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Juliet Chevalier-Watts
University of Waikato

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Abstract

The focus of this article is on the political purpose doctrine and public benefit within New Zealand charity law, in the light of the much awaited New Zealand Supreme Court decision in *Re Greenpeace*. This article asserts that the majority decision in *Re Greenpeace* was merely a reflection of the court's ability to recognise the applicability of charity law in contemporary circumstances, in a way that responds to societal needs. The article considers the notion of public benefit as it relates to charity law, both prior to, and after *Re Greenpeace*, and contends that courts may find the public benefit where it is appropriate to do so, and in circumstances where the social framework favours that way of thinking.

Keywords

political purpose, doctrine, public benefit

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JULIET CHEVALIER-WATTS*

Abstract

The focus of this article is on the political purpose doctrine and public benefit within New Zealand charity law, in the light of the much awaited New Zealand Supreme Court decision in Re Greenpeace. This article asserts that the majority decision in Re Greenpeace was merely a reflection of the court's ability to recognise the applicability of charity law in contemporary circumstances, in a way that responds to societal needs. The article considers the notion of public benefit as it relates to charity law, both prior to, and after Re Greenpeace, and contends that courts may find the public benefit where it is appropriate to do so, and in circumstances where the social framework favours that way of thinking.

I Introduction

The long awaited New Zealand Supreme Court decision on political purposes and charity law, contained in *Re Greenpeace of New Zealand Incorporated* ('*Re Greenpeace*'),¹ may appear, prima facie, as a sudden volte-face in New Zealand's approach to charity law and political purposes. In this case, a majority of the Supreme Court determined that the long-established political purpose exclusion should no longer apply in New Zealand. This meant that political and charitable purposes were not mutually exclusive in all cases.²

This article submits, however, that this apparent sudden about-face may, in reality, be an illusion. History shows us that New Zealand has never shied away from difficult charity law questions, while at the same time respecting the foundations and underlying ethos of charity law. This article asserts that the Supreme Court's decision in *Re Greenpeace* is simply a reflection of our times, which encapsulates an approach not unfamiliar to that already taken by New Zealand's courts when the circumstances dictate. In order to demonstrate this hypothesis, this article considers some earlier, ground breaking jurisprudence, and then brings the reader up-to-date with a critical

* Senior Lecturer in Law, Associate Dean Research, Te Piringa — Faculty of Law, University of Waikato, julietcw@waikato.ac.nz.

¹ [2015] 1 NZLR 169.

² Ibid 177 [3] (Elias CJ, McGrath and Glazebrook JJ).

analysis of certain New Zealand cases that have considered charity law and political purposes in contemporary times, including a very recent case in which *Re Greenpeace* was considered in the High Court of New Zealand.

This article focuses on public benefit, which is a fundamental requirement of charity law and central to discussions on political purposes. To that end, the article also gives some consideration to the flexibility and inclusive nature of some elements of the public benefit doctrine. The article therefore reviews the notion of public benefit as it relates to New Zealand charity law both prior to, and in the wake of, the *Re Greenpeace* judgment, and the final form of the New Zealand political purpose doctrine that materialised from this case as a means of expression for the critical review of public benefit.

It is also necessary to discuss, albeit briefly, the relevance of public benefit so as to contextualise this article's assertions. From early times, courts have held that, for a purpose to be charitable, it must be of public benefit. Thus, in 1767 Lord Camden LC defined charity as a 'gift to the general public use'.³ The main concern for a court is to ensure that the purpose is not for a private benefit, or if that purpose is private, that the private nature is ancillary to the overall charitable purpose. There is no statutory definition of charity in New Zealand, and for an organisation to obtain registered charitable status it must exist for the benefit of the public and be exclusively charitable.⁴ The notion of charitable purpose 'owes its genesis to the list of purposes found in the preamble to the Statute of Charitable Uses Act 1601',⁵ and in the purposes identified by Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v Pemsel*.⁶ This case 'is generally considered to be the source of the modern classification of charitable trusts into four principal categories':⁷ the relief of poverty; the advancement of education; the advancement of religion; and, any other purposes beneficial to the community.

In New Zealand, the definition of 'charitable purposes' is to be found in s 5(1) of the *Charities Act 2005* (NZ), which states:

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 G E Dal Pont, *Charity Law in Australia and New Zealand* (Oxford University Press, 2000) 13, citing *Jones v Williams* (1767) Amb 651, 652.

⁴ *New Zealand Computer Society Inc* (2011) 25 NZTC 25, 247 [10]–[12].

⁵ *Re Family First New Zealand* (Unreported, High Court of New Zealand, Collins J, 30 June 2015) [17]; *Statute of Charitable Uses Act 1601* (Imp) is also referred to as the "Statute of Elizabeth".

⁶ [1891] AC 531, 583.

⁷ *Re Family First New Zealand* (Unreported, High Court of New Zealand, Collins J, 30 June 2015) [18].

As noted, to be charitable, an organisation's purposes must be for public benefit. In New Zealand, for the first three heads of charity, public benefit is presumed unless that presumption can be rebutted.⁸ Under the fourth head of charity, public benefit 'must be expressly shown and must be sufficiently within the spirit and intendment of the Statute of Elizabeth 1601 to be a charitable purpose.'⁹ In order to achieve its object, this article critically assesses a number of key cases. While not all of these cases focus on political purposes, they each illustrate the key methodology of the New Zealand courts in assessing public benefit generally. This methodology has led to key changes within the political purpose doctrine, which has in turn been the subject of many judicial and academic discussions over the years.

II The Legal Landscape Prior to the Supreme Court Decision

The first case of note is *Latimer v Commissioner of Inland Revenue* ('*Latimer*').¹⁰ This case provides a clear illustration of the value afforded to the adaptability of charity law by New Zealand courts, and is an early pioneer in the jurisprudence of Aotearoa (New Zealand) insofar as it simply responded to cultural and social norms of the time.

Latimer concerned an agreement between the Crown, the New Zealand Maori Council and the Federation of Maori Authorities Inc, whereby the Crown sold existing tree crops on Crown forestry land to third party commercial purchasers. These purchasers were to make an initial capital payment, and then an annual rental for the use of the land. The initial payment and the rental payment were to be placed in a fund administered by a trust. The interest earned on the rental proceedings was to be made available to Maori to assist in the preparation, presentation and negotiation of claims before the Waitangi Tribunal, which claims involved lands covered by the agreement. The trustees contended that the purpose of the trust was charitable. The question for the Court, therefore, among other issues, was whether the trust had public benefit.

In outlining the purpose of the assistance to be given to Maori claimants, it was important for the New Zealand Court of Appeal to understand the Waitangi Tribunal process. When that process was understood, it was clear that the assistance purpose was 'not a mere matter of funding litigants in the preparation, presentation and

⁸ *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31, 65; *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688, 695 (Somers J) ('*Molloy*').

⁹ Juliet Chevalier-Watts, *Law of Charity* (Thomson Reuters, 2014) 47; Juliet Chevalier-Watts, 'Professional Bodies and Charity Law' (2014) *New Zealand Law Journal* 97.

¹⁰ [2002] 3 NZLR 195.

negotiation of their cases.¹¹ In reality, the intended outcome of the assistance to the claimants was that of high quality historical research. The results would enable the Tribunal to assess the historical record of what had occurred to the tribal group claimants, so that if a breach of the Waitangi Treaty had occurred, appropriate action could be undertaken. Thus, in reality, the

research funded by the trust is a means of finally determining the truth about grievances long held by a significant section of New Zealand society (on the figures given to us, up to nearly ten per cent of the population) for the benefit of all members of New Zealand society. Without such research being properly conducted the tribunal's findings might not be seen as having a sound basis and therefore might not be accepted either by Crown or Maori or, very importantly, by the general public. Settlements might not be achieved or might not be regarded as truly full and final. If research is not properly conducted then, whether or not the parties purport to reach a settlement, grievances are likely to continue and will be bound to lead to social ferment at a future time.¹²

The public benefit associated with the successful resolution of claims was considerable, and it was evident to the Court that the historical research being undertaken as a result of the funding was key to any resolutions. This in turn led the Court to conclude that there was 'undoubtedly, therefore, a large public benefit in the assistance purpose.'¹³ The same could equally 'be said in relation to the proper presentation of the research to the tribunal and its utilisation during the negotiation process',¹⁴ from which it was hoped that comprehensive and lasting settlements might be achieved.

In *Latimer*, the New Zealand Court of Appeal recognised a benefit that was culturally and socially appropriate for New Zealand. This case therefore illustrates how charity law can, where appropriate, adapt to meet the needs of a changing society. It also demonstrates the flexible and inclusive nature of the notion of benefit. However, this was not the end of the story. The Court still had further matters to consider in relation to public benefit, and its next challenge was to determine whether or not the claimant groups, which had their research funded, were, for the purposes of charity law, a section of the public. To answer this question, it was necessary to determine whether their respective purposes were directed to the general community, or a sufficient section of the community that would amount to the public.¹⁵ One significant difficulty for the claimants in this respect was that, *prima facie*, the leading English case of

¹¹ Ibid 207 [36].

¹² Ibid 207 [37].

¹³ Ibid 207–208 [37].

¹⁴ Ibid.

¹⁵ *Verge v Somerville* [1924] AC 496, 499; Dal Pont, above n 3, 15.

Oppenheim v Tobacco Securities Trust Co Ltd ('*Oppenheim*')¹⁶ stood in the way of such a finding. It is worthwhile setting out, albeit briefly, the principles of this case so as to understand the background to the Court of Appeal's decision in *Latimer*.

In *Oppenheim*, the House of Lords was required to decide whether a trust to provide education for the children of employees, or former employees of British American Tobacco, was for the public benefit. Lord Simonds noted that a trust established by a father for the education of his son would not be charitable because no public element exists in the son's education.¹⁷ However, in contrast, the establishment of a college or university would likely be charitable because the public element would be present.¹⁸ Of course, this example merely describes the notion of public benefit; it does not capture what is really meant by public benefit in a particular sense.¹⁹ The 'difficulty arises where the trust is not for the benefit of any institution either then existing or by the terms of the trust to be brought into existence, but for the benefit of a class of persons at large.'²⁰ In *Oppenheim*, the salient question was whether a class of persons can be properly regarded as a section of the community to satisfy the test of public benefit. As Lord Simonds explained:

These words 'section of the community' have no special sanctity, but they conveniently indicate first, that the possible (I emphasize the word 'possible') beneficiaries must not be numerically negligible, and secondly, that the quality which distinguishes them from other members of the community, so that they form by themselves a section of it, must be a quality which does not depend on their relationship to a particular individual.²¹

In the result, his Lordship concluded that a trust to educate a member of a family, or a number of families, could not be charitable, even if the number of persons was considerable.²² This is because the 'nexus between them is their personal relationship to a single propositus or to several propositi'.²³ Such a group could not be described as a community or section of the community, and could not therefore exist for the public benefit.

¹⁶ [1951] AC 297.

¹⁷ Ibid 306.

¹⁸ Ibid.

¹⁹ Juliet Chevalier-Watts, 'The Operation of Public Benefit in New Zealand – Meeting Contemporary Challenges?' (2014–15) 17 *The Charity Law & Practice Review* 173, 176 ('*The Operation of Public Benefit in New Zealand*').

²⁰ *Oppenheim* [1951] AC 297, 306.

²¹ Ibid.

²² Ibid. See also *Re Compton* [1945] Ch 123, which provides further evidence of this principle.

²³ *Oppenheim* [1951] AC 297, 306.

Lord Simonds, in referring to the children of the employees in the case at hand, noted that while the beneficiaries were numerous, ‘the difficulty arises in regard to their common and distinguishing quality.’²⁴ In essence, Lord Simonds held that ‘their quality is that they are children of employees and, as a result, he could make no distinction between children of employees and employees themselves.’²⁵ In *Oppenheim* and earlier cases, the ‘common quality is found in employment by particular employers’,²⁶ and the close connection between the beneficiaries and the employer negated the public benefit. It has been said that the underlying rationale for this is to ‘distinguish those organisations which look outward and seek to provide public benefits from those which are inward looking and self-serving.’²⁷

Oppenheim established that the class of beneficiaries must not be numerically small, and the ‘variable which distinguishes them from other members of the community, must not depend upon any personal relationship, such as connections based on blood relationships.’²⁸ This principle had potentially negative repercussions for New Zealand because of the issues relating to blood ties and Maori, and the issue of public benefit. It was evident that actually New Zealand had been influenced strongly by the *Oppenheim* decision until relatively recent times. The case of *Arawa Maori Trust Board v Commission of Inland Revenue* (‘*Arawa*’) illustrates this point.²⁹ At issue for the Court, *inter alia*, was whether the members of Maori Arawa tribe, and their descendants, would satisfy the public benefit test. Donne SM, relying on the authority of *Oppenheim*, stated that the nexus principle set out in *Oppenheim* applied ‘whether relationship be near or distant, whether limited to one generation or extended to two or three in perpetuity.’³⁰ As a result, the trust failed the public benefit test because the group of persons was determined by their “whakapapa” — that is to say, their geneology or bloodlines.³¹

However, while the Court in *Arawa* might have relied on the authority of *Oppenheim*, the Court in *Latimer* asserted that the English approach was not consistent with the cultural norms of New

²⁴ Ibid.

²⁵ Chevalier-Watts, *The Operation of Public Benefit in New Zealand*, above n 19, 177.

²⁶ *Oppenheim* [1951] AC 297, 306. See also *Re Hobourn Aero Component Ltd's Air Raid Distress Fund* [1946] Ch 194 and *Re Compton* [1945] Ch 123.

²⁷ Chevalier-Watts, *The Operation of Public Benefit in New Zealand*, above n 19, 177, citing Jean Warburton et al, *Tudor on Charities* (Sweet & Maxwell, 9th ed, 2003) 10.

²⁸ Chevalier-Watts, *The Operation of Public Benefit in New Zealand*, above n 19, 177, citing Paul Harpur, ‘Charity Law’s Public Benefit Test: Is Legislative Reform in the Public Interest?’ (2003) 3(2) *Queensland University of Technology Law and Justice Journal* 425; Chevalier-Watts, *Law of Charity*, above n 9, ch 2.

²⁹ (1961) 10 MCD 391.

³⁰ Ibid. See also *Davies v Perpetual Trust Co* [1959] AC 439.

³¹ Chevalier-Watts, *The Operation of Public Benefit in New Zealand*, above n 19, 177-8.

Zealand at the time. As a result, *Latimer* ‘created a sea change with respect to public benefit and blood tie relationships, and led the way in recognising indigenous tribal claims in Aotearoa, thus separating its jurisprudence from that of England.’³² The Court did this by asserting that Maori could be recognised as a sufficient section of the community for the purposes of public benefit. It was correct that for Maori there was of course a relationship of common descent for each claimant group,³³ but in relation to that notion of common descent, the Court stated that

the common descent of claimant groups is a relationship poles away from the kind of connection which the House of Lords must have been thinking of in the *Oppenheim* case when it said that no class of beneficiaries could constitute a section of the public for the purpose of the law of charity if the distinguishing quality which linked them together was a relationship to a particular individual either through common descent or through common employment. There is no indication that the House of Lords had in its contemplation tribal or clan groups of ancient origin.³⁴

In *Latimer*, the New Zealand Court of Appeal held that it was

more likely that the Law Lords had in mind the paradigmatic English approach to family relations. Lord Normand exemplified this approach in his observation that ‘there is no public element in the relationship of parent and child’ ... Such an approach might be thought insufficiently responsive to values emanating from outside the mainstream of the English common law, in particular as a response to the Maori view of the importance of whakapapa and whanau to identity, social organisation and spirituality.³⁵

In addition, the Court noted that Lord Normand, in *Oppenheim*, also stated that ‘the law of charity has been built up not logically but empirically’,³⁶ and that *Oppenheim* was subject to criticism in *Dingle v Turner*, where Lord Cross of Chelsea stated:

In truth the question whether or not the potential beneficiaries of a trust can fairly be said to constitute a section of the public is a question of degree and cannot be by itself decisive of the question whether the trust is a charity. Much must depend on the purpose of the trust. It may well be that, on the one hand, a trust to promote some purpose, prima facie charitable, will constitute a charity even though the class of potential beneficiaries might fairly be called a private class and that, on the other hand, a trust to promote another purpose, also prima facie charitable, will

³² Ibid, 178.

³³ *Latimer* [2002] 3 NZLR 195, 208 [38].

³⁴ Ibid.

³⁵ Ibid, citing *Oppenheim* [1951] AC 297, 310.

³⁶ Ibid, citing *Oppenheim* [1951] AC 297, 309.

not constitute a charity even though the class of potential beneficiaries might seem to some people fairly describable as a section of the public.³⁷

As a result, the Court concluded that, in the New Zealand context, it is 'impossible not to regard the Maori beneficiaries of this trust, both together and in their separate iwi or hapu groupings, as a section of the public'.³⁸ On the second stage of inquiry, as to whether the purpose of the public benefit was charitable in nature, again the Court was staunch in its application of law appropriate to the social context of the times. This was because, in their Honours' view:

The assistance purpose of providing the Waitangi Tribunal with additional material which will help it produce more informed recommendations, leading in turn to the settlement of long-standing disputes between Maori and the Crown, is of that character. It is directed towards racial harmony in New Zealand for the general benefit of the community.³⁹

It could be argued that *Latimer* was simply a jurisprudential forerunner to the Supreme Court's *Re Greenpeace* decision, both of which reflect the ability of New Zealand courts to interpret and apply culturally and socially appropriate charity law principles. In *Latimer*, it was a context specific situation that could not have been on the radar of English courts when determining specific matters of public benefit. As a result, it would not have been appropriate at the time to continue to apply English authorities in what were contextually and culturally different circumstances. It is not apparent that the Court in *Latimer* undermined the decision in *Oppenheim*; instead, their Honours interpreted the law in line with social constructs. Lord Wilberforce's dictum, in *Scottish Burial Reform and Cremation Society Ltd v Glasgow Corporation*,⁴⁰ provides support for this approach. In that case, his Lordship noted:

[T]he effect of decisions given by the courts as to its scope, decisions which have endeavoured to keep the law as to charities moving according as new social needs arise or old ones become obsolete or satisfied.⁴¹

Latimer is an illustration of Lord Wilberforce's assertion that charity law evolves in line with social needs, although it might be argued that acknowledging the public benefit of racial harmony is not so difficult for a court to recognise.

³⁷ Ibid, citing *Dingle v Turner* [1972] AC 601, 624.

³⁸ Ibid.

³⁹ Ibid 209 [40].

⁴⁰ [1968] AC 138.

⁴¹ *Scottish Burial Reform and Cremation Society Ltd v Glasgow Corporation* [1968] AC 138, 154. See also *McGovern v Attorney-General* [1982] Ch 321, 332.

In contrast is the 2013 New Zealand High Court case of *Plumbers, Gasfitters and Drainlayers Board v Charities Registration Board* ('PGDB'),⁴² where the challenge for Goddard J was assessing the public benefit in circumstances that may not, at first sight, appear to benefit the public directly. What becomes apparent from this case, nonetheless, is that while plumbing, gas fitting, and drain laying may be as far removed from providing public benefit as one might imagine — especially in comparison with the public benefit of a nation's racial harmony — the reality is that New Zealand is capable of finding public benefit by logical and rational means. Such findings underpin this article's hypothesis. Thus, the flexible and inclusive nature of the benefit aspect of public benefit is illustrated in a setting that, while rather less salubrious than the earlier case, is an entirely necessary function of a civilised society. Inclusivity does not distinguish between popular or glamorous causes so reflecting perhaps the true nature of public benefit.

The Plumbers, Gasfitters and Drainlayers Board ('the Board') was established under s 133 of the *Plumbers, Gasfitters and Drainlayers Act 2003* (NZ) ('the Act'), and registered as a charitable entity by the then Charities Commission of New Zealand in 2008.⁴³ In 2012, the Board of the Department of Internal Affairs — Charities Services ('DIAC') deregistered the Board, stating that the Board's regulation of its industries had private purposes that were not ancillary, which meant that its members benefitted significantly from the purposes.

Section 137 of the Act sets out the functions of the Board, and these include such matters as the prescription of minimum standards for registering as a service provider, renewing licences, and hearing complaints and disciplinary matters. One of the key issues for Goddard J was establishing whether or not s 137 benefited the public or the members. She concluded that its functions were

directed to promoting the proper regulation of the regulated trades in order to ensure those operating within it are competent and therefore the health and safety of the public is therefore safeguarded, so far as possible.⁴⁴

While it was evident that the members would obtain a benefit from the Board, the reality was that its main purpose was to ensure the proper imposition of safety standards for the protection of the public. Once enunciated in this manner, it seems clear that the Board does provide a public benefit, and therefore this is a reflection of charity law responding to the times, whereby human safety is a paramount

⁴² [2014] 2 NZLR 489.

⁴³ The Charities Commission was disbanded and its services moved to DIAC.

⁴⁴ PGDB [2014] 2 NZLR 489, 498 [48].

consideration, even in situations where it may not be such an obvious fit. However, what is perhaps most interesting is the use of analogy by Goddard J in confirming the public benefit of the Board.

DIAC, in deregistering the Board, distinguished the Board from the Medical Council of New Zealand, which was considered by the New Zealand Court of Appeal in *Commissioner of Inland Revenue v Medical Council of New Zealand* ('*Medical Council*').⁴⁵ In that case, the Court found that the Medical Council was a charitable body.⁴⁶ Some of the functions of the Board were noted earlier, and Goddard J observed that these functions were also 'markedly similar to the functions of the Medical Council of New Zealand.'⁴⁷

The Medical Council of New Zealand was established under the *Medical Practitioners Act 1950* (NZ), continuing under the *Medical Practitioners Act 1968* (NZ), with its main functions being as follows:

- (a) The maintenance of a formal system of registration of medical practitioners.
- (b) The maintenance of discipline within the medical profession.
- (c) The accreditation and surveillance of appropriate undergraduate and postgraduate education of medical practitioners.
- (d) The suspension of impaired medical practitioners and the maintenance of systems for identifying, monitoring and rehabilitating impaired medical practitioners.
- (e) The provision of statistical information to the Minister of Health.⁴⁸

It is perhaps not surprising that medical professional bodies are commonly registered as charities, because their public benefit is certainly evident, but what is perhaps surprising is the analogy made between the Board and the Medical Council of New Zealand in *Medical Council* and *PGDB*. This analogy requires further consideration.

Goddard J compared the functions of a medical body with that of the Board, which, 'without wishing to denigrate the functions of a very important body, would not automatically strike the public as having the same sort of role as medical bodies.'⁴⁹ In noting that the functions of the Board were in fact 'markedly similar to the functions of the Medical Council of New Zealand',⁵⁰ Goddard J cited McKay J in *Medical Council*, who had 'readily' accepted

⁴⁵ [1997] 2 NZLR 297.

⁴⁶ *PGDB* [2014] 2 NZLR 489, 495–6 [26].

⁴⁷ *Ibid* 499 [50].

⁴⁸ *Medical Council* [1997] 2 NZLR 297, 297.

⁴⁹ Chevalier-Watts, *Professional Bodies and Charity Law*, above n 9, 100.

⁵⁰ *PGDB* [2014] 2 NZLR 489, 499 [50].

that a principal function of the council is to provide and maintain a register of qualified medical practitioners. I can also accept that the maintenance of such a register is beneficial to those whose names are included in it ... [It] does not follow, however, that these benefits were either the purpose of the legislation or the purpose of the establishment of the council. The restriction of the right to practise under the recognised descriptions, and the provision for registration of only those who are properly qualified, would seem to have as their obvious and primary focus the protection of the public.⁵¹

Thus, in Goddard J's view, the same analysis could be applied in *PGDB* as in *Medical Council*. The functions of the Board 'may increase public confidence and thereby provide a flow-on benefit to those working in the subject industries.'⁵² However, those benefits were 'purely collateral and incidental consequences inherent within a system of registration.'⁵³ In fact, none of the functions or activities carried out by the Board provided sole benefits to those working in those industries; rather, the public benefit was paramount.

It is also worthwhile mentioning the views of Thomas J in *Medical Council*, albeit that Goddard J chose not to do so:

It is my opinion that the medical council was established by Parliament for the purpose of protecting and promoting the health of the community. Parliament was seeking to in part discharge the established responsibility of the state for the maintenance of the health of its citizens. No other purpose can reasonably be ascribed to it in enacting the legislation. But this responsibility cannot be met, Parliament clearly determined, unless high standards are maintained in the practice of medicine and surgery. A system for the registration and disciplining of qualified medical practitioners was equally clearly seen to be necessary to achieve that objective. Hence, the medical council was established and vested with the function of registering medical practitioners and disciplining those whose conduct falls short of an acceptable standard.⁵⁴

Clearly, the Board in *PGDB* was also 'established for the purposes of protecting and promoting the health of the community; without its subject industries society would be much the poorer in terms of health and facilities.'⁵⁵ Therefore the analogy between a medical body and a service associated with plumbing and drainage is entirely appropriate, even though these bodies are poles apart in their functions. The courts are therefore able to apply charity law in a manner that is appropriate

⁵¹ Ibid 499 [51], citing *Medical Council* [1997] 2 NZLR 297, 309; see also Chevalier-Watts, *Professional Bodies and Charity Law*, above n 9, 100.

⁵² *PGDB* [2014] 2 NZLR 489, 499 [51].

⁵³ Ibid.

⁵⁴ *Medical Council* [1997] 2 NZLR 297, 316; Juliet Chevalier-Watts, *Professional Bodies and Charity Law*, above n 9, 100.

⁵⁵ Chevalier-Watts, *Professional Bodies and Charity Law*, above n 9, 100.

to the circumstances, and it seems reasonable to conclude that the Board is

without doubt equally as valuable in its role in society as any medical or legal professional body and the spirit of charity may be found equally as positively in its purposes as its analogous bodies.⁵⁶

However, that is not to say that every ‘body’ will be analogous. For example, in *Institution of Professional Engineers New Zealand Inc v Commissioner of New Zealand* (‘IPENZ’),⁵⁷ the question arose as to whether an institution established to advance science and the profession of engineering, the corporate plan of which involved employee welfare and employment, existed for the public benefit. On balance, the Court held that the benefits to members outweighed any possible public benefit.

In *PGDB*, Goddard J distinguished *IPENZ*, stating that if the Board had been established for purposes similar to those of the institution — that is, ‘for the benefit of those working within the subject industries’ — then ‘it could be expected that s 137 [of the Act] would have made provision for similar services.’⁵⁸ In Goddard J’s view, ‘IPENZ is a clear example of an institution established for the advantage and in the interests of those working in the subject industries’,⁵⁹ which may be distinguished on this basis from the Board in *PGDB*, which echoed the ethos of the Medical Council of New Zealand. As asserted previously, public benefit in those circumstances ‘should not be undermined by merely incidental consequences of the provision of private benefits that come from the registration of their members.’⁶⁰

What the comparison of *PGDB* and *IPENZ* demonstrates, therefore, is that there are checks and balances in place, as recognised by the Courts, to prevent public benefit extending too far. While it may have appeared from *Latimer* and *PGDB* that contemporary courts are willing to extend the boundaries of public benefit, perhaps even beyond those notions first conceived with the advent of the Statute of Elizabeth, *IPENZ* suggests that these checks and balances still exist today.

These various cases demonstrate that New Zealand courts are willing and able to apply charity law in a manner that is appropriately adapted to the requirements of contemporary society. In the result, public benefit is able to traverse a diverse range of circumstances. The

⁵⁶ Ibid.

⁵⁷ [1992] 1 NZLR 570.

⁵⁸ *PGDB* [2014] 2 NZLR 489, 499–500 [52]; Chevalier-Watts, *Professional Bodies and Charity Law*, above n 9, 100.

⁵⁹ *PGDB* [2014] 2 NZLR 489, 500 [53].

⁶⁰ Chevalier-Watts, *Professional Bodies and Charity Law*, above n 9, 100.

ability of the law to reflect social norms can also be seen in the Supreme Court case of *Re Greenpeace*, to which this article now turns.

III Political Purposes

A *Reception of the Doctrine in New Zealand*

One of the central considerations for the Supreme Court in *Re Greenpeace* was the concept of political purposes and public benefit in relation to charity law. As a result, it is pertinent to outline the doctrine of political purpose that has foreshadowed the decision making of courts in New Zealand, the United Kingdom, Canada and Australia for many decades.

As might be imagined, much of New Zealand's law, including charity law, is rooted in English law, and these roots — in particular, the doctrine of political purposes — can be traced through New Zealand's case law until very recent times. It is not clear when exactly the political purpose doctrine was created, although its place in charity law was secured by the House of Lords in *Bowman v Secular Society* ('*Bowman*').⁶¹ In that case, Lord Parker stated that, in relation to political purposes, 'Equity has always refused to recognise such objects as charitable ... [A] trust for the attainment of political objects has always been held invalid.'⁶² This is not because such objects are illegal, but because the 'Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift.'⁶³

New Zealand followed this line of authority in cases such as *Molloy*.⁶⁴ In that case, the Court of Appeal relied on the authority of *Bowman* and recognised that charitability will not necessarily be negated where the political purposes are ancillary to the main object.⁶⁵ *Re Collier (Deceased)*⁶⁶ also affirmed the authority of *Bowman* in New Zealand, although Hammond J (as he was then) did so with some reticence, asking whether it is 'really inappropriate for a Judge to recognise an issue as thoroughly worthy of public debate, even though the outcome of that debate might be to lead to a change in the

⁶¹ [1917] AC 406.

⁶² *Bowman* [1917] AC 406, 441.

⁶³ *Ibid* 442.

⁶⁴ [1981] 1 NZLR 688. See also *Re Wilkinson* [1941] NZLR 1065; *Knowles v Commissioner of Stamp Duties* [1945] NZLR 522.

⁶⁵ *Molloy* [1981] 1 NZLR 688, 695.

⁶⁶ [1998] 1 NZLR 81. See also *Re Draco Foundation (NZ)* HC WN CIV 2010-485-1275 [3 February 2011].

law?’⁶⁷ Hammond J was not alone in such views. In *Re Greenpeace*,⁶⁸ Heath J stated as follows:

Albeit with a degree of reluctance, I feel constrained to apply the full extent of the *Bowman* line of authority on the basis that I am bound to do so by the Court of Appeal decision in *Molloy*. In modern times, there is much to be said for the majority judgment in *Aid/Watch*.⁶⁹

In *Aid/Watch v Federal Commissioner of Taxation*,⁷⁰ a majority of the Australian High Court confirmed that the *Bowman* line of authority no longer had any place in Australian charity law jurisprudence, and established that ‘in Australia there is no general doctrine which excludes from charitable purposes “political objects”’.⁷¹

The comments of Hammond J and Heath J illustrate that New Zealand had ‘tentative misgivings as to the relevance of the doctrine overall in all circumstances’,⁷² and with such misgivings being expressed so explicitly, it was perhaps not surprising that the Supreme Court, in *Re Greenpeace*, concluded that the English political purposes doctrine has no place in contemporary New Zealand law.

B The Supreme Court Decision

One of the key issues for the Supreme Court in *Re Greenpeace* was whether s 5(3) of the *Charities Act 2005* (NZ) codified when political purpose was permissible in New Zealand. Section 5(3) of this Act reads:

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.

The Court of Appeal had affirmed this approach as an apparent endorsement of *Molloy*, where the Court asserted that s 5(3) of the Act ‘identified “advocacy” as a purpose that was non-charitable and inconsistent with charitable status unless merely “ancillary” (the

⁶⁷ *Re Collier (Deceased)* [1998] 1 NZLR 81, 89.

⁶⁸ [2011] 2 NZLR 815.

⁶⁹ *Re Greenpeace New Zealand Inc* [2011] 2 NZLR 815, 832 [59].

⁷⁰ (2010) 241 CLR 539.

⁷¹ *Aid/Watch v Federal Commissioner of Taxation* (2010) 241 CLR 539, 557 [48] (French CJ, Gummow, Hayne, Crennan and Bell JJ).

⁷² Juliet Chevalier-Watts, ‘The Changing Face of Political Purposes and Charity Law in New Zealand’ (2015) 21(10) *Trusts & Trustees* 1121, 1123.

exception in *Molloy*).⁷³ In other words, the Court of Appeal regarded s 5(3) as providing a prohibition on non-ancillary political purposes.

The Supreme Court, however, asserted that the language and legislative history of the section point to a different interpretation, and that the words ‘to avoid doubt’ are ‘directed to the risk of exclusion of charitable status by adoption of non-charitable purposes which are purely ancillary to a charitable purpose of the entity.’⁷⁴ The common law already shows that non-charitable purposes, which may include political activity and advocacy, will not negate charitable status, providing that such purposes are ancillary to the main charitable purpose. As a result, the Court was of the view that because s 5, and the Act as a whole, assumes the common law approach to charity law, this points away from the Act codifying when political purposes are permissible. All that s 5(3) provides for is ‘latitude for non-charitable purposes if no more than ancillary’;⁷⁵ it offers nothing further about the scope of purposes that the common law may recognise as being charitable. What this means in reality, according to the Supreme Court, is that s 5(3) should be applied to all ancillary purposes, and advocacy is given as merely an illustration. The Court further added:

There is nothing in the structure and language of the proviso or its legislative history to justify the words in parenthesis being treated as excluding any non-ancillary purpose, including advocacy or political activity which would otherwise properly be regarded as charitable.⁷⁶

In other words, s 5(3) does not impose a statutory exclusion of political purposes. This means that advocacy may be treated as charitable as a matter of common law⁷⁷ — a point that the Court went on to recognise, asserting that charitable purpose and political purpose are not mutually exclusive.⁷⁸ This article has already argued that the jurisprudence of New Zealand provides a number of illustrations as to how charity law evolves in line with social needs or social norms of the time, and this statement finds support in the assertions of the Supreme Court in *Re Greenpeace*, where it was noted that ‘a strict exclusion risks rigidity in an area of law which should be responsive to the way society works.’⁷⁹ Such an exclusion would risk hindering the responsiveness of charity law to the changing requirements of society, which would detract from the underlying ethos of charity as a whole. The Court explained this further by noting:

⁷³ *Re Greenpeace* [2015] 1 NZLR 169, 192 [52] (Elias CJ), citing *Re Greenpeace of New Zealand Inc* [2013] 1 NZLR 339, 357–8 [56] (White J).

⁷⁴ *Re Greenpeace* [2015] 1 NZLR 169, 192–3 [55] (Elias CJ).

⁷⁵ *Ibid.*

⁷⁶ *Ibid* 193 [57] (Elias CJ).

⁷⁷ *Ibid.*

⁷⁸ *Ibid* 193–6 [59]–[71] (Elias CJ).

⁷⁹ *Ibid* 196 [70] (Elias CJ).

Just as the law of charities recognised the public benefit of philanthropy in easing the burden on parishes of alleviating poverty, keeping utilities in repair, and educating the poor in post-Reformation Elizabethan England, the circumstances of the modern outsourced and perhaps contracting state may throw up new need for philanthropy which is properly to be treated as charitable. So, for example, charity has been found in purposes which support the machinery or harmony of civil society, such as is illustrated by the decisions in England and Australia holding law reporting to be a charitable purpose and in New Zealand by the decision of the Court of Appeal in *Latimer v Commissioner of Inland Revenue* holding the assistance of Maori in the preparation, presentation and negotiating of claims before the Waitangi Tribunal to be a charitable purpose.⁸⁰

It could be argued that *PGDB* is also an illustration of the finding of purposes that ‘support the machinery...of civil society’, in relation to its vital importance in ensuring the health of society. Thus, the Supreme Court provided numerous reasons in support of its conclusion that charity law should avoid being overly restrictive, not least because the consequences for society of such an approach may be severe.

To conclude that a purpose is to support advocacy or political activity actually ‘obscures proper focus on whether a purpose is charitable within the sense used by the law.’⁸¹ Further, the Court found it difficult to ‘construct any adequate or principled theory to support blanket exclusion’⁸² because, the Court asserted, the development of such a principle was comparatively recent, and ‘based on surprisingly little authority.’⁸³

The Court then turned its attention to the principle of public benefit and how this should be determined with regard to political purposes, as public benefit and political purposes have previously been classified as mutually exclusive. In the Court’s view, excluding political purposes as charitable was unnecessary and a better approach would be to accept that an object that entails advocacy for a change in the law is ‘simply one facet of whether a purpose advances the public benefit in a way that is within the spirit and intendment of the statute of Elizabeth I.’⁸⁴

Nonetheless, the Court was quick to emphasise the absolute relevance of public benefit when assessing such purposes. In the Court’s view, the advancement of such causes may not always be

⁸⁰ Ibid, citing *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73 (CA); *Incorporated Council of Law Reporting (Qld) v Commissioner of Taxation (Cth)* (1971) 125 CLR 659; *Latimer* [2002] 3 NZLR 195.

⁸¹ *Re Greenpeace* [2015] 1 NZLR 169, 196 [69] (Elias CJ).

⁸² Ibid.

⁸³ Ibid 193 [59] (Elias CJ).

⁸⁴ Ibid 197 [72] (Elias CJ), citing LA Sheridan ‘Charitable Causes, Political Causes and Involvement’ (1980) 2 *The Philanthropist* 5, 16.

charitable because it may not be possible to say whether or not the promoted views benefit the public in the way in which the law recognises as charitable. For instance, matters of opinion may be of particular issue because ‘reaching a conclusion of public benefit may be difficult where the activities of an organisation largely involve the assertion of its views.’⁸⁵ Here then public benefit will not be easy to recognise. Indeed, it is likely that there may be a limited number of circumstances when advocacy of certain views will be charitable. An argument could, however, be made that such an approach is contradictory. On the one hand the majority of the Court has rebuked the political purpose doctrine for its lack of relevance in today’s society, yet on the other hand they have stated that there may be a number of circumstances where the public benefit will not be found in political purposes.

The better view, however, is that there are simply limits to the utility of the political purpose doctrine and with that the reality of endeavouring to recognise public benefit in such a wide variety of circumstances. Public benefit will not always be found — that is the reality of charity law, and merely reflects the stringency of the law by which charity must be measured to ensure accountability to the public. This is as it should be. Indeed, just because the number of occasions when public benefit may be found in such purposes might be limited, does not justify a rule that all non-ancillary advocacy should be characterised as non-charitable. The Supreme Court therefore recognised the fundamental importance of charity law in society and provided a mechanism by which political purposes may be construed as charitable, in appropriate circumstances:

[A]ssessment 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.⁸⁶

Further, while the Court may acknowledge the limits of public benefit in some circumstances, their recognition that public benefit may actually be found within political purposes, regardless of how often, reflects the flexibility of the benefit element of the doctrine, whereby contemporary society understands that old concepts may no longer be acceptable in today’s way of thinking. Thus the inclusivity of its inherent nature is recognised and given authority.

⁸⁵ *Re Greenpeace* [2015] 1 NZLR 169, 197 [72] (Elias CJ), citing *Aid/Watch v Federal Commissioner of Taxation* (2010) 241 CLR 539, 565 [69] (Keifel J).

⁸⁶ *Re Greenpeace* [2015] 1 NZLR 169, 198 [76] (Elias CJ).

One could still argue that such an approach undermines the stringent requirements imposed by charity bodies (such as commissions and tribunals) and the courts, which ensure that purposes are recognised as charitable at law; however, the Supreme Court was very clear that the public benefit test should be met. Explicitly acknowledging the requirement of public benefit recognises the foundations of charity law and provides certainty and clarity as to the application of this doctrine in similar circumstances, while at the same time ensuring reasonable flexibility in charity law to reflect societal conditions.

It could be argued, therefore, that *Re Greenpeace* is a welcome addition to New Zealand charity law, and a decision that is not too much of a surprise given the history of charity law and its adaptability in this jurisdiction. Nonetheless, there has undoubtedly been much anticipation as to its application in subsequent cases, and we did not have to wait long for its influences to be felt. The case in question is *Re Family First New Zealand*⁸⁷ — a case that was always likely to prove controversial because of the nature of the organisation with which it was concerned.

The object of Family First is, inter alia, to promote and advance research and policy supporting marriage and family as a foundation to a strong and enduring society.⁸⁸ Family First was a registered charity within New Zealand. However, in 2013, the Charities Board deregistered the organisation. One of the key factors in that decision was the political purposes doctrine. It needs to be noted at the outset that at the time of the Board's decision, *Re Greenpeace* had not been heard, although leave to appeal had been granted by the Supreme Court. The Board was of the view that Family First had a political purpose that promoted a point of view where the benefit was not self-evident. This specific point of view related to the organisation's view on family, which included promoting and supporting the notion of marriage between a man and a woman, for the purposes, inter alia, of raising children, and providing moral education. Family First referred to this notion of family as the "natural family".⁸⁹ The Board had concerns as to Family First's view that the Government must shelter and encourage the "natural family"; its views as to the consequences of the demise of the "natural family"; its prescription as to the roles of men and women in family life; and its advocacy against individual rights perspectives. Such views would clearly be controversial in contemporary New Zealand society.⁹⁰

⁸⁷ (Unreported, High Court of New Zealand, Collins J, 30 June 2015).

⁸⁸ Clause 4, Trust Deed, Family First New Zealand cited in Deregistration Decision: Family First New Zealand (CC42358) Decision No: D2013-1, 15 April 2013 [7].

⁸⁹ Ibid [44].

⁹⁰ Ibid [46].

Family First first filed its appeal against the deregistration decision on 27 May 2013, and the parties subsequently agreed to defer the appeal until after judgment was handed down in *Re Greenpeace*, which happened in August 2014. The High Court allowed the appeal, and Collins J directed the Charities Board to reconsider the application of Family First as a charity in the light of the *Re Greenpeace* judgment and the High Court judgment. This High Court case is of particular value to this article, not only because it applies very recent charity law principles, but also because it does so on a controversial issue — family values.

As might be imagined, and is apparent from the decision itself, the decision by the Charities Board to deregister Family First was heavily influenced by the Court of Appeal's ruling in *Re Greenpeace*, which held that political purposes could be no more than ancillary to an entity's overall charitable purpose (the historical approach). Collins J acknowledged that the Board was satisfied that Family First's main purpose was to promote its point of view about families, and that this activity was 'so pervasive and predominant it [could] not realistically be considered ancillary to any valid charitable purpose.'⁹¹ Therefore, the Board concluded that Family First's actions of seeking political outcomes were at the forefront of its endeavours.⁹²

Collins J asserted that the Board's position that Family First's political objects could not be charitable could not, now, be reconciled with the approach taken by the majority of the Supreme Court in *Re Greenpeace*, because the position taken by the Board was based on a principle that has now been found to be incorrect. As a result, it would be appropriate for the Board to reconsider the position of Family First in the light of the Supreme Court judgment, whereby political purposes and charitable purposes are no longer mutually exclusive.

In addition, Collins J noted that the Board's analysis of Family First's advocacy role as being 'controversial', and its conclusion that it was not therefore of public benefit, would also need to be reconsidered. This is because the Supreme Court determined that 'it was not a criterion for registration as a charity that the advocacy undertaken or views expressed by the entity were generally acceptable and not "controversial."⁹³ This approach is surely correct. Many contemporary views may be controversial and contrary to general

⁹¹ *Re Family First New Zealand* (Unreported, High Court of New Zealand, Collins J, 30 June 2015) [65], citing Family First New Zealand cited in Deregistration Decision: Family First New Zealand (CC42358) Decision No: D2013-1, 15 April 2013 [99].

⁹² *Re Family First New Zealand* (Unreported, High Court of New Zealand, Collins J, 30 June 2015) [65], referring to Family First New Zealand cited in Deregistration Decision: Family First New Zealand (CC42358) Decision No: D2013-1, 15 April 2013 [100].

⁹³ *Re Family First New Zealand* (Unreported, High Court of New Zealand, Collins J, 30 June 2015) [36], [85], citing *Re Greenpeace* [2015] 1 NZLR 169, 197–8 [75] (Elias CJ).

societal values, yet may at some stage become accepted as normal practice. Examples of this may be found in the Supreme Court judgment where Elias CJ (delivering the judgment for the majority) made reference to historical charitable purposes that at first sight would have been socially controversial — for instance, the promotion of abolition of slavery, and more recently, advocacy for such ends as human rights.⁹⁴

Re Family First New Zealand again demonstrates the ability of charity law in New Zealand, and specifically the political purposes doctrine, to reflect progressive societal trends. Indeed, if one recognises the flexible nature of a doctrine, then it should apply in all appropriate circumstances, not just the non-controversial situations, in order to be truly inclusive of all members of a democratic society. This submission is given weight when one looks to Collins J's next consideration, that of benefit to the public, and the caution against subjectivity in assessing the merits of a particular view.

His Honour was persuaded by counsel for Family First that its purposes of advocating its conception of traditional family values are analogous to organisations that have advocated for mental and moral improvement of society. Collins J recognised the value of those submissions but cautioned that he would not suggest that the Board must accept that Family First's purposes are for the benefit of the public when it reconsiders the case. Rather, the Board's approach should be to consider whether Family First's activities are directed at the promotion of moral improvement in society.⁹⁵ Such analysis must be done with care, however, and his Honour warned against 'seeking to carefully match Family First's purposes with organisations that have achieved recognition as charitable entities.'⁹⁶ To do so would be to risk undermining the Supreme Court's recognition that political purposes are not excluded from being charitable at law.⁹⁷

The other caution sounded by Collins J was in reference to objective analogous analysis — that is, His Honour held that analysis should be objective and 'not conflated with a subjective assessment of the merits of Family First's views.'⁹⁸ It is possible that members of the Board may disagree personally with the views of Family First, 'but at the same time recognise there is a legitimate analogy between its role and those organisations that have been recognised as

⁹⁴ *Re Greenpeace* [2015] 1 NZLR 169, 196 [71] (Elias CJ), citing *Jackson v Phillips* (1867) 96 Mass 539; *Charities Act 2006* (UK) s 2(2)(h).

⁹⁵ *Re Family First New Zealand* (Unreported, High Court of New Zealand, Collins J, 30 June 2015) [89].

⁹⁶ *Ibid* [86].

⁹⁷ *Ibid*.

⁹⁸ *Ibid* [89].

charities.⁹⁹ This approach would therefore be consistent with the obligation upon members of the Board to act with honesty, integrity and good faith.¹⁰⁰ The overall result therefore was that Board is to reconsider its decision to deregister Family First, and must give effect to the Supreme Court judgment of *Re Greenpeace*, and Collins J's judgment.

Re Family First New Zealand correctly applies the majority decision in *Re Greenpeace*. Although Family First may have some controversial purposes, this does not preclude the correct recognition and application of charity law principles, which the New Zealand courts have been willing to demonstrate for many a decade, in such a way as to acknowledge and support changing societal needs. This does not guarantee that Family First will however be registered by the Board as a result of either of these recent judgments. Instead, the High Court has acknowledged the correct application of law and principles, and directed the Board as to their relevance in the circumstances, which is an entirely appropriate procedure.

IV Conclusion

This article began by asserting that the New Zealand Supreme Court decision of *Re Greenpeace*, while appearing, *prima facie*, to be a sudden volte-face in terms of New Zealand's approach to politics and charity, is in fact simply a reflection of the ability of New Zealand courts to recognise the applicability of charity law in contemporary circumstances in a manner that responds appropriately to the pressures of society at the time. This article began its journey by, perhaps unusually, considering some non-political purpose cases, on the basis that these cases reflect the key practices of the New Zealand courts in assessing public benefit generally, which enabled fundamental changes within the political purpose doctrine in order to correspond to the demands of society. Such changes are perhaps not so surprising when one takes into consideration the historical legal landscape. The changes are timely, and much welcomed, because the political purpose doctrine has been the subject of considerable judicial and academic discussion over the years, which has now revealed a new legal landscape in New Zealand.

In the case of *Latimer*, the Court of Appeal recognised that English charity law is no longer appropriate in the context of Maori tribes, and that public benefit could be found where it would be denied in the English context. While this was undoubtedly a challenging case for the Court of Appeal, at no point was it apparent that the underlying

⁹⁹ Ibid.

¹⁰⁰ Ibid, citing *Charities Act 2005* (NZ) sch 2 cls 17, 18.

principles of public benefit were not given appropriate recognition. Indeed, the Court went to some lengths to ensure that the public benefit of assisting in research in the Waitangi Tribunal was given due consideration within the appropriate framework for New Zealand, and this case was a useful first illustration of the inclusive and flexible nature of the benefit within the doctrine.

Perhaps of equal challenge to the courts was *PGDB*. However, when considering analogous cases and the appropriateness of the law to current times, Goddard J was of the view that the Board's purposes fulfilled the relevant charitable purposes and public benefit, even though, *prima facie*, such purposes might appear charitable. The type of analogy made between the Medical Council and the Board in relation to their public functions by Goddard J is one, perhaps, that will be utilised by DIAC when considering the charity of Family First in relation to other charitable causes. Nonetheless, Goddard J was quick to assert that not every 'body' will be analogous, and that appropriate checks and balances must be kept in place to ensure the proper functioning of charity law. This reflects the approach taken by Collins J in *Re Family First New Zealand*, where his Honour noted that the Charities Board may indeed not find Family First to be charitable. Even so, analogical assessments must be undertaken, which would be informed by considering the activities of Family First in line with moral improvements society, which is a recognised charitable purpose.

Therefore, when the Supreme Court delivered its judgment in *Re Greenpeace*, the way was already paved for the majority to ensure that charity law continues to meet the needs of society in an appropriate manner and that public benefit is recognised within a framework that is appropriate to the New Zealand social climate, including, importantly, within that of political purposes.

Collins J in *Re Family First New Zealand* emphasised the fundamental importance of *Re Greenpeace*, as it ensures that charity law is able to adapt in modern times. However, the decision also illustrates that, even though political purposes and charitable purposes are no longer mutually exclusive, the key emphasis is still on public benefit, and on ensuring that analogous assessments are undertaken in an appropriate context. What this therefore illustrates is that the political purpose doctrine of charity law, while being firmly rooted in history, and of evidential importance in determining legal charity, is a doctrine that is fully acknowledged by the courts but which is not stultified by its history. Rather, the courts may find public benefit where appropriate and in circumstances where the social framework tends to that way of thinking.