



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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MEDIA RELEASE

ATTORNEY-GENERAL v FAMILY FIRST NEW ZEALAND

(SC 79/2020) [2022] NZSC 80

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

Background

Family First New Zealand (Family First) was registered as a charity in 2007. Family First's objects, as stated in its trust deed, are to promote and advance research and policy supporting marriage and family, to educate members of the public on certain issues, to participate in social debate on matters affecting families, and to produce and publish materials on those topics. Family First believes that the traditional marriage (a permanent union of man and woman) is the best model for delivering the societal benefits associated with stable family life. It puts these principles into operation by, among other things, commissioning research reports, proposing legislative reforms aligning with its views, hosting conferences, and collating information on its website.

On 15 April 2013, the Charities Registration Board (the Board) decided Family First no longer qualified for charitable registration under the Charities Act 2005; this because expressing one-sided views on an issue is not educational, and Family First's main purpose was political.

Subsequently on 6 August 2014, the Supreme Court issued its decision in *Re Greenpeace of New Zealand Inc*, which determined that having a political purpose was no longer a bar to an entity obtaining registration as a charity. The Board reconsidered its decision to deregister Family First in light of *Greenpeace*, but it concluded again that it should be deregistered.

Lower Courts

Family First appealed against the Board's second deregistration decision, but the High Court dismissed the appeal. That decision was reversed by a majority of the Court of Appeal. The Supreme Court granted leave to appeal.

Issues before the Supreme Court

The question before the Court was whether Family First qualified for charitable registration, either on the basis that its objects were for the advancement of education or that they were objects of general benefit to the community. The Court identified three central issues:

- (1) Do Family First's objects qualify as being for the purpose of advancing charitable education? A related issue is whether viewpoint expression (disseminating material adhering to a particular viewpoint) legitimately qualifies as educational.
- (2) Does Family First's object of promoting and supporting institutions of family and marriage qualify as advancing objects of general benefit to the community?
- (3) Even if Family First qualifies on educational or community benefit grounds, does it have non-charitable purposes that are not merely ancillary to another charitable purpose?

Decision

The Supreme Court has unanimously allowed the appeal, finding that Family First no longer qualifies for charitable registration. O'Regan J gave the reasons for Winkelman CJ, William Young and Glazebrook JJ. Williams J concurred in the result but wrote separately.

Beginning with the education issue, the Court held that viewpoint expression is not an automatic disqualifier. Entities that advance a view may still have an educative charitable purpose if they genuinely seek to educate not advocate, and they do so in a relatively objective and balanced way. Such entities are capable of generating the benefits of charitable education. Applying that test, the Court found that Family First's purpose (exhibited by its trust deed and activities) crossed the line between education and advocacy. Its research reports lacked the balance that is required to further an educative purpose. By publishing research reports, hosting conferences, posting information on its website, and suggesting law reforms, it sought to advocate for the adoption of its views concerning the traditional family.

Nor did Family First qualify on general community benefit grounds. Supporting the family and marriage is not a purpose beneficial to the community and charitable by analogy to previously recognised purposes. Family First's purpose is to advocate. Although *Greenpeace* opened the door for advocacy-based purposes in limited situations, Family First did not satisfy the criteria. It advocated a particular version of the family, being the traditional man-woman marriage. Its purposes are discriminatory — it advocates for measures to prefer the traditional family to the disadvantage of others. Any benefits of securing those outcomes would likely be outweighed by resulting detrimental effects. Even more fundamentally, purposes involving discriminatory elements are not compatible with charity.

On the third issue, the Court held that Family First's engagement with issues such as abortion, assisted dying, prostitution and censorship were not subsets of its wider purpose of supporting marriage and family. They are free-standing political objects about which there are differing views in society. For such issues, it is not possible for the Court to determine whether the views promoted are publicly beneficial or otherwise charitable. This differs from advocacy for ends like human rights and protection of the environment which *Greenpeace* held were themselves charitable ends. Family First's advocacy on the above issues was not ancillary to its expressed purpose of supporting marriage and family.

Writing separately, Williams J agreed with the conclusions reached by the other members of the Court but added further comments in relation to charitable purpose. Since at least 1805, the law has avoided hard-and-fast rules for identifying charitable and non-charitable purposes. It has preferred to maintain flexibility. However, that approach has resulted in inconsistencies. To help guide future decision-making, Williams J suggested that "selflessness" can operate as a touchstone. Substantially self-regarding purposes should not, in principle, be charitable.

Using that approach, Williams J agreed Family First did not qualify as an educational charity. One-sided promotion of personally held views detracts from the cohesiveness of our pluralistic society and disempowers the receiver by failing fairly to inform them of alternative viewpoints on the subject. Family First's promotion is self-referential; it is not about community. Nor can Family First qualify on general community benefit grounds. Advocating for controversial ideas or causes may be charitable where the group addresses the issue in a balanced way. Honesty and respect in debate is not self-referential. But Family First's advocacy is not fair, balanced or respectful, so its advocacy is not charitable.

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