

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2025-485-643
[2026] NZHC 1304**

UNDER the Charities Act 2005
IN THE MATTER of an appeal under s 59 of the Charities Act
2005
BETWEEN OTARAUA HAPŪ MANAGEMENT
COMMITTEE INCORPORATED
Appellant
AND THE COMMISSIONER OF INLAND
REVENUE
Respondent

Hearing: 16 February 2026

Appearances: J H Coleman for Appellant
K I S Naik-Leong and S Townsend for Respondent

Judgment: 15 May 2026

JUDGMENT OF BOLDT J

Introduction

[1] The appellant, Otaraua Hapū Management Committee Incorporated (Otaraua), is a registered charity. In March 2022, the charities registration board (the Board) cancelled Otaraua's registration because, despite multiple warnings and reminders, it had failed to file financial statements for the 2020 and 2021 financial years.

[2] Otaraua successfully applied for re-registration in late 2023, but because it had been deregistered for more than a year it lost the benefit of its tax-exempt status. The result is that Otaraua, which in 2023 had just under \$700,000 in net assets, faces a tax bill of \$213,885.67, plus interest.

[3] Otaraua applies for leave to appeal out of time against the Board's decision to cancel its registration. The respondent is the Commissioner of Inland Revenue, who argues that the Board made no error when it deregistered Otaraua, and that Otaraua's failure to secure re-registration within twelve months means it must now face the tax consequences.

[4] There is a second application for leave to appeal out of time. That application was made orally during the hearing of the first application. The Charities Act 2005 (the Act) gives the Board limited power to backdate a charity's re-registration — registration can be backdated to the date the application is filed, but no further. On appeal, unusually, the Court's power is broader. At the relevant time, the Act provided that on appeal the Court could backdate a charity's registration to any date it chose.¹ On behalf of Otaraua, Mr Coleman sought leave to appeal out of time against the Board's decision to backdate Otaraua's re-registration only as far as 21 September 2023. He asks me to make an order restoring Otaraua to the register with effect from a date that will keep it out of tax trouble.

Background

[5] Otaraua manages the affairs of the Otaraua hapū. It owns Ngā Ringawera Otaraua Limited, a company which supports Otaraua's charitable purposes through commercial activities. Otaraua provides assistance with education, health and other charitable purposes for the benefit of the Otaraua hapū, the Waitara community and surrounding areas. Its activities include:

- (a) promoting the regeneration of deprived communities within the Otaraua hapū and the wider Waitara area;
- (b) promoting kotahitanga within the Otaraua hapū and the Waitara community;
- (c) promoting, upholding and enhancing the mana of the Otaraua hapū; and

¹ Charities Act 2005 (as at 1 January 2022), s 61(3). Today s 58N(3) of the Act gives the same power to the Taxation and Charities Review Authority.

- (d) promoting tino rangatiratanga of the hapū and supporting its Treaty of Waitangi relationship with the Crown.

[6] Otaraua also provides advice, information and advocacy services to the communities it serves, along with grants, loans and facilities for education, training and research.

[7] Otaraua has been managed by Ms Donna Eriwata since 1997. Mr David Doorbar has also been involved in its management as chairperson since January 2005. Otaraua registered as an incorporated society in 1998 and on 26 April 2016 it registered as a charity with Charities Services, giving it the benefit of a charity-related income tax exemption.²

[8] It is fair to describe Otaraua's administration in recent years as shambolic. Its 2017 return was filed in March 2019, and its 2018 and 2019 returns were filed in February 2020. Registered charities are obliged to file an annual return with Charities Services within six months of the end of each financial year (i.e. by 30 September).³

[9] Otaraua did not file annual returns for the financial years ending 31 March 2020 and 31 March 2021. Charities Services sent three reminders between June and August 2020, and three more between April and August the following year, but Otaraua did not respond, nor did it file either return.

[10] Ms Eriwata attributes the filing failures to the fact she was very unwell between mid-2018 and mid-2024. Although Otaraua is governed by an executive, it appears Ms Eriwata had no support or assistance, despite plainly being unable to manage the organisation on her own.

[11] In addition to the filing reminders, Otaraua received multiple warnings about the potential tax consequences if its returns remained outstanding. On 3 November 2021 Charities Services issued Otaraua with a notice headed "[t]ake action or lose the benefits of being a registered charity." The notice detailed Charities

² Charities Services is the body which regulates registered charities in New Zealand.

³ Charities Act, s 41.

Services' formal intention to seek Otaraua's removal from the charities register if it did not file its 2020 and 2021 returns by 9 February 2022. The notice said "[y]our charity may have to pay a one-off tax on any income and assets that your charity has accumulated while being registered."

[12] On 9 March 2022, Otaraua was served with formal notice of deregistration from the charities register. The notice advised that Otaraua could appeal to the High Court within 20 working days, and that upon deregistration, Otaraua "can no longer benefit from charitable tax exemptions."

[13] Otaraua did not appeal the deregistration decision. Ms Eriwata responded to Charities Services by email on 15 March 2022, claiming the only warning she had received was in October 2021 and that the website had not permitted her to upload the relevant files. She sought to place some of the blame on her former accountants, although she now acknowledges she had not provided them with all the information they needed to prepare the financial statements.

[14] In March 2022 Otaraua engaged new accountants, Tandem Group Chartered Accountants. Ms Eriwata asked Tandem to help Otaraua secure re-registration.

[15] Preparation of the 2020 and 2021 financial statements posed several unanticipated challenges. The 2021 return required audited financial statements for the first time, a considerably more involved process than had been required in the case of previous returns. Among other things, the auditor had to sign off on the opening balance. Ms Eriwata said the former accountants' record keeping had been poor and that Tandem effectively had to reconstruct the previous five years' financial statements from scratch to allow the auditors to be confident each year's opening balance was correct.

[16] Ms Eriwata acknowledged she was unable to meet all Tandem's requests for information, blaming the poor state of the financial records on her ill health. As a result, Tandem was not able to circulate draft financial statements for the 2017–2022 financial years until 12 December 2022, and audited statements did not become available until September 2023.

[17] On 18 June 2022, the Inland Revenue Department (IRD) wrote to Otaraua advising that deregistration meant its tax-exempt status would end, but that it would not be liable to pay deregistration tax if it re-registered as a charity within twelve months of deregistration, or if its net assets and income were distributed to another charity within the same period.

[18] On 3 August 2023, the IRD wrote to Otaraua again, this time to advise that it was now liable to pay tax. It had been deregistered for more than a year and had neither secured re-registration nor transferred its net assets to another charity.

[19] On 21 September 2023 Otaraua applied to be re-registered, and on 8 November 2023 Charities Services advised that that application had been successful. Charities Services exercised its power to backdate the effective date of registration to 21 September 2023. Section 20(2)(b) of the Act prevented it from backdating the registration any further.

[20] On 13 May 2025, IRD issued Otaraua with a notice of proposed adjustment under the Income Tax Act 2007. The Commission assessed the value of Otaraua's net assets at \$694,434, giving rise to a one-off tax liability of \$194,441.52. IRD also applied a shortfall penalty for not taking reasonable care of \$19,444.15.

[21] On 14 July 2025 Otaraua lodged a Notice of Response rejecting the proposed adjustment. The dispute and challenge procedures in the Tax Administration Act 1994 have been engaged, and the parties are now at the conference phase. Meanwhile, on 26 August 2025 Otaraua applied for leave to appeal against its deregistration.

The Charities Act

[22] The purpose of the Act is:⁴

- a) to promote public trust and confidence in the charitable sector:
- b) to encourage and promote the effective use of charitable resources:
- c) to provide for the registration of societies, institutions, and trustees of trusts as charitable entities:

⁴ Section 3.

- d) to require charitable entities and certain other persons to comply with certain obligations:
- e) to provide for the Board to make decisions about the registration and deregistration of charitable entities and to meet requirements imposed in relation to those functions...

[23] Registration provides charities with exemptions from income tax and fringe benefit tax. It also carries certain obligations, including a requirement to file annual returns. Annual returns must include financial statements,⁵ which for large charities must be audited.⁶

[24] Section 32(1) sets out the grounds on which the Board may direct that a charity be removed from the register. It relevantly provides:

32 Grounds for removal from register

- (1) The Board may direct that an entity be removed from the register if—
 - (a) the entity is not, or is no longer, qualified for registration as a charitable entity; or
 - (b) there has been a significant or persistent failure by the entity to meet its obligations under this Act or any other enactment; or
 - (c) there has been a significant or persistent failure by any 1 or more of the officers of the entity to meet their obligations under this Act ...

...

[25] Once deregistered, the former charity loses its tax exemption; its income, for tax purposes, is deemed to be the net value of the assets it had accumulated on the date of deregistration. As Palmer J observed in *World Gospel Bible College Charitable Trust v Commissioner of Inland Revenue*:⁷

[23] ... The purpose of the deregistration tax is to ensure that only bona fide charities should be eligible for tax concessions. The way the tax is levied means a deregistered charity is taxed on the assets and income it built up while it had the benefit of those tax concessions.

⁵ Section 41(2).

⁶ Section 42C. Section 42D defines a large charity as one with total operating expenditure of \$1.1 million or more.

⁷ *World Gospel Bible College Charitable Trust v Commissioner of Inland Revenue* [2024] NZHC 1232, (2024) 312 NZTC 26-024 [*World Gospel Bible College*].

[26] Section HR 12(2)(a) of the Income Tax Act provides that no deregistration tax is payable if the charity is re-registered within a year of the deregistration decision.

[27] If a charity is restored to the register, s 20 allows the Board to backdate its re-registration, but only as far as “the time the chief executive received a properly completed application for registration”.⁸ In *National Council of Women Inc v Charities Registration Board*,⁹ Dobson J held that s 20(2)(b) meant the Board had no power to backdate beyond the date the entity applied for re-registration. He observed:

[23] The evident purpose of the backdating provision is to avoid disadvantaging an applicant by virtue of the length of time that might be taken to consider and determine a successful application for registration.

[28] Nonetheless, s 61 of the Act gave the Court, sitting on appeal, a much wider power to backdate a charity’s registration. In 2014 (and throughout 2022 and 2023), s 61 relevantly provided:

61 Determination of appeal –

- (1) In determining an appeal, the High Court may—
 - (a) confirm, modify, or reverse the decision of the Board or the chief executive or any part of it;
 - (b) exercise any of the powers that could have been exercised by the Board or the chief executive in relation to the matter to which the appeal relates.
- (2) Without limiting subsection (1), the High Court may make an order requiring an entity—
 - (a) to be registered in the register of charitable entities with effect from a specified date; or
 - (b) to be restored to the register of charitable entities with effect from a specified date; or
 - (c) to be removed from the register of charitable entities with effect from a specified date; or
 - (d) to remain registered in the register of charitable entities.

⁸ Charities Act, s 20(1)(b).

⁹ *National Council of Women Inc v Charities Registration Board* [2014] NZHC 3200, [2015] 3 NZLR 72.

- (3) The specified date may be a date that is before or after the order is made.
- (4) The High Court may make any other order that it thinks fit.
- (5) An order may be subject to any terms or conditions that the High Court thinks fit.

[29] Dobson J observed that s 61, and s 61(4) in particular, appeared to “free the Court from being limited to orders that could have been made by the [Board].”¹⁰ He held that s 61 afforded wider powers to the Court on appeal than the Act granted to the original decision-maker.¹¹

[30] *National Council of Women* concerned a charity which was deregistered in 2010 because the Charities Commission (the predecessor of the Board) determined its advocacy activities were incompatible with its charitable status. The Council did not appeal and paid the subsequently-assessed deregistration tax under protest. In 2013, following observations by the Court of Appeal,¹² the Board reconsidered the Council’s position and decided its advocacy activities did not disqualify it from operating as a charity. It was re-registered accordingly. The Council asked the Board to backdate its re-registration to 2010, which would mean it was not liable to pay deregistration tax. The Board was unable to do so because of s 20(1)(b).

[31] Nonetheless, because s 61 provided that the Court may order that registration takes effect from any date the Court sees fit, Dobson J allowed the Council’s appeal and backdated its re-registration to 19 August 2010, the day the deregistration took effect.¹³ As a result, the deregistration tax the Council had paid was refunded.

Leave to appeal deregistration out of time

[32] Otaraua seeks leave to appeal out of time against the Board’s decision to remove it from the register. It also applies for leave to adduce further evidence. The

¹⁰ At [51].

¹¹ At [52].

¹² *Re Greenpeace New Zealand Inc* [2012] NZCA 533, [2013] 1 NZLR 339. The law was clarified further by the Supreme Court in [2014] NZSC 105, [2015] 1 NZLR 169.

¹³ *National Council of Women Inc v Charities Registration Board*, above n 9, at [55].

latter application is not opposed by the Commissioner, who seeks leave to file new evidence on the same basis. By consent, both evidence applications are granted.¹⁴

[33] The statutory time limit for Otaraua to appeal against its deregistration expired in April 2022, 20 working days after the Board’s decision.¹⁵ The Court can, in its discretion, grant leave to appeal out of time. Leave applications usually turn on the length of the delay, the reasons for the delay, the conduct of the parties, whether the delay has caused prejudice or hardship to the respondent and the significance of the issues raised.¹⁶ The Court may also have regard to the merits of the proposed appeal, but this factor may sometimes be “overwhelmed by other factors.”¹⁷ The ultimate question is whether allowing the appeal to proceed would be in the interests of justice.¹⁸

[34] In this case, the delay is significant — the application for leave to appeal was filed in August 2025, around three years and four months after the statutory appeal period expired.

[35] The reasons for the delay also tell against a grant of leave. I do not accept that responsibility for Otaraua’s failures can be laid at the feet of Ms Eriwata and her poor health. While her affidavit says she was the “only office worker” managing Otaraua between 2018 and 2022, there were many others within the organisation who were obliged to maintain oversight of its activities.

[36] Otaraua is governed by an executive committee which includes a chairperson, deputy chairperson, secretary, treasurer, a trustee of the Ōwae marae, two kaumatua and a manager. The constitution requires the executive to hold meetings on the first Sunday of each month. While Ms Eriwata was unwell between August 2018 and August 2024, it is also apparent there was a comprehensive failure in oversight. Responsibility for filing annual returns fell at least as heavily on the treasurer, secretary and chairperson as it did on Ms Eriwata. Maintaining registration, including

¹⁴ High Court Rules 2016, r 20.16(2).

¹⁵ Charities Act (as at 1 January 2022), s 59(2)(a).

¹⁶ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38].

¹⁷ At [39(a)].

¹⁸ At [38].

by ensuring annual returns are completed and filed on time, is among the most fundamental obligations of a person charged with administering a charity.

[37] Otaraua also contends the delay arose because Ms Eriwata was misled into believing that re-registration was the solution to its predicament, rather than lodging an appeal. On 16 March 2022, Charities Services advised Ms Eriwata that “the Charities Act ... does not have any provision for restoration of deregistered charities”, but noted Otaraua could re-apply for registration. Otaraua argues that email encouraged it to believe the only way to reverse its deregistration was to seek re-registration.

[38] I do not accept that submission. The deregistration notice of 9 March 2022 advised Otaraua both of its right to appeal and of the 20 working day deadline. Otaraua may have decided there were no grounds to appeal — a fair assessment, as I discuss below — but it was not misled into believing its only legal option was re-registration.

[39] Finally, Otaraua seeks to blame the delay on the disorganised state of its accounts, something, in turn, it blames on its former accountants. For the reasons already discussed, I do not accept that submission either. Responsibility for Otaraua’s accounts rests with Otaraua’s executive. Even when Ms Eriwata was unwell, there were numerous others in the organisation who had responsibility for ensuring the accounts were in order. Ms Eriwata now acknowledges that a significant part of the problem was that during her illness she had not provided the accountants with all the information they required. Otaraua’s executive was responsible for ensuring there was adequate cover for Ms Eriwata when she was unwell, and that basic functions, such as the provision of information to the charity’s accountants, were still being performed.

[40] It is apparent the principal reason Otaraua did not lodge an appeal for so long is that it did not seek legal advice when it lost its charitable status. Indeed, it did not engage a lawyer until July 2025, by which time it had been deregistered for more than three years.

[41] In any event, and most importantly, I am satisfied the merits of the proposed appeal are weak. Aside from pointing to the undesirable consequences of deregistration — the loss of a substantial proportion of the charity’s assets despite its reinstatement to the register — Mr Coleman struggled to identify any error in the Board’s decision.

[42] Section 32(1)(b) of the Act provides the Board may direct that an entity be removed from the register if there has been “a significant or persistent failure” in compliance with its obligations under any Act. There is no dispute Otaraua breached its obligations when it failed to file returns for the 2020 and 2021 financial years. It was reminded repeatedly of the need to do so and warned of the likely consequences if it did not.

[43] I am satisfied those failures amounted to a significant and persistent breach of Otaraua’s obligations under the Act. In *World Gospel Bible College Charitable Trust v Commissioner of Inland Revenue*, Palmer J observed:¹⁹

[32] Mr Coleman submits that the failure to file two annual returns is not significant or persistent failure to meet the trustees’ obligations. I do not accept that submission. Filing annual returns is an integral part of the accountability of charitable entities under the Act. Failure to comply with relevant accounting standards in doing so is subject to criminal sanction. While failing to file one annual return by mistake may not constitute significant or persistent failure, failing to file two consecutive annual returns can do so... Charitable entities cannot simply put aside the reporting obligations that accompany their privileged tax status.

[44] Otaraua’s neglect of its obligations was significant and sustained. The deregistration decision did not turn on a technical or brief period of non-compliance. Not only had it disregarded its filing obligations over an extended period, its records were in such disarray that it took another 18 months before it was in a position to seek re-registration.

[45] It follows the Board made no error when it directed Otaraua’s removal from the register. The decision was a reasonable and unremarkable exercise of the Board’s power under s 32. The purpose of the Act is to promote public trust and confidence in

¹⁹ *World Gospel Bible College*, above n 7.

the charitable sector.²⁰ As Palmer J observed, filing annual returns is an integral part of a charity's accountability under the Act. Annual returns promote transparency and encourage responsible administration. Compliance is a small price to pay for the advantages that flow from charitable status.

[46] While Otaraua's delay in seeking to challenge the Board's decision was inordinate and poorly explained, the main reason it is not in the interests of justice to grant leave to appeal out of time is because the proposed appeal has no chance of success. Otaraua's application for leave to appeal against the decision removing it from the register is declined.

Backdating the re-registration

[47] Although the Board made no error when it deregistered Otaraua in March 2022, things have moved on since then. The Act, along with the corresponding provisions in the Income Tax Act, is relatively forgiving. The fact a charity can avoid the tax consequences of deregistration if it re-registers within a year means, in many cases, that the harshest consequences of non-compliance can be avoided.

[48] There would have been no injustice in Otaraua becoming liable for deregistration tax if it had not secured re-registration. But by late 2023 it was able to persuade the Board it had untangled its finances, its records were in order, and that it continued to meet the requirements of a registered charity. Its operations did not change despite its registration difficulties. It continued to provide services to the Otaraua hapū and the wider community.

[49] But now Otaraua faces a situation where the fact its re-registration took 20 months to secure, rather than the statutory grace period of twelve, means it stands to lose a substantial proportion of its assets. Re-registration within a year would have meant it faced no tax consequences at all.

²⁰ Charities Act, s 3(a).

[50] While Ms Naik-Leong, on behalf of the Commissioner, is right to observe that Otaraua's large tax bill is the result of its disorganisation and inadequate oversight, it is those who benefit from Otaraua's services who will ultimately pay the price if the current tax liability stands. I do not consider it to be in the interests of justice for a temporary period of disorganisation to have such a significant effect on Otaraua's ability to serve its communities.

[51] The Board made no error when it backdated Otaraua's re-registration to the date it filed its application. That was the best the Board could do in light of s 20(2)(b). But, as Dobson J observed in *National Council of Women*, s 61 empowers the Court to backdate a charity's re-registration to any date it sees fit. If Otaraua's re-registration is backdated to a date prior to 9 March 2023 it will avoid the tax consequences of deregistration.

[52] During the hearing Mr Coleman made an oral application for leave to appeal out of time against the Board's decision to backdate Otaraua's to 21 September 2023. Ms Naik-Leong did not object to Mr Coleman making an oral application, though she argued leave to appeal against the backdating decision should be declined. She argued Otaraua's non-compliance was too serious to allow it to sweep aside the tax consequences of deregistration.

[53] Subject to the jurisdictional complication discussed below, I am satisfied it is in the interests of justice to grant Otaraua leave to appeal out of time, to allow the appeal, and to make an order backdating Otaraua's re-registration to 3 March 2023.

The Charities Amendment Act 2023

[54] On 5 July 2023, the Charities Amendment Act 2023 received the Royal Assent. Among other things, the Amendment Act created a new regime for appeals against decisions of the Board and chief executive. The old right of appeal to this Court has been replaced by a right of appeal to the Taxation and Charities Review Authority (the Authority).²¹ The broad power to backdate registration, which the old s 61 vested in

²¹ Section 58A(1)(b).

the Court, now lies with the Authority.²² There is a right of second appeal to this Court.²³

[55] The transitional provisions are not straightforward, and I sought further written submissions on their application to this case after the hearing. While there is no doubt the application for leave to appeal against the deregistration decision was properly brought in this Court,²⁴ the parties disagree as to whether the same analysis applies to the application for leave to appeal against the backdating decision. Mr Coleman submits it does, while Ms Naik-Leong argues Otaraua must instead apply for leave to appeal to the Authority.²⁵

[56] The new appeal provisions came into force on 5 July 2024, one year after the Amendment Act received the Royal Assent.²⁶ Clause 4 of sch 1AA to the Act provides:

4 Provisions relating to decisions of Board or chief executive

The principal Act, as in force before the commencement of this clause, continues to apply to the following as if the amendment Act had not been enacted:

- (a) an application for registration under section 17 made before the commencement of this clause; and
- (b) any process for the removal of an entity from the register where the chief executive issued a notice under section 33 before the commencement of this clause.

[57] The application to backdate Otaraua's registration was made in September 2023 and granted two months later, meaning the relevant decision was made before the new appeal provisions came into force the following July. Mr Coleman submits, in light of that, that Otaraua's right of appeal is to the Court rather than the Authority.

²² Section 58N(2), (3) and (4).

²³ Section 58W.

²⁴ Schedule 1AA, cl 4(b).

²⁵ The Authority's power to grant leave to appeal out of time are considerably stricter than the equivalent power under the old regime. Before the amendment, s 59(2) provided an appeal must be brought within 20 working days after the date of the decision or "any further time the High Court might allow on application either before or after the expiration of the period". Under the new s 58B, an appeal must be brought within two months or "within any further time that the Authority may allow, if ... the Authority is satisfied that exceptional grounds outside the appellant's control prevented the appellant from lodging an appeal" in time.

²⁶ Charities Amendment Act 2023, s 2(2).

[58] Ms Naik-Leong acknowledges, by virtue of cl 4(b) sch 1AA, that the Court retains jurisdiction over the deregistration appeal. But she submits cl 4 has no application to the application for leave to appeal against the backdating decision. That application does not arise either from an application for registration under s 17 or a process for removal under s 33, meaning neither of the situations expressly preserved by cl 4 apply. Otaraua did not seek leave to appeal out of time against the backdating decision until February 2026. Accordingly, Ms Naik-Leong submits that any appeal against the backdating decision must be to the Authority.

[59] I am satisfied the Court remains the correct body to consider Otaraua's application for leave to appeal against the backdating decision. Charities Services made its backdating decision in November 2023; at that time the right of appeal was to the Court. Section 59(2)(b), as it stood at the time of the decision, expressly permitted the Court to allow an appeal to be filed at a later time "on application made before or after the expiration of that [20 working day] period". The right to appeal, and the right to seek leave to appeal out of time, were conferred when the backdating decision was made.²⁷ Given the original appeal right was to the Court, it remains the Court's function to determine whether the statutory timeframe should be extended. The Authority has jurisdiction to grant leave to appeal out of time only if the original right of appeal was also to the Authority.

Decision

[60] I am satisfied that it is appropriate to backdate Otaraua's re-registration. The purpose of deregistration tax — to ensure a deregistered entity cannot retain the tax it was excused from paying while registered — is not engaged in this case. Otaraua's deregistration was only temporary, and there was no interruption to its provision of charitable services. In my discretion, I grant Otaraua's application for leave to appeal out of time against the backdating decision and allow the appeal. I make an order that Otaraua was registered in the register of charitable entities with effect from 3 March 2023.

²⁷ Legislation Act 2019, ss 32(1)(b) and 33(1)(a).

[61] That is not quite the end of the story. During oral argument I was surprised to hear that Otaraua's annual returns for the 2023, 2024 and 2025 financial years also remained outstanding, though Charities Services has not yet moved to deregister Otaraua a second time. Mr Coleman advised that financial statements for those years had been prepared and were ready for auditing, but that the auditors were awaiting the outcome of this proceeding before commencing their work. It appears that since the hearing the 2025 return, at least, has been filed.

[62] It goes without saying that ongoing non-compliance is unacceptable. Otaraua has been very fortunate in this proceeding, and it is inevitable it will lose its charitable status again unless it is a model of compliance in years to come. If it is to avoid the tax consequences of its deregistration it is essential any outstanding returns are filed promptly.

[63] While now repealed, s 61(5) of the Act continues to apply to this appeal. It provides that the Court's order may be subject to any terms or conditions it thinks fit. My decision to allow the appeal and further backdate the re-registration will not take effect unless and until Otaraua demonstrates it is fully compliant with its obligations.

[64] The parties have agreed to file a joint memorandum advising the Court when all outstanding returns have been filed. Otaraua must file any outstanding returns and other documents within 60 days of the date of this judgment. If it does not, the application for leave to appeal out of time will be declined and the re-registration date of 21 September 2023 will stand.

Costs

[65] Subject to its demonstrating full compliance within 60 days, Otaraua has been successful, albeit via a different route to the one it originally envisaged. Nonetheless its conduct reflects little credit on those charged with its oversight, and the Board (because of the restriction in s 20(1)(b)) made no error when it backdated the re-registration only to September 2023. In those circumstances, costs will lie where they fall.

Addendum

[66] Otaraua's compliance difficulties have largely, if not exclusively, arisen because it relied so heavily on Ms Eriwata to run the charity, even during a period of ill health. The charity's non-compliance arose because of serious and unacceptable failures in governance and oversight. It is essential the executive committee assumes proper responsibility for the oversight of the charity and provides Ms Eriwata with the support and assistance she requires.

Boldt J

Solicitors:
Crown Law for Respondent