistent with the values which underpin its support of the institutions of marriage and family, are ones that may fall outside the penumbra of the advocacy of the public goods of family and marriage as currently recognised. Issues such as divorce, alternative forms of marriage and, as the Supreme Court recognised when acknowledging the apparent correctness of the decision in *Molloy v Commissioner of Inland Revenue*, abortion, *may* fall within that category. Family First will need to bear that in mind as it determines its priorities and activities for the future.

[148] We agree with Gilbert J that, if SPUC in *Molloy* would not qualify under the fourth head even after *Greenpeace* (SC), it is hard to see how Family First could do so. We would delete the word "may" where it appears in the quotation from the majority judgment in the Court of Appeal set out above. As we see it, the advocacy purpose and activities of Family First cannot be distinguished from those of SPUC in *Molloy* and we do not think they can be said to be within the penumbra of advocacy for the traditional family and marriage. As Gilbert J notes, the majority do not explain why they considered these activities were ancillary to that purpose.[171] In effect, their conclusion was that one advocacy purpose was ancillary to another advocacy purpose.

Conclusion

[149] We conclude that Family First does not qualify as a charity under the fourth head.

Rule 20A notice: *Molloy*

[150] Family First gave notice that it supported the judgment under appeal on another ground, namely that this Court should overrule *Molloy* and depart from the observation in *Greenpeace* (SC) that *Molloy* seems correct, notwithstanding the demise of the political purpose exclusion. Mr Bassett submitted the Court should reconsider *Molloy* in such a way that permits education regarding abortion and discourages the use of the

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169 CA judgment, above n 1, at [200].
170 At [176] (footnote omitted and emphasis added).
171 At [202].

Molloy decision in lower courts as an exclusionary rule of general application. He described the decisions of the Charities Registration Board and the dissent in the Court of Appeal (and by extension the High Court judgment) as seeking "to close down all conservative education and debate on the issue of abortion by charities". He pointed out that an entity on the other side of the abortion debate was found to have charitable objects in *Auckland Medical Aid Trust v Commissioner of Inland Revenue*.[172]

[151] We do not intend to revisit *Molloy* or the observation about its correctness in *Greenpeace* (SC). The observation in *Greenpeace* (SC) recorded that the majority in that case did not see the change that had been made to the political purpose exclusion as affecting the analysis in *Molloy* in a way that would call into question the outcome in *Molloy*. We do not consider that observation was in error or needs correction.

[152] We do not intend to engage in the debate about the *Auckland Medical Aid Trust* case. That decision cannot fairly be characterised as simply a decision to confer charitable status on an entity advocating for more liberal abortion law when *Molloy* denied it for an entity advocating for a more restrictive regime. The facts of the case and the analysis leading to the conclusion are more complex and nuanced than that. Neither case is before us. The majority in *Greenpeace* (SC) expressed no view about the correctness of the *Auckland Medical Aid Trust* case. Neither do we.

[153] More generally, one of the affidavits of Mr McCoskrie filed after the Court of Appeal hearing identified a number of other entities that have taken an opposing position to that of Family First on issues such as abortion, cannabis law reform, gender identity and gay marriage, all of which are registered charities. We do not know the basis on which these entities achieved charitable registration or under which head they qualified. It may be that in their cases, the advocacy they undertook was ancillary to a recognised charitable purpose or was undertaken to advance a recognised charitable end such as advancement of human rights. If the purpose of presenting this information was to suggest that entities that have the object of advocating for the liberal side of a political debate are regarded as charitable while

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[172] *Auckland Medical Aid Trust v Commissioner of Inland Revenue* [1979] 1 NZLR 382 (SC).

those that have the object of advocating for the conservative side are not, we do not accept that proposition. In principle, an entity that has non-ancillary purposes of advocacy on free-standing political issues will not be entitled to charitable status, whatever side of the debate it is on. It is the lack of any means available to the Court to judge the public benefit of a political issue that will usually count against charitable status. That applies equally to both sides of any political debate.

Fiscal considerations

[154] CLAANZ submitted that the fact that obtaining charitable status has tax implications favouring the entity on which the status is conferred should not influence decision-makers in determining whether to recognise a new type of purpose as charitable in law.[173] Mr Bassett supported that submission. CLAANZ argued that this assumes the tax advantages for a charity are concessions from tax law, when it can equally be argued the non-taxability of charities is part of the definition of the tax base. We do not see that as altering the fact that there is a more favourable tax position for an entity that has charitable status than for an entity that does not.

[155] CLAANZ's submission challenges the approach taken in *Greenpeace* (SC), where the majority observed that determining what constitutes a charitable purpose by the method of analogy to objects already held to be charitable was "the safer policy since charitable status has significant fiscal consequences".[174] We do not consider any correction of that statement is required. The fiscal consequences are a reality that cannot be ignored. The Court in *Greenpeace* (SC) was not suggesting the fiscal consequences are a controlling factor, but rather that changing the analogical approach that has been followed may be outside what Parliament intended when it effectively determined that the pre-existing law should continue to apply. The only reason to reverse the statement made in *Greenpeace* (SC) would be if we were minded to abandon the analogical approach. We do not consider there is any good reason to depart from this methodology, which is long standing, was confirmed so recently in

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[173] It cited in support of this *Re Queenstown Lakes Community Housing Trust* [2011] 3 NZLR 502 (HC) at [78] per MacKenzie J.

[174] *Greenpeace* (SC), above n 7, at [30] (footnote omitted). A similar position was taken by the Supreme Court of Canada in *Vancouver Society*, above n 20, at [200] per Iacobucci J for the majority.

Greenpeace (SC) and reflects the common law method of incremental development of the law to adjust to societal changes.

Section 14 of the Bill of Rights

[156] CLAANZ submitted that the withdrawal of charitable status from an entity that engages in political advocacy may be an impermissible interference with the entity's freedom of expression under s 14 of the Bill of Rights. This is said to arise because the entity loses the tax advantages that go with charitable status if that status is withdrawn.[175] This argument was raised in the Court of Appeal, but the Court did not engage with it.[176]

[157] The same argument (in the context of a case about registration) was rejected by the Court of Appeal in *Re Greenpeace of New Zealand Inc*, the decision that was under appeal in *Greenpeace* (SC).[177] It found that a refusal to register as a charity an entity engaging in activities that had political objects did not breach s 14 of the Bill of Rights. Logically, the same must apply to the deregistration of an entity that has been registered as a charity. The Court of Appeal in *Re Greenpeace* cited with approval the following extract from the decision of the Canadian Federal Court of Appeal in *Human Life International in Canada Inc v Minister of National Revenue*:[178]

> With respect to the Charter argument based on alleged infringement of freedom of expression, the basic premise of the appellant is untenable. Essentially its argument is that a denial of tax exemption to those wishing to advocate certain opinions is a denial of freedom of expression on this basis. On this premise it would be equally arguable that anyone who wishes the psychic satisfaction of having his personal views pressed on his fellow citizens is constitutionally entitled to a tax credit for any money he contributes for this purpose. The appellant is in no way restricted by the *Income Tax Act* from disseminating any views or opinions whatever. The guarantee of freedom of expression in paragraph 2*(b)* of the Charter is not a guarantee of public funding through tax exemptions for the propagation of opinions no matter how good or how sincerely held.

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175 This argument can be seen to run counter to the argument just addressed, that fiscal consequences are irrelevant.

176 CA judgment, above n 1, at [181].

177 *Re Greenpeace of New Zealand Inc* [2012] NZCA 533, [2013] 1 NZLR 339 at [59]–[60]. See also *Better Public Media Trust v Attorney-General* [2020] NZHC 350 at [80].

178 *Human Life International in Canada Inc v Minister of National Revenue* [1998] 3 FC 202 (FCA) at [18].

[158] CLAANZ argued that an analogy could be drawn with the Ontario decision *Canada Without Poverty v Attorney-General of Canada*.[179] In that case, the Ontario Superior Court declared unconstitutional a rule of the Canada Revenue Agency restricting the proportion of income a charitable entity may expend on political advocacy and the distinction drawn between political and charitable activities in the relevant legislation. The rule was said to be unconstitutional because it violated the freedom of expression provision in s 2(b) of the Canadian Charter of Rights and Freedoms. We do not see that case as persuasive in the present situation. It concerned a rule limiting the freedom of expression of an entity that had charitable status. That is different from the present situation, where the issue is whether Family First continues to meet the statutory requirements for charitable status. The reasoning in *Human Life International in Canada* applies.

[159] CLAANZ also cited an article by Jane Calderwood Norton, in which she suggests that a Bill of Rights approach to a decision on charitable status may require a more expansive view of benefit when assessing entities engaged in advocacy and other political expression.[180] However, that was qualified by her later observation that, while entities that provide information to the public to ensure they are informed about proposed legislation and policy matters can be seen to be supporting democratic government, an entity that seeks to advocate for one side of a contentious dispute might have greater difficulty in demonstrating that it supports that same value. And, earlier in the same article, Dr Norton opines:[181]

> There does not appear to be convincing authority for the argument that removing or denying charitable status is a limitation on freedom of expression. Removal of charitable status is more akin to the permissible withdrawal of a state subsidy rather than the suppression of political expression.

[160] We agree with that conclusion.

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179 *Canada Without Poverty v Attorney-General of Canada* 2018 ONSC 4147, (2018) 142 OR (3d) 754.

180 Jane Calderwood Norton "Charities and freedom of expression" [2019] NZLJ 174 at 178. Dr Norton also observes that: "An organisation that seeks to *take rights away* from individuals or groups in society might have an even harder time showing that their purpose is beneficial": at 178. That arguably applies to the discriminatory aspects of Family First's objects.

181 At 176.

Result

[161] For the above reasons, the appeal is allowed. We conclude that the Charities Registration Board was correct to resolve that Family First be de-registered. The declaration made by the Court of Appeal that Family First qualifies for registration under the Charities Act is set aside.

Costs

[162] The appellant indicated that he was content for costs to lie where they fall. We therefore make no award of costs.

WILLIAMS J

[163] I agree with the conclusions reached in the reasons given by O'Regan J and wish only to add a few comments of my own in relation to charitable purpose. Firstly, I acknowledge that since at least 1805, and probably before that, the law has studiously avoided the imposition of hard-and-fast boundaries between charitable and non-charitable purposes.[182] Instead, the approach has been one of evolving delineation through decisions over time. This flexibility has enabled (it is said) the legal concept of charitable purpose to keep pace with social change.[183] Such change has relevantly included: the decline of village or parish communities and the rapid growth of large but segmented urban communities; the equally rapid growth of religious, political and ethnic diversity and the eventual acceptance of diversity as a core liberal democratic value; and the replacement of the Church by the welfare state as the primary provider

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[182] *Morice v Bishop of Durham* (1805) 10 Ves Jun 522, 32 ER 947 (Ch) declared that "charitable purposes" are those found in the Preamble to the Charitable Uses Act 1601 (Eng) 43 Eliz I c 4 [Statute of Elizabeth] or which by analogy fall within its spirit and intendment. The *Morice* judgment did however reduce the scope of charitable purpose by rejecting an old line of authority which appeared to accept that the only qualification was bestowal of public benefit, and adding that the donor's purpose must also conform with the spirit of the list of purposes in the Preamble. In this way, *Morice* effectively chose to privilege flexible incremental elaboration by analogy over hard-and-fast rules.

[183] *Re Greenpeace of New Zealand Inc* [2014] NZSC 105, [2015] 1 NZLR 169 at [64]. See also the discussion in G E Dal Pont *Law of Charity* (2nd ed, LexisNexis, Chatswood (NSW), 2017) at 20, referring to several authorities at n 33 for the proposition that the legal concept of a charity is not static, but rather is flexible enough such that it "moves, changes and evolves with prevailing ideas about social values and attitudes in the society in question". Writing in 1890, the Supreme Court of California remarked in *Attorney-General v Dashaway Association* 84 Cal 114 (1890) at 122 that the meaning of charity can transform to reflect "new fields and opportunities for human action" and the "differing condition, character, and wants of communities and nations".

of what each generation considers are core community supports. Charitable purposes have indeed evolved in response to these new contexts.[184]

[164] But one problematic effect of adaptive incrementalism with little guidance in principle has been the steady encrustation of contradictory decisions onto the charitable purpose canon — especially under the fourth (analogous) *Pemsel* head.[185] The modern growth of advocacy-based organisations seeking charitable status has highlighted the problem. Whatever public benefit such advocacy may be said to provide, it will almost always be less direct and less tangible than that provided by 'works'-based charities.[186] For that reason, I have found it necessary, when thinking about the issues arising in this appeal, to begin (if only briefly) at the beginning.

[165] All societies place a high value on non-transactional giving to community; that is, on giving to support one's wider community without expecting equivalent value in return (at least not in this life). It is one of the key ways in which social cohesion is supported. So, all cultures and religions (and therefore all legal systems) encourage

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184 See, for example, the authorities cited in *Greenpeace*, above n 183, at [70]–[71], including *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 (CA) (subsequently overruled by the Judicial Committee of the Privy Council but on different grounds); *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] 1 Ch 73 (CA); and *Jackson v Phillips* 96 Mass 539 (1867).

185 See, for example, *Jackson*, above n 184 (accepted that a bequest to promote the abolition of slavery was charitable but not a bequest for promoting women's rights); and *Re Cranston (deceased), Webb v Oldfield* [1898] 1 IR 431 (CA) (accepted promotion of vegetarianism in London and Manchester was charitable by analogy). Growing the corpus of recognised "charitable purposes" by analogical reasoning means charity law has, some say, "built up not logically but empirically" (*Gilmour v Coats* [1949] AC 426 (HL) at 448–449), leading to a "great body of law" which may "appear illogical and even capricious" as its "guiding principle is so vaguely stated": at 443. In *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297 (HL), Lord Normand said charity law's general tendency towards historicism and analogy privileges empirical (rather than logical) development, which has "baffled efforts to reduce the law to systematized definitions": at 309.

186 *Greenpeace*, above n 183, at [102].

such giving, whether by requiring it as a condition of membership or by incentivising it within the life of the community.[187]

[166] In the common law tradition, a convenient starting point is the Christian doctrine that made selfless giving to church and the needy a duty of all good Christians of means.[188] The word used by Paul (who was Greek-speaking) in his epistle to the Corinthians to convey this Christian concept of selfless love was *agape*.[189] When the Roman Empire adopted Christianity as its official religion and the scriptures were translated into Latin, agape became *caritas*.[190] And when the first State-sponsored and sanctioned English language version of the Bible was completed in 1611 by scholars working under the direction of King James I, caritas became *charity*.[191] Most English versions of the Bible that pre-dated the King James version, and most modern versions, have preferred *love* as the better English rendering of caritas or agape.[192] It will come as no surprise that the Māori language versions of the Biblical references just cited use

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187 Tikanga Māori for example promotes social responsibility and cohesion by placing a high value on giving to one's whānau, hapū or iwi, and to manuhiri (one's guests). Core tikanga values reflect, or at least approximate, the multi valent English language idea of charity — aroha for charity itself, whanaungatanga for obligations to one's community, kaitiakitanga for the responsibility to nurture community and place, mana for individual and community dignity, manaakitanga for generosity to outsiders and tika for social justice. In a completely different context, wealthy Roman citizens had an implicit obligation to give generously to the poor, and legal mechanisms like the *fideicommissum* (an ancestor of the trust) could, it seems, be invoked to secure compliance with the donor's wishes (see C E F Rickett "Charitable Giving in English and Roman Law: A Comparison of Method" (1979) 38 CLJ 118). Relatedly, in Islam, the *Waqf* arose in the 7th century to provide for permanent charities seeking to advance social objects including infrastructure, socio-economic development and education (see Islamic Relief Academy *Comparing the Effectiveness of Waqf and English Charitable Trusts* (2015) at 7).

188 Matthew 5:42–44 and 22:39–40 (King James Version).

189 1 Kórinthos 13:1–13. A variation of the word agape also utilised in these verses is agapen. See the Online Greek Bible available at <www.greekbible.com>.

190 1 Corinthios 13:1–13. A variation of the word caritas also utilised in these verses is caritatem. See the Latin Vulgate Bible available at <www.vulgate.org>. The Vulgate Bible was first commissioned in 382 AD.

191 1 Corinthians 13:1–13. This work began in 1604, making it roughly contemporaneous with the Statute of Elizabeth, above n 182. King James I was crowned in 1603 following the death of Queen Elizabeth I.

192 Older bible translations which preferred the word "love" include the Tyndale Bible 1534; the Coverdale Bible 1535; the Matthew Bible 1537; the Great Bible 1539; the Geneva Bible 1560; and the Bishops' Bible 1568. Modern day bible translations which prefer the word "love" include Young's Literal Translation 1862; the English Revised Version 1885; the American Standard Version 1901; the World English Bible 2000; and the Lexham English Bible 2010. See <http:///www.studybible.info> for each bible.

the term *aroha* to convey the same message.[193] That is because the match between aroha and agape or caritas is very close.

[167] Writers such as Professor Dal Pont and Gareth Jones have traced the migration of the scriptural idea of "charity" into medieval canon law generally, and the work of the English ecclesiastical courts specifically.[194] Operating under its (then) exclusive jurisdiction over testamentary causes, the ecclesiastical courts applied principles of canon law to enforce charitable bequests.[195] The beginnings of what have become known as the special privileges of charity law were developed in that court.[196] But by the 15th century, the Chancellor had established a parallel jurisdiction for enforcing charitable gifts and eventually, the ecclesiastical courts were displaced by the Court of Chancery. Even then, the Church retained a supervisory jurisdiction over charities until approximately the 18th century.[197] Most importantly, however, the Chancery Courts adopted and adapted the body of law developed by its predecessor.

[168] So, the common law of charity, with its historic and linguistic provenance in scripture, should not ignore the caution that mere giving, even to deserving causes, is not charitable, if the way it is done is self-regarding. This was the point Gray J made in the Massachusetts Supreme Court when he accepted that a charitable gift is "whatever is given for the love of God, or for the love of your neighbor … *free from the stain or taint of every consideration that is personal, private or selfish*".[198] A

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193 Matiu 5:42–44 and 22:39–40; and 1 Koroniti 13:1–13. The text generally accepted as authoritative in te reo Māori is the 1868 translation of Te Paipera Tapu, although a te reo Māori version of the entire New Testament had been printed by William Colenso in 1837. See Te Paipera Tapu available at <www.paiperatapu.maori.nz>.

194 Dal Pont, above n 183, at 79–82; and Gareth Jones *History of the Law of Charity 1532–1827* (Cambridge University Press, Cambridge, 1969) at ch 1. See also R H Helmholz "The Law of Charity and the English Ecclesiastical Courts" in Philippa Hoskin, Christopher Brooke and Barrie Dobson (eds) *The Foundations of Medieval English Ecclesiastical History* (Boydell Press, Woodbridge, 2005) 111.

195 Helmholz, above n 194.

196 Dal Pont, above n 183, at 79–82; and Jones, above n 194, at ch 1.

197 The Statute of Elizabeth provided for a commission procedure to supervise the administration of charitable funds. One of the commissioners had to be the Bishop of the diocese in recognition of the Church's historic role in delivering charitable services: Jones, above n 194, at 40. For various reasons, the commission procedure fell into disuse, with the last commission under the Statute of Elizabeth being sealed in 1787: at 160.

198 *Jackson*, above n 184, at 556 (emphasis added), referring to the definition proposed in argument by Horace Binney in *Vidal v Mayor of Philadelphia* 43 US 127 (1844). As noted by Gray J, Mr Binney's definition was endorsed by the Supreme Court of Pennsylvania in *Price v Maxwell* 28 Pa 23 (1857) at 35 ("If we were to attempt a definition which would embrace all gifts for charitable uses, we should adopt the language of … Mr Binney, as expressed in his argument in *Vidal*").

purpose that, in its nature or implementation, is substantially self-regarding is not, I suggest, a charitable purpose. Before going on to explain my heresy, let me provide four caveats.

[169] First, I am not suggesting that charity law should be re-clothed in its original religious meaning. The common law and the Church parted formal company a long time ago and, in fact, the late 16th and early 17th century statutes in relation to the control of charitable uses were very much a part of that process of displacing the political and legal power of the Church and substituting Parliament and the secular courts.[199] My point is a different one. It is that by understanding the older doctrinal foundations of charity, underlying principles may be discerned that can still perform a useful organising function without disrupting our long preference for adaptive incrementalism. Those principles may help to avoid further inconsistency by guiding the search for true analogues. Principle can mitigate the tendency to undue subjectivity. It is a problem to which this subject is prone, due perhaps to the untethering of charity law's technical rules from their principled beginnings.[200]

[170] Second, I am not saying that the court must look into the heart of the donor or entity to determine whether their intent is sufficiently altruistic.[201] I accept that the approach of the law has been primarily instrumental and unconcerned with motive. Subject to a few contradictory exceptions, that has proved workable because the cases overwhelmingly relate to charitable works.[202] The works can speak for themselves. Pure advocacy of ideas or doctrines is different. Advocacy is less tangible, more prone

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[199] Charitable Uses Act 1597 (Eng) 39 Eliz I c 6; and the Statute of Elizabeth, above n 182.

[200] As noted above at [163], n 183, the inherent flexibility of charity law has enabled it to keep pace with changing social values. While that may be virtuous, the system relies on judges acting as neutral gatekeepers regulating access to the benefits of charitable status. Some may not be equal to the task, especially given the historical tendency for judges to be drawn from a narrow social milieu. Such is the danger of the law's aversion to hard-and-fast rules in circumstances where charity's original principle of selflessness has fallen away. But see my comments below at [179]–[180].

[201] See Dal Pont, above n 183, at 21–23; and *Hoare v Osborne* (1866) 1 LR Eq 585 (Ch) at 588.

[202] See, for example, cases where an arguably selfish gift qualified as charitable because the law looks past subjective motives and focuses the analysis on whether the gift can objectively be characterised as publicly beneficial in the charitable sense: *Hoare*, above n 201; *Re King, Kerr v Bradley* [1923] 1 Ch 243 (Ch); *Re Delius (deceased), Emanuel v Rosen* [1957] 1 Ch 299 (Ch); *Grant v Commissioner of Stamp Duties* [1943] NZLR 113 (SC); and *Re Spence, Barclays Bank Ltd v Mayor of Stockton-on-Tees Corp* [1938] 1 Ch 96 (Ch).

to ambiguity, and therefore less straightforward. It requires closer attention to the objective character of the donor's purpose.

[171] Third, I accept, of course, that charitable giving will often involve a degree of self-interest. The payment of chantries to the Church helped, it was believed, to ensure the donor or their candidate obtained blessings in the next life,[203] while in modern contexts, gifts for parks, buildings or university endowed chairs often come with the condition that the thing funded be named for the donor (or that it be in honour of persons close to the donor).[204] Gifting public infrastructure to one's own community, for example, will typically also involve self-interest because the donor will, by co-residence, enjoy the fruits of their own charity.[205] But there is, or ought to be, a significant asymmetry in the exchange — the personal benefit to the donor will be far outweighed by the public benefit generated.[206] Put another way, where a purportedly charitable gift is made but the relevant benefits flow disproportionately to the donor (or their privees) rather than the wider public, there has, in truth, been no gift at all.

[172] Finally, and perhaps obviously, selflessness is in my view a necessary but not sufficient pre-condition for charitable purpose. The well-established rules governing

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203 *Nelan v Downes* (1917) 23 CLR 546, as cited in Dal Pont, above n 183, at 64 for the proposition that gifts for the saying of masses can qualify as a charitable purpose even if the "donor expects a spiritual advantage, whether personally or to another". See also *Re Hetherington (deceased)* [1990] 1 Ch 1 (Ch) where the testatrix gifted money for the saying of masses "for the repose of the souls" of her family and herself after death. The gift was found to be charitable.

204 See, for example, *Re Mair (deceased)* [1964] VR 529 (SC); *McGrath v Cohen* [1978] 1 NSWLR 621 (SC); and *Cram Foundation v Corbett-Jones* [2006] NSWSC 495. See also the authorities listed above at n 202. Additionally, in Donald Poirier *Charity Law in New Zealand* (Department of Internal Affairs, June 2013) at 102, the author gives one example of self-interested charitable giving where he said it is considered that Howard Hughes created the Howard Hughes Medical Institute as a mechanism for tax avoidance but it is one of the most important charitable organisations for carrying out biomedical research.

205 See, for example, infrastructural gifts such as those listed in the Preamble to the Statute of Elizabeth (repair of bridges, havens, churches, causeways, sea banks and highways).

206 I acknowledge that there are historical cases which have upheld as charitable trusts in which preference was to be given to a private class such as the donor's family or descendants. See, for example, *Spencer v The Warden and Fellows of All Souls College, Oxford* (1762) Wilm 163, 97 ER 64; and *Re Christ's Hospital* (1889) 15 App Cas 172 (PC). Similarly, in *Attorney-General v Sidney Sussex College* (1869) LR 4 Ch App 722 (Court of Appeal in Chancery), a devise of land to colleges at Oxford and Cambridge for the education of the testator's relations was assumed to be charitable, although the central question was one of construction rather than charitability. These cases (amongst others) are discussed in Jonathan Garton *Public Benefit in Charity Law* (Oxford University Press, Oxford, 2013) at 117–118. In my view those cases are wrong in principle and ought not to be followed. Compare *Latimer*, above n 184, in which funding research for claimants in the Waitangi Tribunal — almost all of whom represented iwi and hapū — was held to be a charitable purpose. This on the basis that the purpose is analogous, and iwi and hapū are communities rather than private classes of individuals.

qualification for charitable status are not displaced, but charity law's original understanding of selfless giving can operate as a touchstone or organising theory to assist in dealing with the difficult cases.

[173] With those caveats in mind, and as *Re Greenpeace of New Zealand Inc* held, especially with respect to advocacy, the charitable purpose inquiry is not just about ends.[207] Charity also consists in the manner and means by which the end is to be achieved.[208] The less self-evidently charitable the purpose of the giver, the more important the manner and means of achieving it become. Determining what constitutes charitable education and what qualifies as an analogous (fourth head) purpose will often require consideration of manner and means issues. This is where underlying principles can do some of the lifting.

[174] First, education. Charitable education is not a narrow concept.[209] It is not just giving to schools, polytechnics and universities. It includes disseminating information and propagating ideas in the widest sense.[210] But the law still distinguishes between providing for education which is a charitable purpose and supporting the distribution of "propaganda" which is not.[211] The problem is that in this wider sense, one disseminator's education is another's propaganda. Deciding which is which can be a troublingly subjective exercise, and the line dividing one from the other can be difficult to discern in practice.[212] It is sometimes just a matter of degree.

[175] One-sided promotion of personally held views or views one supports is not education in the charitable sense. Nor is disseminating information that only reflects the disseminator's view. Why this is so, in principle, is important. There are, I suggest, two reasons why even if the subject matter is of great social importance, the one-sidedness of the material neutralises its educative utility. First, promoting only one side of an idea or cause can detract from the cohesiveness of our pluralistic community because it ignores other perspectives on the same thing. Second, it does

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207 *Greenpeace*, above n 183, at [76].
208 At [76].
209 See the reasons given by O'Regan J at [51]–[55].
210 Juliet Chevalier-Watts *Law of Charity* (2nd ed, Thomson Reuters, Wellington, 2020) at 141.
211 *Commissioners for Special Purposes of the Income Tax v Pemsel* [1891] AC 531 (HL) at 564 per Lord Bramwell dissenting. See also *Re Collier (deceased)* [1998] 1 NZLR 81 (HC) at 91–92.
212 L A Sheridan "The Political Muddle – A Charitable View?" (1977) 19 Mal L R 42 at 70.

not respect individual dignity either, because it does not set out to empower the receiver to make up their own mind.[213] To the contrary, it can disempower the receiver by failing fairly to inform them of alternative views on the subject. Indeed, such self-referential manner and means may actually produce social disbenefit. One-sided information is not about community; it is about self.

[176] That does not mean that charitable education must be opinion-neutral. Far from it. The contest of ideas and perspectives is an important means by which liberal democracies such as ours adapt and thrive. And it is one of the protectors of our diversity. The advocate can still educate in a charitable sense, but their advocacy must acknowledge alternative perspectives fairly and respectfully. Such advocacy will be education because by acknowledging other perspectives it empowers the receiver to come to their own view. So, material that seeks to persuade in this way can be educative. The question to my mind is whether the persuading is done in a manner consistent with the underlying non-self-referential values of charity. There is, of course, no getting away from the fact that drawing the line between charitable and non-charitable education in advocacy cases will be a question of degree requiring an overall assessment, but that is where underlying principles can guide adaptive incrementalism.

[177] In this case, Family First's advocacy is plainly too one-sided and therefore too self-referential to be education in the charitable sense. That overall impression is not mitigated by the occasional more balanced exception in the materials provided to the Court. Those exceptions serve only, through contrast, to confirm that there is no gift at all.

[178] Turning then to the indefinite analogous head of charity, similar issues arise, and again, especially with respect to advocacy. Charities law has always been sceptical of situations where the stated purpose is advocacy for an idea, doctrine or perspective. This is for two reasons, I suggest. First, it is inherently difficult to demonstrate that mere advocacy produces tangible outcomes of public utility.[214] Not

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213 See discussion on political purposes, autonomy and altruism in Matthew Harding *Charity Law and the Liberal State* (Cambridge University Press, Cambridge, 2014) at ch 6.

214 *Greenpeace*, above n 183, at [114].

impossible, but difficult. Second, as noted in *Greenpeace* by reference to the American Restatement on Trusts, "a charitable trust does not exist to give satisfaction to those who believe in the cause it promotes".[215] In other words, advocacy will often be too self-referential to meet the benefit requirement. *Greenpeace* did not change any of this. Rather, it confirmed that the gateway for pure advocacy-based purposes is narrow and provided a more satisfactory conceptual framework for analysis than did the problematic political purpose exception.[216]

[179] Some (analogous) purposes are, it is said, self-evidently charitable. The promotion of human rights, protection of the environment and (in our particular context) the promotion of post-colonial reconciliation are among the examples referred to.[217] Self-evidently charitable perhaps means no more than that the court accepts there is broad consensus in the community about the utility of the purpose in terms of its contribution to social cohesion and well-being, and its consistency with underlying societal values, and that advocating for it will therefore also be charitable. That is not to say there must be social unanimity about the purpose's benefits. Nor is it to say that agreement on how, or how far, the purpose should be pursued is required. It is just to accept that there is sufficient consensus about the purpose to suggest it has become as self-evidently charitable as the promotion of religion, the advancement of education and the relief of poverty. And as with the specific heads of charity, manner and means will still be important.

[180] That said, promoting controversial causes or ideas will not of itself be disqualifying.[218] This is consistent with authority and (more importantly) the pluralist underpinnings of our democratic culture.[219] As noted in the education context, the contest of ideas and perspectives is a predicate for a thriving community. But care is obviously needed, and it is perhaps in this context that manner and means, and the

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215 At [32], referring to American Law Institute *Restatement of the Law (Third): Trusts* (St Paul, Minnesota, 2007) at pt 3 ch 6 § 28.

216 At [72]–[76].

217 At [70]–[71], citing *Latimer*, above n 184, and the Charities Act 2006 (UK), s 2(2)(h). The corresponding section in the current legislation is s 3(1)(h) of the Charities Act 2011 (UK).

218 *Greenpeace*, above n 183, at [75].

219 See for example *Jackson*, above n 184. Dal Pont notes that if popularity or broad social consensus were required for showing that an advocacy-based purpose qualifies as charitable, the law would devolve into a "battle between pollsters" and to the extent charities provide relief to minorities, a "popularity straightjacket would undermine the core function of many existing charities": see Dal Pont, above n 183, at 24.

original charitable principle of selflessness, become very important. An advocacy group that addresses a controversial topic in a balanced way may well be charitable, even if it ultimately favours one side or the other. Honesty and respect in debate is not self-referential. In fact it can contribute to social cohesion and the empowerment of individuals while respecting also the communicator's right to their point of view. It can assist the community to navigate its way through difficult issues. And there is certainly no shortage of those right now.

[181] In this case, it does not much matter whether one describes Family First's purpose as advocacy for the family or advocacy for a particular traditional or conservative view of the family. The key question is whether Family First's manner and means of execution can be described as fair, balanced and respectful. As I have said, this will usually be a question of degree. For the reasons already traversed, I too am of the view that the answer to that question is plainly no.

[182] I agree that the appeal should be allowed.

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