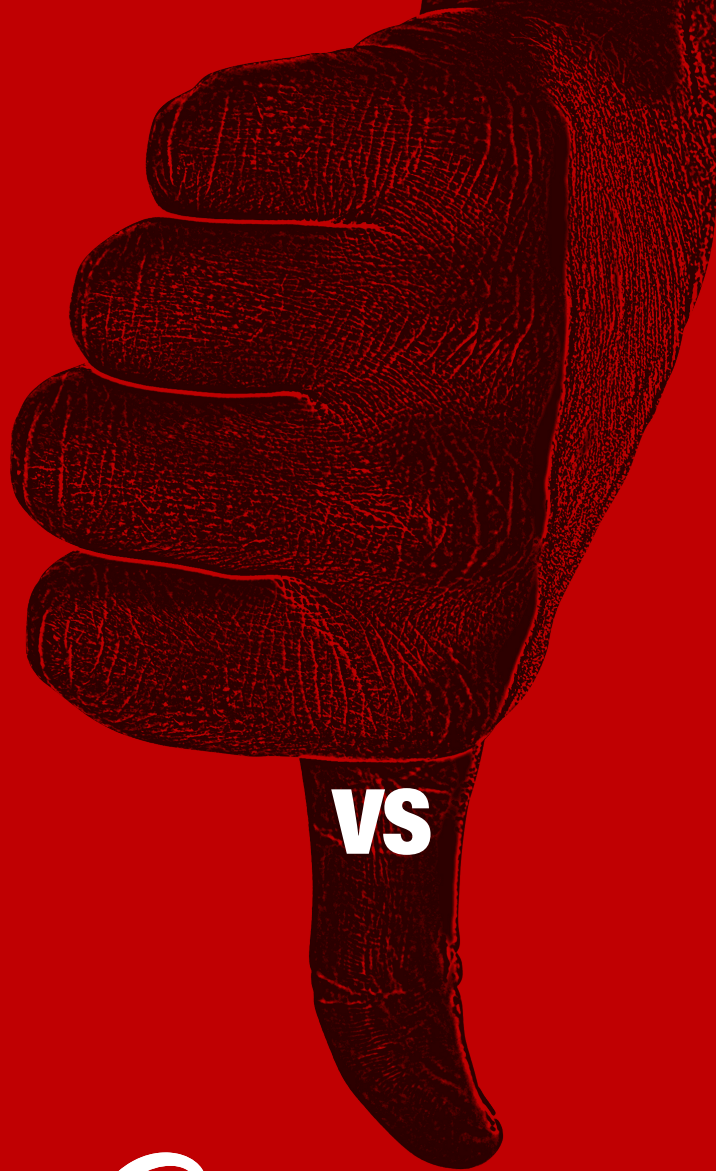


# THE STATE

(CHARITIES REGISTRATION BOARD)



**VS**

**FAMILY  
FIRST** NEW ZEALAND  
WHĀNAU TAHI AOTEAROA

— AUGUST 2022 —

## Author



BOB McCOSKRIE is the founder and Chief Executive of Family First New Zealand (founded in 2006).

He gained a Masters of Commerce with Honours at Auckland University, and a Diploma of Teaching at the Auckland College of Education. He lectured at a tertiary institute in accounting and tax law for four years. In 1994, he set up a charitable trust working with at-risk youth and their families in South Auckland.

In 1996 he was appointed a Justice of the Peace. From 2002 - 2006 he was breakfast/talkback host on Rhema Broadcasting nationwide radio, and television presenter on their Sky-TV current affairs show N-Zone Focus. In 2006, he established Family First New Zealand.

Bob McCoskrie has authored a number of research reports, including *Defying Human Nature: An Analysis of New Zealand's 2007 Anti-Smacking Law* (2016), *It's time for dinner: The Effect Of Regular Family Dinners On Family Life* (2018), *A Dog's Breakfast: New Zealand's Anti-Smacking Law 13 Years On* (2020), and was a contributor to *21 Reasons Why Marriage Matters* (2009). He has had articles published in the *NZ Medical Journal*, *NZ Herald*, *Dominion Post*, *Christchurch Press*, *Otago Daily Times*, *Newshub* website, international newspapers including *The Scotsman*, and in community newspapers throughout New Zealand.

He has lived in South Auckland all his life, is married and has three children aged 18 – 24 years old.

*For the purposes of this report, the views and analysis contained within are those of the author. Any factual errors are also the responsibility of the author. We welcome any documented corrections.*

## About Family First NZ

Family First NZ is a charitable organisation formed in 2006. Its purposes and aims are:

- to promote and advance research and policy regarding family and marriage
- to participate in social analysis and debate surrounding issues relating to and affecting the family
- to educate the public in their understanding of the institutional, legal and moral framework that makes a just and democratic society possible
- to produce and publish relevant and stimulating material in newspapers, magazines, and other media relating to issues affecting families
- to speak up about issues relating to families that are in the public domain



**For more information and copies of this report, go to [www.familyfirst.nz](http://www.familyfirst.nz)**



TEL: 09 261 2426

FAX: 09 261 2520

EMAIL: [admin@familyfirst.org.nz](mailto:admin@familyfirst.org.nz)

WEB: [www.familyfirst.nz](http://www.familyfirst.nz)

POST: PO Box 276-133, Manukau City 2241, New Zealand

COPYRIGHT: This report and all information contained herein is © Family First NZ 2022.

## A timeline of events

Here is a summary of events relating to the deregistration of Family First NZ by the Charities Board.

### MARCH 2010

The Charities Board undertakes a full audit of Family First and “*confirms that the Trust continues to be qualified for registration as a charitable entity*”. The principal reasons for the investigation were because of Family First’s participation in the debate on the anti-smacking law (which other charities such as Plunket, Barnardos, UNICEF and EPOCH also participated in), and because of a reward (\$25,000) that Family First offered seeking information which might have led to a conviction of any person responsible for the murders of the Kahui Twins.<sup>1</sup>

### SEPTEMBER 2012

The Charities Board informs Family First that they have been investigating the Charity and are going to recommend to the Board that Family First be deregistered.<sup>2</sup> Reasons include:

- Research on the drinking age, daycare, marriage, and fiscal cost of family breakdown “*could more properly be considered to be propaganda or indoctrination.*”
- The annual conference *Forum on the Family*: “*It appears the Trust has selected speakers that promote views similar to those of the Trust.*” But speakers have included people who have opposed Family First’s views, including Green MP Sue Bradford, Labour leader Phil Goff, Prime Minister John Key, and the Children’s Commissioner, amongst others!
- The billboards about eating dinner together as a family and about marriage are just “*promoting Family First’s philosophy to the public*”
- The *Value Your Vote* brochure “*encourages people to join Family First as a member.*” Can’t charities encourage membership / supporters?

### NOVEMBER 2012

Family First responds to the Charities Board, and are informed that they will receive the final decision within 6-8 weeks (late January / early February 2013) as to whether the Charities Board will continue to seek to deregister Family First.

### APRIL 2013

Family First NZ receives notification that the Charities Commission intends to deregister the charity, citing Family First’s traditional view of marriage being one man and one woman as one of the reasons for the de-registration.<sup>3</sup>

- “*The Trust’s main purpose is to promote points of view about family life, the promotion of which is a political purpose because the points of view do not have a public benefit...*”

*“The Board’s position is that Family First’s main purpose is to promote particular points of view about family life. Under the Act, promotion of a controversial point of view is a political purpose...”*

*Family First does not advance religion or education, not promote a benefit to all New Zealanders as determined by the Act.”*

**Brendon Ward,**  
General Manager  
Charities Services

ONE News 6 May 2013



- *"The Board considers that the Trust has a main purpose to promote the view that the "natural family" (defined by the Trust as the union of a man and a woman through marriage) is the fundamental social unit..."*
- *"The Board considers that the Trust's opinion(s).... are fairly described as controversial in contemporary New Zealand society..."*

## TIMING

It is significant to note that this investigation began just after the same-sex marriage debate started in 2012 (*see discussion below*). The Commission appeared to then deliberately hold off the notification until after the final reading of the same-sex marriage bill (April 2013), despite the Commission indicating that their decision would be made by January / February 2013. We believe they knew that attempting to deregister one of the lead groups in this significant social debate would look even more bias than it already was.

## ONE COMPLAINT

Family First asked for additional documentation from the Charities Board under the Official Information Act. On the day that Family First presented a petition containing 50,000 signatures asking for the definition of marriage to be maintained as one man one woman (August 2012),<sup>4</sup> one person made a 2-sentence complaint to the Charities Commission. The complaint said:

*"That (Family First) are a religious based pressure group whose whole purpose seems to be the prevention of human rights to non heterosexual people. I don't see how the state should be supporting such an organisation by providing tax free status. e.g., like Greenpeace."*<sup>5</sup>

In the period immediately following this one complaint, the Commission undertook a large-scale investigation which ultimately resulted in their attempt to deregister Family First.

## INCONSISTENCY

In the same month that Family First was notified they would be *deregistered*, the **National Council of Women** was *re-registered*.<sup>6</sup> Whilst Family First completely agrees with their reinstatement, the reasons for the decision by the Charities Registration Board raises legitimate concerns about the bias of the Charities Board.

- NCWNZ is charitable because of its 'promotion of the status of women', including its reporting to the UN on discrimination against women
- As with Family First, the Board acknowledges that their research promotes their message. But Family First's research is "propaganda or indoctrination"

**Your complaint to the Charities Commission**

Here is a copy of the complaint you submitted to the Charities Commission using the online complaint form on this page:  
<http://www.charities.govt.nz/compliance/complaints/make-a-complaint/>

**What charity is your complaint related to?**  
 Family First

**Is the charity registered with the Charities Commission?**  
 Yes

**How do you know the charity?**  
 Through their constant anti-gay media releases disguised as news.

**What is your complaint?**  
 That they are a religious based pressure group whose whole purpose seems to be the prevention of human rights to non heterosexual people. I don't see how the state should be supporting such an organisation by providing tax free status. EG, like Greenpeace.

- The Board refers to *Greenpeace*, and the Court of Appeal's decision that the government supports the Nuclear Non-Proliferation Treaty and has enacted the New Zealand Nuclear Free Zone Disarmament and Arms Control Act. Therefore, the public good was evident. (This is a very dangerous basis to argue the definition of 'charity' because that means that if you are educating or researching on issues contrary to the view of the government, it will be argued that what you are doing is not for the 'public good'. This is why Family First's view on marriage has been a key factor in our de-registration.)
- The Board argues that any lobbying or submissions done by the NCWNZ is not 'political', but rather "*a means by which the NCWNZ advances its charitable purposes*" – the complete opposite measure than that which was applied to Family First NZ.

**It appears that views on gender equality and disarmament are acceptable and charitable – but certain views on marriage are not.**

The Commission has also admitted that only one charity who has been on the opposing side of the debates that Family First has been part of has been investigated – the *Child Poverty Action Group* which was investigated in 2010 and continues to qualify for registration, despite their obvious political advocacy.

In fact, they were in the Court of Appeal in June 2013 taking on the government (political advocacy).<sup>7</sup> And conservation group *Forest and Bird* – also a registered charity – were in the Environment Court in the same month.<sup>8</sup>

#### NOVEMBER 2014

Despite the *Greenpeace* case decision (August 2014) where the Supreme Court found that political advocacy for a charitable undertaking was allowed,<sup>9</sup> Family First received notification that the Charities Commission still wanted to deregister them.<sup>10</sup>

#### JULY 2015

Family First NZ appealed the deregistration decision to the Wellington High Court. In their decision, the court upheld the appeal of Family First's against deregistration by the Charities Board.<sup>11</sup> Justice Collins directed the Charities Board to reconsider its decision to deregister Family First in light of the judgement in the *Greenpeace* case and also this High Court judgement.

In delivering his decision, Justice Collins recognised the strength of Family First's argument that its advocacy for the concept "*...of the traditional family is analogous to organisations that have advocated for the 'mental and moral improvement' of society.*" In a rather blunt statement, Collins J said:

*"...Members of the Charities Board may personally disagree 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 charities."*

Collins J also said that "*..the Charities Board's analysis that Family First's advocacy role is "controversial" and therefore not self-evidently of benefit to the public will need to be reconsidered.*"



MAY 2017

Family First NZ receives notification that the Charities Board still intends to deregister the charitable organisation despite the decision in the Wellington High Court in 2015 to allow Family First's appeal against de-registration.<sup>12</sup> The notice says:

*"(W)e do not consider that the Trust continues to qualify for registration as it has an independent purpose to promote and protect the traditional family and this is not charitable."*

"For some reason (the Charities Board are) gunning for us because we believe things like marriage is one man one woman. Do you think this is right?"

BOB MCCOSKRIE

"Well, if they were gunning for you on that basis, then the people doing that would of course have to be removed from the public service because the law is not anything to do with what the advocacy is."

RT HON BILL ENGLISH, PRIME MINISTER  
Forum On The Family, 7 July 2017



The Board confirms this action in August<sup>13</sup> saying that it will remove Family First from the Charities Register on 18 September 2017.<sup>14</sup>

SEPTEMBER 2017

Family First NZ lodges an appeal in the Wellington High Court against the Charities Board's attempts to deregister the group.<sup>15</sup> Family First is also granted an interim order against the Board restraining them from removing Family First from the Register until the appeal is heard.

SEPTEMBER 2018

In a reverse decision to the 2015 decision in the same court, the Wellington High Court upholds the Charities Board's decision to de-register Family First as a charity.<sup>16</sup>

The High Court says that:

*"In relation to marriage, Family First's model, to the extent it involves law change **favouring the traditional family unit, would on its face run counter to human rights law** which prohibits discrimination on such bases. Unless able to be shown to be a reasonable limit, the position advocated for would be unlawful, an obstacle to charitable status."*

Family First does not accept the High Court's analysis or its conclusions and lodges an appeal with the Court of Appeal.

An order is subsequently made by the Wellington High Court that the Charities Board maintain Family First's registration as a charity until its appeal against deregistration is heard in the Court of Appeal.

"(Family First's) core purpose of promoting the traditional family unit cannot be shown to be in the public benefit."

JUSTICE FRANCE  
Wellington High Court, 2018



Family First NZ wins their appeal in the Wellington Court of Appeal against de-registration from the Charities Register.<sup>17</sup>

#### JUDGMENT OF THE COURT

- A. The appeal is allowed.
- B. The decision of the Charities Registration Board dated 21 August 2017 to remove Family First New Zealand from the Charities Register is set aside.
- C. There is a declaration that Family First New Zealand qualifies for registration under the Charities Act 2005."

#### Key Statements from the Court of Appeal Judgement

*"The Universal Declaration of Human Rights, and other similar instruments, affirm a right to family life. That provides considerable support for the proposition that Family First's support of, education about, and advocacy for, the family and its related institution of marriage may, other things being equal, be charitable."* (Para 73)

*"[As] Paul Rishworth QC has observed: "Our political systems depend upon our deliberating as a community. Our understanding of the world comes by seeking information and transmitting it to others."* (Para 92)

*"An examination of this material, set in the context of advancement of education and research, **shows Family First's clear purpose of stimulating a public debate and participating in public discourse on important social issues relevant to families.**"* (Para 109)

*"Such research is valuable in promoting public knowledge about marriage and families and the many issues that affect the family. **Public discussion and debate about such important issues is desirable to encourage the development of related policies and laws.**"* (Para 122)

*"The end promoted by Family First is the support of marriage and family or core family values. This is an abstraction not dissimilar to the examples given in Greenpeace of world peace or nuclear disarmament. As already analysed, **Family First seeks to educate and conduct research.**"* (Para 136)

*"It would be curious if promotion of what the Board called the **"traditional family"** would cease to be of public benefit because there is a growing acceptance of other forms of stable family life, including within whānau and hapū relationships. And to be fair, Family First recognised the contribution non-traditional forms of family life can make."* (Para 147/148)

*"We consider Family First's engagement in the deliberations of the community on issues such as abortion, assisted death, anti-smacking laws, prostitution reform and censorship is properly characterised as part of its broader purpose of supporting marriage and family as being foundational to a strong and enduring society. **Any attempt to label such engagement generally as cause advocacy of a political nature is not helpful.**"* (Para 164/165)

*"Nor is there any suggestion that Family First engages in unlawful activities, such as the types of non-violent direct action at issue in Greenpeace."* (Para 180)

DECEMBER 2020

The Supreme Court announces that they will allow **the Government to take Family First to the Supreme Court** to appeal the recent Court of Appeal decision upholding Family First as a charity.<sup>18</sup>

JUNE 2021

The case is heard in the Supreme Court. The five judges reserve their decision.

28 JUNE 2022

The Supreme Court rules that the Charities Registration Board was correct to resolve that Family First be deregistered.<sup>19</sup> The declaration made by the Court of Appeal that Family First qualifies for registration under the Charities Act is set aside.

The most significant statement is where the Court rejects our view of marriage...

*"We agree with the High Court Judge that an object of promoting the family as foundational to a stable society could be a charitable object. But we do not agree with the Court of Appeal majority that Family First's advocacy of the role and importance of this particular version of the family and of marriage between a man and a woman is self-evidently beneficial in a charitable sense." (para 91)*

The court disagrees with our view – a view that most of society held until 'about five minutes ago'. **What other views will become 'uncharitable' sometime soon? The definition of a woman?**

In the Supreme Court's media release which summarised the judgement<sup>20</sup> (and the media quoted primarily from this – it is uncertain whether they read the whole judgement), it said:

*"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..."*

*"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..."*

There are two problems with these statements.

All charities both educate and advocate. *The Helen Clark Foundation, Drug Foundation, Child Poverty Action Group, Greenpeace, Amnesty International, Save Animals from Exploitation (SAFE), National Council of Women* all advocate a viewpoint. Both *The Helen Clark Foundation* and the *Drug Foundation* tried to advocate for the legalisation of cannabis in the recent referendum. Fortunately they failed! And we're sure you know what *Greenpeace's* opinion is on certain issues!



But secondly, the statement ignores the huge amount of research Family First has done on issues which have nothing to do with family structure e.g. the health harms of pornography, screentime, childcare, gender identity, fertility rates, family dinners, censorship, prostitution, child abuse, and many other issues.

The court also says:

***“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...”***

No, we simply present evidence that argues that family structure matters, and that marriage matters. In our view, the research is clear and overwhelming. If they disagree, simply put up the research that proves us wrong. Debate the issue. Don’t shut it down.

But what are the “*limited situations*” where advocacy is deemed to be for the ‘public benefit’?

Here’s the significant comment in the judgement:

*“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...”*

This is the key point to understand.

The court appears to be saying that the religions of ‘human rights’ (including sexuality, gender, critical theory etc) and ‘environmentalism’ are acceptable things to advocate for, but to present and use decades of research proving that family formation and structure matters is unacceptable and apparently discriminatory.

Finally, one of the Justices (Williams J) was very critical of Family First – although it’s important to note that **this view was not shared by the other four Justices**. He said:

*“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.”*

With due respect, this is confused thinking. **There is no “selfishness” in doing research and advocacy to strengthen families, encourage marriage, respect the sanctity of life, and protect freedom. As already stated, every charity is promoting their cause – their view.** On this measure, every charity should be deregistered if they have a view and promote that view.

“Pluralistic society” is a buzzword with no specific meaning, but what it does do is simply reinforce that there will be differing views that deserve debate.

Williams J also said:

*“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...”*

We completely disagree. In fact, we challenge Williams J to give evidence of his claims. He may not agree with our opinion – but his character assassination is highly subjective, and is itself “not fair, balanced or respectful”, in our opinion.

**We know and trust that our supporters would call us out immediately if we were guilty of any of these accusations.**

**Our research reports have never been proved to be factually incorrect.** Opponents simply disagree with them, which they’re entitled to do. We would argue that most of the reports out of *The Helen Clark Foundation* and the *Drug Foundation* haven’t been fair or balanced either!

## **What other charities operate like Family First?**

### **Current registered charities who also do political advocacy:**

- Helen Clark Foundation (campaigning to legalise cannabis)
- NZ Drug Foundation (campaigning to legalise cannabis)
- Child Poverty Action Group
- Amnesty International New Zealand Inc
- Save Animals From Exploitation (S.A.F.E.)
- The Vegan Society of Aotearoa
- ASH New Zealand Incorporated
- National Council of Women
- Rainbow Wellington
- Humanist Society of NZ
- Human Rights Foundation Of Aotearoa New Zealand
- Save the Children
- Royal Forest and Bird Protection Society of New Zealand Inc
- Action For Children And Youth Aotearoa
- Caritas Aotearoa – New Zealand
- International Shia Cultural and Human Rights Organization
- Agender Christchurch Inc
- Animal Welfare Institute of New Zealand

## Charities who opposed Family First during the anti-smacking debate

- EPOCH
- Te Kahui Mana Ririki
- UNICEF
- New Zealand National Committee For Unicef Trust Board

## Charities who opposed Family First during the 'gay marriage' debate

- QSA Network Aotearoa
- Waikato Queer Youth
- Rainbow Youth Incorporated

Family First does NOT believe these groups should be deregistered. We simply ask for a level playing field and equal treatment.

## What do political parties say about this issue?

Two political parties explicitly touched on this issue in their manifestos during the 2017 General Election campaign.



"Labour will ensure that community and voluntary organisations can engage in advocacy without fear of losing government contracts or their charitable status."

**Labour Party Manifesto 2017**

*Community and Voluntary Sector*



"Advocacy is important, including political advocacy, and we would ensure that advocacy doesn't prevent community groups from receiving funding or gaining charitable status."

**Green Party**

*Community and Voluntary Sector Policy*

These policies were quietly dropped in the 2020 campaign, and we suspect that part of the reason was because Greenpeace's charitable status was no longer an issue. They had won back their status,<sup>21</sup> so the political parties had lost interest in the issue.

## In Australia

In December 2018, the Australian government accepted a recommendation from the Ruddock review into religious freedom to amend their Charities Act to ensure that groups who say marriage is between a man and a woman are not stripped of their charitable status.<sup>22</sup> The Ruddock Review said: *"The Commonwealth should amend section 11 of the Charities Act 2013 to clarify that advocacy of a 'traditional' view of marriage would not, of itself, amount to a 'disqualifying purpose'."*

## How will the Supreme Court decision affect Family First?

It won't. We will continue researching, educating and advocating in exactly the same way as we have done for the past 16 years. If anything, it means we no longer have to be cautious about the level of political advocacy we do. **The gloves are off!**

## How about financially?

Losing our status as a registered charity means that donations made to Family First will no longer qualify for the Donation Rebate. That's a disadvantage for our generous donors, but based on all the feedback received, the loss of the Rebate will make no difference to most people when determining how much to invest in our work – and in fact, many supporters have made new or increased financial commitments.

### Summary

The real question is whether the Government will pursue other charities who operate in a similar fashion and do political advocacy – charities who Family First have possibly engaged with during social debates such as cannabis legalisation, but are from the left wing side of political discourse. Will they now be targeted? We believe they won't. And they shouldn't be. But they are safe because the state approves of their views.

This decision reveals just how far the state is overreaching their control and power to attempt to shut down free speech and certain points of view that it doesn't like.

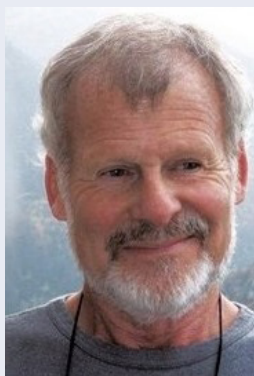
**Family First will not be silenced and will continue to represent and be a powerful voice for families, faith and freedom, and advocate on behalf of the thousands of families who support us.**

Thank you to the (literally) thousands of you who have responded with words of encouragement and with financial support over the past 10 years and four court cases.

## BRUCE LOGAN – The Cult Of Diversity

*In the beginning was the Word, and the Word was with God, and the Word was God. He was in the beginning with God. All things were made through him, and without him was not anything made that was made. In him was life, and the life was the light of men. The light shines in the darkness, and the darkness has not overcome it.*

*John 1: 1-4. ESV*



***Bruce Logan is a board member of Family First NZ.***

The Supreme Court's decision to cancel Family First's charitable status demonstrates its submission to the parasitic civil religion of Diversity, Inclusion and Equity (DIE), now deeply embedded in New Zealand culture and law. One cannot even use the word 'Civilisation' with confidence anymore. Instead, we have Gramsci styled Marxist claims repackaged into promiscuous human rights theory, to paraphrase English Philosopher Roger Scruton.

DIE is parasitic because its presumptuous and reductionist concept of dignity is stolen from the Genesis creation story. 'Diversity' is not the liberating recognition of God's creative variety and power, and the dignity given to every man and woman; it's a self-creating and self-sustaining dogma pontificating in the steamy haze of its own puffing and blowing.

The DIE Catechism of 'Inclusion' actually applauds exclusion by making group affirmation and government fiat of identity politics absolute. 'Equity' demands the impossible; equality of outcome irrespective of human character or morality.

To give a little more context, TS Eliot in his *Idea of a Christian Society* (1939) argued that liberalism (progressivism in 2022) was a negative project that pushed back against traditional constraining forces. In doing so it cannot supply any kind of satisfactory cultural glue.

*"By destroying traditional social habits of the people, by dissolving their natural collective consciousness into individual constituents, by licensing the opinions of the most foolish, by substituting instruction for education, by encouraging cleverness rather than wisdom, the upstart rather than the qualified, fostering an ocean of "getting on" to which the alternative is hopeless apathy, liberalism can prepare the way for that which is its own negation: the artificial, mechanised or brutalised control which is a desperate remedy for its chaos."*

Antidiscrimination law is a result of that attempt to find a desperate remedy for liberalism's chaos and the context for the Supreme Court's decision.

{Family First's} *"main purpose was political and thus non-charitable — it sought to advance points of view about family life which had no self-evident public benefit as a matter of law."* (Para 5)

The pivot is, *"no self-evident public benefit as a matter of law"*. Antidiscrimination law by its very nature advances a relativist point of view about the status of the natural family at the outset.



We need to realise that in order for that to have happened there has been a covert change in our understanding of the role of law, the limited sovereignty of the individual and the role of the family in civil society.

The primacy of antidiscrimination law (DIE's lifeblood) shifts the focus away from the dignity of the individual to the claims of any group that would make itself a substitute for the family insofar as it can manufacture a theory for human identity. Groups, claiming their own sovereign existence, trump the rights available to individuals while the pressure for hate speech law is primarily an attempt to defend the fragile sensitivities of the self-defining group.

Hate speech law has nothing whatsoever to do with stopping hate speech, whatever that might be deemed to be. Hate speech law is a tool of DIE to protect the fragile sensitivities of the self-defining group.

*Hate speech law is a tool of DIE to protect the fragile sensitivities of the self-defining group.*

It is the consequence of that focus away from the dignity of the individual to that of the herd/tribe that enables the Supreme Court to declare that it is discriminatory to advocate for the natural family. It says, *"Family First... 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..."*

As to *"the disadvantage of others"* – what others? *"Others"* can only be a wounded version of the natural family. There are no others, only pretenders claiming their own specious sovereignty. The *"others"* cannot and do not have the power to recreate naturally through the generations. To identify their nature is not discriminatory; it is the rational discernment of historical and scientific method.

Attempts to point out the central role of the natural family is neither to condemn *"others"* nor is it necessarily to their disadvantage. Rather it is an encouragement to society to remember the most humane and economically productive way to bring up children. It is simply a reminder of a permanent social reality.

Until the legalisation of same-sex marriage, the charge of discrimination above would have been unimaginable. Nearly everyone understood that the natural family, more precise than *"traditional family"*, has the desire and power to recreate itself and protect its members from generation to generation without taxpayer assistance. They knew that the identity creating glue of the natural family is the fuel of civil society and without it children suffer and civilisation flounders.

*Until the legalisation of same-sex marriage, the charge of discrimination above would have been unimaginable.*

In spite of the natural family being self-evidently beneficial the Court ruling is predicated on the specious notion that all *"family"* structures produce the same outcomes particularly for children, when this is demonstrably false. By making this ruling, the court has deemed the 'lifestyle' choices of the parent(s) must trump the best interests of children in their care.

And then there's the question of balance. The Supreme Court says, *"Many of the papers lack the balance or neutrality needed to legitimately further an educative purpose in circumstances where the papers express a clear viewpoint on the subject-matter. Rather, the papers seek to persuade people to*

*Family First's point of view and seek support for its efforts to bring about (or resist) a change of policy or law." Para 107a*

The Supreme Court has already given up on balance and neutrality by presuming cultural relativism the overarching reality. That presumption fudges any distinction between advocacy and education it might care to make. To advocate for what is true, especially if that truth is under attack, must be beneficial to society. So, who's 'truth' is true; Family First's or the Supreme Court's?

*Who's 'truth' is true; Family First's or the Supreme Court's?*

Antidiscrimination law is not the discovery of something new but rather the denial of something old. It is the eventual replacement of the Genesis story of transcendent human dignity by the alternative atheist story that secured traction in the 18th century, particularly in France.

The developing consequence is that the old negative rights which protect the individual from overweening State power; freedom of religious belief and expression, free speech, freedom of movement, freedom of assembly and freedom to trade now compete with the new positive human rights, more accurately described as claims.

Humanity is the source of its own salvation which will be delivered by the state. Western Civilisation does not contain within it something permanent and transcendent to be loved and conserved because civilisation does not exist. A relativist culture is all there is; the constant renewal of novel identities and those increasing positive human rights (claims) that will lead to Utopia.

The new rights, freedom of sexual expression for example, are divorced from what we once knew as the restraint of responsibility. That's why the natural family and marriage is devalued by the Supreme Court because it is in marriage that sexual license is restrained by uniting responsibility with sexual desire.

*The natural family and marriage is devalued by the Supreme Court because it is in marriage that sexual license is restrained by uniting responsibility with sexual desire.*

Significantly, belief in and practice of English common law kept the judiciary and the administration separate. That separation kept each other honest. Now with the primacy of antidiscrimination law the separation of powers has disappeared; replaced by the DIE priesthood with the power to excommunicate.

Until recently everyone knew that the intergenerational family is the first, and best source of shared wealth and welfare. Every noun, naming intimate human identity has a familial root; from father or mother to son or daughter, brother or sister. From grandparent to cousin. The doctrine of identity politics is a replacement of that, not an addition.

The morality of human character, implicit in the traditional understanding of self-respect, is replaced by the psychological morality of self-esteem.

*We should not be surprised that DIE's sovereignty of identity politics, essentially LGBT+ dogma, is so fragile it constantly needs government affirmation.*

We should not be surprised that DIE's sovereignty of identity politics, essentially LGBT+ dogma, is so fragile it constantly needs government affirmation. Indeed, the aim would seem to be to dispose of the notion of "normal" entirely. Queer theory, now so influential in shaping public

morality, would flatten our understanding of sexual behaviour and morality and in the process deny the natural family its pivotal status in shaping sexual order.

The Supreme Court declares itself to be an arm of DIE's civil religion.

*The natural family and marriage is devalued by the Supreme Court because it is in marriage that sexual license is restrained by uniting responsibility with sexual desire.*

*"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.....Family First's advocacy on the above issues was not ancillary to its expressed purpose of supporting marriage and family..."*

Because the Supreme Court redefines what has already been defined by natural law and Western civilisation's biblical foundation, the family unit is any set of relationships the state decides. It will decide what is "ancillary" to the support of marriage and family. Life is not sacred; marriage and family do not have divine approval. Abortion, for example, does not wound the family. It is merely a consequence of self-creation and the reordering of what it means to be human. This is the heart of the new civil religion. Narcissus is on the throne.

Civil religion will always be totalitarian because it is driven by an instinct for survival; it has no working concept of self-criticism. It must always seek increasing power and the silencing of opposition because the sovereignty of God, the foundation of Western civilisation, has been replaced by the power of the sovereign state.

The cancellation of Family First's charitable status is an almost perfect embryonic example of that totalitarianism in action and its faux law of sovereign antidiscrimination.

*This is the heart of the new civil religion. Narcissus is on the throne.*

God can take all the criticism that you cast at Him; the totalitarian state cannot. *"Come now, let us reason together, says the Lord: though your sins are like scarlet, they shall be as white as snow; though they are red like crimson, they shall become like wool."* (Isaiah 1:18).

Antidiscrimination's sins against the sovereign state will always be red like blood. One cannot reason with the politics of identity which must be totalitarian in order to survive.

The Supreme Court has become much less the protector of common-law than a protector of the claims of each new tribe as it discovers and asserts its autonomy; the transgender tribe, for example. Human rights are not the consequence of a divinely ordained dignity or even natural law. Rather they are the product of the assertion of the primacy of the self.

Antidiscrimination law is blind to the obvious truth that abortion, assisted dying, prostitution and censorship are wrong because they always wound the family. They are only "freestanding" because the politicised religious state says so. Differing views about them in society are quite beside the point. And anyway, from DIE's perspective none can possibly be intrinsically wrong.

So, the overarching flaw of a civil religion is that it erodes the dynamics of personal freedom by

seizing the moral high ground: politics and religion are fused into one sovereign tyranny. It denies that public morality depends on a shared grassroots belief in the transcendent.

If conscience can only find its origin in DIE then both private and public morality must be imposed by the state and its bureaucratic priesthood. If one's moral code is something that one drags up from the inner self or from grasping at the air, it cannot be exposed to the light of day. It can never admit that morality in a democracy is the submission of the human conscience to an authority transcending self. DIE is the product of pride and the root of inevitable sorrow.

*Antidiscrimination's sins against the sovereign state will always be red like blood. One cannot reason with the politics of identity which must be totalitarian in order to survive.*

No wonder New Zealand is a nation in a moral and spiritual muddle. Is it New Zealand or Aotearoa or both? What's in a name? A great deal it would seem. In the crazy upheaval of dechristianisation and repaganisation, a name change will lead us to a glorious utopian partnership.

It is the cult of DIE that permits, indeed insists on, the insertion of propaganda such as 'partnership', 'decolonisation' and the self-evidently specious 'co-governance' into our legal bureaucracy and universities. Of course, it acts like a civil religion because it is a civil religion telling us how we should understand contemporary culture, our history and individual identity. It insists that we follow its vision of the future.

It's hardly surprising how nearly every personal problem or societal dysfunction (there are no spiritual problems) now fall under the inclusive catchall of mental health. Drug addiction is a mental health problem. Misunderstood sexual identity is a mental health problem. Educational failure is a mental health problem. The offended psyche is a mental health problem. Suicide is a mental health problem. Morality is a mental health problem. Life is a mental health problem. Agencies to improve our mental health proliferate monthly. All they need is more money.

Courage, virtue's necessary component of cultural confidence, has been undermined by the heretical doctrine of DIE. The lie is hidden in the small print. New Zealand's social order, its tradition of common-law and its perception of human dignity which once gave New Zealanders hope and purpose are ignored. Without hope, cultural confidence and the courage essential to satisfying citizenship are impossible to practice. Justice is a lost cause. Social justice is its replacement.

Ultimately DIE demands that the politics of tribal membership be absolute in giving identity and value. Replacing historical method with its own chronological snobbery and the authority of the subjective, it cannot understand that such a recipe will lead to fighting on the streets; or as TS Eliot once prophetically said, *Interneccine fighting, people killing one another in the streets.*

*The Supreme Court needs to understand that politics is a consequence of encultured morality and at the heart of morality is religion.*

The Supreme Court needs to understand that politics is a consequence of encultured morality and at the heart of morality is religion. To the misfortune of all it has chosen the civil religion of DIE and its dogma of self-creation instead of the Biblical religion of the human creature who finds his or her dignity in the God of Genesis.

## SUE BARKER: Family First – a gift to the forces of authoritarianism?



***Sue Barker is director of CharitiesLaw, a boutique law firm based in Wellington, specialising in charities law and public tax law.***

Perhaps the decision of the Supreme Court of New Zealand in *Attorney-General v Family First New Zealand* [2022] NZSC 80 might be what it takes to catalyse the proverbial charitable sector “frog” to jump out of the increasingly boiling water.

The *Family First* decision is the latest step in a process that has been going on for more than a decade. Family First New Zealand was originally registered in 2007, making it one of the first charities in New Zealand to register under the regime established by the Charities Act 2005.

Following a review in 2010, Family First was confirmed as eligible for registration, but was then deregistered in April 2013 after it organised a petition opposing the Marriage (Definition of Marriage) Amendment Bill - the Same Sex Marriage Bill.

Family First's appeal against the deregistration was upheld in 2015 by the High Court (*Re Family First New Zealand* [2015] NZHC 1493), which referred the matter back to the Charities Registration Board - Te Rātā Atawhai - for reconsideration in light of its judgment.

The board took more than two years to reach essentially the same decision (*Charities Registration Board Decision 2017-1 Family First New Zealand* 21 August 2017).

Family First's appeal of that decision was dismissed by the High Court in 2018 (*Re Family First New Zealand* [2018] NZHC 2273), but upheld 2:1 by the Court of Appeal in 2020 (*Family First New Zealand v Attorney-General* [2020] NZCA 366). The Attorney-General's appeal of the Court of Appeal's decision, in his capacity as the “protector” of charities, has now been upheld by the Supreme Court.

Whatever might be said about the process to date, clearly the issue of whether Family First is eligible for charitable registration is capable of striking different judicial minds differently.

In the writer's view, the New Zealand legislation provides insufficient guidance as to how to determine whether a purpose is charitable, which is resulting in hundreds of thousands of taxpayer and charitable funds being spent arguing over these issues.

*The New Zealand legislation provides insufficient guidance as to how to determine whether a purpose is charitable.*

The issue of advocacy by charities has become particularly problematic and complex since the 2014 decision of the Supreme Court in *Re Greenpeace of New Zealand Inc* [2015] 1 NZLR 169 (SC): interpretations of this decision have resulted in the introduction of a concept of “causes”, rather than charitable purposes, and a separate “ends, means and manner” test that may or may not be applied whenever advocacy is involved (see *Greenpeace SC* at [73] and [76]).



## Ends, means and manner?

The “ends, means and manner” framework is unique to New Zealand; it is problematic for a number of reasons, not least because it allows an unelected and largely unaccountable bureaucracy to determine the nature and scope of the charitable sector with almost complete subjectivity.

In so doing, it structurally undermines the independence of charities and thereby their effectiveness in a liberal democracy.

Fundamentally, the current approach shifts the underlying legal paradigm from an enabling one focused on purposes, to a restrictive one focused on activities: the ensuing subjectivity precludes certainty and predictability in the law which results in a legal muddle of inconsistent decisions and outcomes that undermines the rule of law.

Some argue the Supreme Court decision in *Family First* is a win for the LGBTQ+ community – see, for example, B Barraclough *Opinion: Why Family First doesn't deserve to call itself a charity*.

*The Supreme Court decision in Family First has the potential to be used arbitrarily as a weapon against any charity that happens to express a view any given decision-maker does not agree with.*

I beg to differ: as former United States' President Barack Obama has observed, in a diverse society, efforts to restrict speech can quickly become a tool for silencing critics and oppressing minorities.

The Supreme Court decision in *Family First* has the potential to be used arbitrarily as a weapon against any charity that happens to express a view any given decision-maker does not agree with: if *Family First* can be deregistered for engaging in the democratic process, any charity can.

The misery of left-leaning charities in places such as Russia and Hong Kong provides a glimpse of the potential future for LGBTQ+ charities in New Zealand if the test for charitable status is permitted to turn on the subjective whims of officials: all it will take is a different decision-maker, and it won't be long before they are coming after you.

*Charities law frameworks are increasingly being used as a tool for suppression of not-for-profit advocacy around the world.*

In that context, it should be noted that charities law frameworks are increasingly being used as a tool for suppression of not-for-profit advocacy around the world. According to the CIVICUS Monitor, 90 per cent of the world's population is now living in countries rated as obstructed, repressed or closed; even Australia and much of Europe are rated as narrowed.

Many commentators have noted that this century is becoming a contest between liberal democracy and the forces of autocracy. A subjective test that places undue focus on charities' activities in isolation from the purposes in furtherance of which they are carried out is a gift to the forces of authoritarianism.

The best protection for LGBTQ+ charities is an objective test that does not turn on the subjective views of the decision-maker: this requires restoring a focus on purpose; it also requires social

tolerance for views we may not necessarily agree with (the price we pay for living in a liberal democracy).

## Canadian jurisprudence

How did New Zealand charities law stray so far from its purpose-based jurisprudential underpinnings?

One key factor has been the heavy reliance on Canadian case law, which itself has been strongly influenced by an underlying tax expenditure analysis that causes charities to be perceived and regulated as if they some kind of tax loophole or “fiscal cost”.

New Zealand jurisprudence has consistently adopted Canadian case law without analysing the different statutory framework on which it was based, or the fact that that statutory framework has since been changed (see, for example, *Family First* at [103], [157]-[158]).

That framework includes statutory references to “charitable activities” and “political activities” that have no equivalents in New Zealand: such references have caused the distinction between purposes and activities to become conflated in Canadian charities law jurisprudence, a conflation which has in turn been imported into New Zealand without critical examination of the different context in which it arose in Canada, or the fact that Canada has since made legislative change to correct it (see *Family First*, for example, at [16], [24], [29]-[30], [59]-[60], [120], [124]-[126], [130]-[131], [143], [173] and [181] and the discussion in the New Zealand Law Foundation International Research Fellowship *Focus on Purpose* report, April 2022, chapter 4).

The notable exception is the landmark charities-friendly decision in *Canada Without Poverty v Attorney-General of Canada* 2018 ONSC 4147), which the Supreme Court distinguishes on the basis of the different statutory framework.

*The original Charities Bill was almost completely rewritten at Select Committee stage in 2004 and then rushed through under urgency without proper consultation.*

The Supreme Court does not explain why the decision in *Human Life International in Canada Inc v Minister of National Revenue* [1998] 3 FC 202 (FCA) should not be similarly distinguished, even though it was decided on the basis of that same statutory framework, a statutory framework which has since been changed raising the question of whether the decision even represents good law in Canada! These issues are simply not discussed.

A compounding difficulty is that, like their Canadian counterparts, New Zealand charities are heavily disadvantaged by a constrained appeal mechanism that unduly favours the original decision-maker. The impact of this can be seen, for example, in the Supreme Court’s treatment of the Attorney-General’s colour-coded table, produced for the first time at Supreme Court level against the strong objection of *Family First* (see *Family First* at [17], [32]-[38], [104], [138]-[144]).

Cases are won and lost on their facts, as determined by evidence. Whether a purpose operates for the public benefit, whether “self-evidently” or otherwise, should be determined at first instance by an independent judicial adjudicator operating as a trier of fact: that is, on the basis of evidence that has had the opportunity to be thoroughly tested according to established rules of evidence.

Denying charities the ability to do this due to the unintended consequences of the inadvertent removal of charities' access to an oral hearing of evidence during the passage of the original Charities Bill through Parliament is tainting the entire process.

### **Will Charities Act review address the issues?**

Having exhausted the appeals process, the only hope now for a fair go for charities in New Zealand lies with Parliament.

The New Zealand charitable sector has been waiting for a proper post-implementation review of the Charities Act since the original Charities Bill was almost completely rewritten at Select Committee stage in 2004 and then rushed through under urgency without proper consultation.

In the 18 years' since, the Charities Act has been subject to a series of piecemeal amendments that have similarly been rushed through under urgency without proper consultation. The net result is a piece of legislation that is replete with unintended consequences and much in need of review.

It was Labour Party policy for the 2017 general election to prioritise the long-promised first principles review of the Charities Act, including reviewing the definition of charitable purpose and ensuring that charities can engage in advocacy without fear of losing their registered charitable status.

The review that was finally announced in May 2019 falls well short of this commitment: its highly-attenuated terms of reference are exacerbated by the fact that the Department of Internal Affairs was effectively tasked with reviewing itself. To make matters worse, the review was attenuated even further in February 2020 when it was telescoped into just three issues (subsequently extended to five in April 2021), effectively excluding from the scope of the review almost all issues of concern for the charitable sector.

On 2 June 2022, the Minister for the Community and Voluntary Sector announced the proposed changes to the Charities Act resulting from this attenuated review process. Sadly, the proposed changes are unlikely to do anything to benefit New Zealand's communities, despite the rhetoric otherwise, and are more likely to act perversely to preclude the real issues from being addressed.

On the topic of appeals, the Minister proposes that Charities Act appeals will be first heard by the Taxation Review Authority, rather than the High Court, with further appeals to the High Court and Court of Appeal on points of law.

This proposal would consequentially remove charities' ability to access the Supreme Court.

In that context, Better Public Media Trust's appeal to the Court of Appeal on the issue of its eligibility for charitable registration, which appeal was stayed pending the Supreme Court decision in *Family First*, should now be brought forward: if BPM's appeal does not progress to the Supreme Court, and if the Minister's proposal is implemented, the *Family First* decision could be the last time the Supreme Court of New Zealand hears a Charities Act appeal. As a consequence, any opportunity for the Supreme Court to subsequently revisit its decisions in *Greenpeace SC* and *Family First* may be precluded.

A further source of difficulty is that TRA appeals are proposed to be conducted as a "rehearing" only. While much will depend on the detail of this proposal, it potentially means that charities'

current inability to access an oral hearing of evidence - in the writer's view, the key issue that the review of the Charities Act needs to fix - will remain glaringly unaddressed.

Instead, the Minister proposes to expand the "objection" process, including by increasing the number of board members from three to five. The difficulty with this proposal is that an internal objection process will not allow evidence to be tested according to rules of evidence before an independent adjudicator: in other words, the entire appeals process will remain tainted by adverse and untested findings of "fact" made by the original decision-maker.

To make matters worse, the Minister proposes to codify the current process of "charitable purpose reviews". That is a euphemism for a subjective vetting of charities' individual activities, in isolation, without reference to the purpose in furtherance of which they are carried out, following which a charity may be deregistered if the decision-maker happens to disagree with one of their "views".

The Minister also proposes to remove the vast bulk of charities' rights of appeal.

### **Don't get mad, get organised!**

Charities are currently significantly depleted following two years of a pandemic that have only exacerbated existing difficulties, such as increasing costs, increasing demand for services, decreasing numbers of volunteers and a highly constrained "hunger games" funding environment.

*Perhaps the Family First decision might be what it takes for the charitable sector to realise it must speak up for itself or risk being consigned to oblivion.*

In addition, the fact that the Charities Act is administered by a business unit within a government department structurally undermines the importance and independence of charities (as discussed in chapter 7 of the *Focus on Purpose* report).

That such a business unit is housed within the Department of Internal Affairs compounds the difficulties: in addition to its role in administering the Charities Act, the department administers about \$650 million of grants and other funding.

A large number of charities, including umbrella bodies, receive funding from the department: the resulting conflict of interest apparently leaves the charitable sector in New Zealand bereft of anyone to speak up for it - unless toeing the official DIA line.

Despite these difficulties, it has never been more important for the charitable sector to come together and push back. We must protect the independence of charities or we will lose that which makes them distinctive and valuable to begin with. Perhaps the Family First decision might be what it takes for the charitable sector to realise it must speak up for itself or risk being consigned to oblivion.

## Endnotes

- 1 <https://familyfirst.org.nz/wp-content/uploads/2013/06/Charities-Commission-March-2010.pdf>
- 2 <https://familyfirst.org.nz/wp-content/uploads/2013/05/Charities-Commission-Removal.pdf>
- 3 <https://familyfirst.org.nz/wp-content/uploads/2013/05/Charities-Commission-Deregistration-April-2013.pdf>
- 4 <https://www.nzherald.co.nz/nz/50000-sign-against-gay-marriage/QCHPD7KOZOBROQKID5EJST7MQQ/>
- 5 <https://familyfirst.org.nz/wp-content/uploads/2013/05/Scan-of-complaint-to-Charities-Commission.pdf>
- 6 <https://www.charities.govt.nz/assets/Uploads/National-Council-of-Women-of-New-Zealand-Incorporated-15-April-2016.pdf>
- 7 <https://www.rnz.co.nz/news/national/136130/working-for-families-to-be-challenged-at-court-of-appeal>
- 8 <https://www.rnz.co.nz/news/national/136215/forest-and-bird-appeals-mine-decision>
- 9 <https://www.charities.govt.nz/assets/Uploads/Greenpeace-of-New-Zealand-Incorporated-Supreme-Court.pdf>
- 10 <http://familyfirst.org.nz/wp-content/uploads/2022/07/Charities-Commission-November-2014.pdf>
- 11 <https://familyfirst.org.nz/wp-content/uploads/2015/06/aaaa-Decision-of-the-High-Court.pdf>
- 12 <https://familyfirst.org.nz/wp-content/uploads/2017/05/Charities-From-Final-Decision-May-2017.pdf>
- 13 <https://familyfirst.org.nz/wp-content/uploads/2017/09/Charities-From-Deregister-Aug-2017.pdf>
- 14 <https://familyfirst.org.nz/wp-content/uploads/2017/09/Charities-From-Deregister-Aug-2017-Cover-letter.pdf>
- 15 <https://www.stuff.co.nz/national/97276959/family-first-launches-high-court-appeal-against-being-stripped-of-charitable-status>
- 16 <https://familyfirst.org.nz/wp-content/uploads/2018/09/High-Court-2018-Family-First-New-Zealand-v-Charities-Commission-DECISION.pdf>
- 17 <https://forms.justice.govt.nz/search/Documents/pdf/jdo/11/alfresco/service/api/node/content/workspace/SpacesStore/442ae530-492c-4ec6-83cf-020dc3e06568/442ae530-492c-4ec6-83cf-020dc3e06568.pdf>
- 18 <https://www.courtsofnz.govt.nz/cases/attorney-general-v-family-first-new-zealand>
- 19 <https://www.courtsofnz.govt.nz/assets/cases/2022/2022-NZSC-80.pdf>
- 20 <https://www.courtsofnz.govt.nz/assets/cases/2022/MR-2022-NZSC-80.pdf>
- 21 <https://www.charities.govt.nz/assets/Uploads/Greenpeace-of-New-Zealand-Inc-v-Charities-Registration-Board.pdf>
- 22 <https://www.ag.gov.au/sites/default/files/2020-03/religious-freedom-review-expert-panel-report-2018.pdf>



