

WHETHER A WOODWORKING CLUB NEEDS RULES

Mark von Dadelszen, former NAW President, a lawyer, and author of *The Law of Societies*, LexisNexis, 2nd Edition, 2009, Wellington

The nature of a club or society

We are, by nature, social beings, and a club or society provides a structure for people to pursue common interests. In New Zealand, woodworking societies are generally known as clubs or guilds. As this article shows, such clubs really do need clear rules, and may be unincorporated, incorporated and charitable.

Unincorporated societies

Unincorporated clubs or societies are voluntary organisations with or without rules, and where there are rules they may range from the most basic to the very detailed. Unincorporated societies are governed by such rules as they may have and by legal principles developed by the Courts, while societies registered under the Incorporated Societies Act 1908 or under the Charitable Trusts Act 1957 are governed according to those statutes. A century ago the Privy Council described unincorporated clubs as:

... associations of a peculiar nature. They are societies the members of which are perpetually changing. They are not partnerships; they are not associations for gain; and the feature which distinguishes them from other societies is that no member becomes liable to pay to the funds of the society or to any one else any money beyond the subscriptions required by the rules of the club to be paid so long as he remains a member. It is upon this fundamental condition, not usually expressed but understood by everyone, that clubs are formed; and this distinguishing feature has been often judicially recognised.

An unincorporated club or society has inherent limitations:

- The status of its members is usually uncertain, and because the relationship between members of an unincorporated society is frequently ill-defined, there are often doubts as to their rights and obligations (including admission, discipline, expulsions, and resignations),
- It has no legal standing to own property or to borrow (and it will have difficulty providing security to lenders),
- It does not have perpetual existence independent of its members,
- An unincorporated entity cannot sue or be sued in Court in its own name, which in the case of an unincorporated society can be very dangerous for its members as that will leave its members, and especially its committee members, potentially liable personally, jointly and severally, for the society's debts and other liabilities and for any judgment against it, and
- Its dissolution is fraught with difficulties as, unless there are clear rules or unless all members can agree, Court action will be required to resolve who owes what or is entitled to share in assets on distribution.

Because an unincorporated entity does not have to adopt a set of rules to satisfy any statutory requirements, its constitution is usually ill-defined. A range of problems may arise as a result:

- An unincorporated society may have no rules at all, which means it is often difficult to determine the rights and wrongs when disputes arise,
- If the unincorporated society has rules it may be difficult to prove how they were adopted, whether new members have agreed to them, how they are amended, and how binding they are on members, and
- Even if there are rules, they may be incomplete and a Court may simply imply what is or should be obvious to make good the omission.

Is the uncertainty associated with an unincorporated club or society acceptable? **No.**

Incorporated societies

Incorporated clubs or societies are either registered under the Incorporated Societies Act 1908 or under the Charitable Trusts Act 1957, and whether large or small, are governed by a relatively simple statutory regime and obligations under those Acts:

- The Incorporated Societies Act prescribes what must be contained in a society's rules. The Charitable Trusts Act 1957 is not so prescriptive about the rules, but in practice the Registrar will require much the same of a charitable society's rules as is required for a society under the Incorporated Societies Act.
- Incorporated charitable societies can be registered under either the Charitable Trusts Act 1957 or the Incorporated Societies Act 1908, but a charitable society incorporated under the Charitable Trusts Act must exist for charitable purposes. An incorporated charitable society can seek registration with the Charities Commission under the Charities Act 2005, and thus obtain various exemptions in respect of income tax and donations.
- A charity incorporated under the Incorporated Societies Act 1908 or Charitable Trusts Act 1957 and registered with the Charities Commission must file annual financial statements with the Commission, while a society not registered with the Commission and incorporated under the Incorporated Societies Act 1908 must file an annual financial statement with the Registrar of Incorporated Societies. A charitable society or trust registered under the Charitable Trusts Act does not have to file an annual financial statement with the Registrar of Charitable Trusts, nor pay fees to the Registrar.

Charitable societies and trusts

A club or society may be of a charitable nature, as long as it is for a public purpose and benefit and is susceptible to Court control, and has objectives which advance religion, education, the relief of poverty, or other purposes beneficial to the community. Several societies and trusts that promote woodworking or woodturning education and appreciation have been accepted as being charitable by the Registrar of Charitable Trusts and by the Charities Commission. While both types of charitable entity must always act consistently with their charitable objects, they are legally fundamentally different in form:

- A charitable society with members is a democratic institution, and is structured along democratic lines, and is susceptible to democratic processes, and the executive is accountable to the members.
- In contrast with the description of a club or society just given, a charitable trust is a more autocratic institution constituted by a trust document with a Board of trustees, and in law it is not an entity structured along democratic lines (although its constitutional document may provide for democratic processes; for instance, the election of trustees). The trustees are accountable in law to comply with the terms of the trust but are not accountable to any membership in the way that the executive of a society is.

Constitution of a club or society

Clubs or societies are formed by the intending members resolving to associate together. As soon as that decision is made, agreement is required on a set of rules which will include certain essentials:

- The name of the society, which must include “Incorporated” as the last word in the name if the society is incorporated under the Incorporated Societies Act 1908, but need not include “Incorporated” if incorporated under the Charitable Trusts Act 1957,
- The objects for which the society is established,
- How people become members of the society,
- How people cease to be members of the society,
- How the rules of the society may be altered, added to, or rescinded,
- How general meetings of the society are summoned and held, and voting at general meetings,
- How officers of the society are elected,
- The control and use of the common seal of the society,
- How the society will be funded, and how the funds of the society are to be controlled and invested,
- The powers (if any) of the society to borrow money,
- The disposition of the property of the society if it goes into liquidation, and
- Such other matters as the Registrar requires.

Apart from the statutory requirements for constitutions and the optional extras recognised by statute, a well-drafted set of rules will match the particular needs of the entity. The desirable optional extras or more detailed features are likely to include some or all of the following:

- Authorising the recording of additional details about members,
- Providing for the setting of subscriptions and levies, and defining the consequences of the failure of members to pay any amounts due,
- Outlining detailed procedures for dealing with complaints against and discipline of members,
- Covering whether and, if so, how previous members may be readmitted to membership,
- Detailing how elections are to be run,
- Defining the roles of officers and how the entity is to be managed,
- Clarifying the relationship between members’ meetings and the executive,
- Clarifying if officers may receive payment for services and expenditure,
- Establishing the procedure for filling any executive vacancies,
- Defining the role of the chairperson,
- Defining the role of the deputy-chairperson,
- Expanding on the role of the secretary, and
- Expanding on the role of the treasurer.

Apart from providing for usual optional extras, some societies have particular needs which should be reflected in their rules or referred to in by-laws or regulations or policies made by the executive:

- A society may have different classes of membership, and careful thought should be given to how to define any differing membership classifications, and any differences in the rights and obligations of the different membership classes,
- If the entity owns or leases premises, how and on what terms guests and prospective members may be admitted should be covered,
- If the society intends to or may in future hold any form of licence, the power to obtain it can usefully be included in the rules to avoid any argument that seeking or holding such a licence is unlawful, and
- Where the entity runs competitions or games the constitution should spell out how any rules for the competitions are established, and the basis upon which non-members may participate in such competitions.

The rules should be kept as simple as possible, while covering all essentials, and should allow flexibility to allow a society to grow in the way it operates and to avoid the need for constant rule changes.

WHETHER A WOODWORKING CLUB SHOULD INCORPORATE

An unincorporated or incorporated club or society

The first in this series of articles discussed some of the problems associated with unincorporated clubs and societies, and set out the basic requirements for incorporation and a set of club rules.

There are a number of practical benefits making incorporation highly desirable:

- The incorporated entity is recognised in law as a separate legal “person” from its members. From this recognition flow the other consequences and benefits of incorporation.
- An incorporated society has what is known as “perpetual succession,” and thus it continues in existence as long as it complies with the law and is not wound up or otherwise removed from the Register. As stated by the High Court in 1995, “Speaking generally, corporate bodies are persons in law distinct and separate from their members; unincorporate bodies are not.” Thus, if an incorporated society owns property it is owned in the name of the society rather than in the names of either the individual members, or a trustee or trustees for its members, or individual charitable trustees. The need (and cost) to record changes of property ownership as members change is, therefore, avoided.
- An incorporated society executes documents as a separate legal person under common seal and can, subject to its rules, enter into contracts in its own name, buy, sell, own, lease, and rent property, borrow money and give securities, and can also sue and be sued in its own name.
- The members of the incorporated society enjoy “limited liability.” This means that if a society incurs any debts or other legal liability it is sued in its own name, and its members cannot normally be held personally responsible. There are exceptions to this – members may be liable where they do not make it clear that any liability they incur is for their society, and where the liability is incurred in the course of a society activity intended to make a financial gain.
- The mere fact of incorporation also gives a society a quality of permanence that gives confidence to those dealing with it, particularly a charitable society seeking public support, donations, or grants.

As demonstrated by the legislative provision for incorporation, the State also has an interest in regulating the affairs of incorporated societies, as the Incorporated Societies Act 1908 and the Charitable Trusts Act 1957 govern the conduct of non-profit associations. The purposes of these Acts are to establish a state-controlled system of registering and controlling non-profit making associations and providing for the dissolution and winding up of those associations.

While the benefits of incorporation are clear and real, as an incorporated society is a creature of the statute under which it is incorporated, the society only has such powers as may be conferred, expressly or by implication, by that statute or by its constitution.

The members of an incorporated society have no right to claim the assets of the society, other than

on dissolution if the rules provide for distribution to members. If the society is registered under the Charitable Trusts Act the assets cannot under any circumstances be distributed to the society's members, but must be held for charitable purposes, and the Charities Commission is vigilant in ensuring that those entities accepted as charities by the Commission have specific rules prohibiting distribution to members.

Registration procedure for a society

Once the rules have been prepared and adopted, the necessary registration forms can be downloaded from <http://www.societies.govt.nz/cms>. On application for incorporation the Registrar must be sent the following:

- 2 copies (certified by one of the subscribers to the application as a correct copy) of the current Rules, and
- 2 copies of an application for incorporation:
 - For a society under the Incorporated Societies Act, signed by 15 members, including minors (with corporate bodies each being equivalent to three members), or
 - For a society under the Charitable Trusts Act, signed by 5 members, including minors (with no provision that corporate bodies are equivalent to more than one member), with the signature of each member witnessed by someone who is not a member who signs and gives an occupation and address.
- A statutory:
 - Certificate for a society under the Incorporated Societies Act, made by an officer or by a solicitor confirming that a majority of the members of the society consented to the application, and that the rules are the rules of the society, or
 - Declaration for a society under the Charitable Trusts Act, made by one of the subscribing members confirming that the application is authorised by the society, and specifying how it was authorised.
- Notice of registered office.
- Name approval, if obtained in advance.
- For a society under the Incorporated Societies Act, the prescribed fee (which changes from time to time), or for a society under the Charitable Trusts Act, no fee.

Following registration the Registrar issues a certificate of incorporation.

GOOD GOVERNANCE OF A WOODWORKING CLUB

Administration of a club or society

Every club or society is different – in interests, ability of personnel, sophistication, and needs, and woodworking and woodturning clubs and guilds are no different. It is, therefore, impossible to set out guidelines for administration that will suit all organisations. There are, however, some universal principles which may provide useful guidance:

Governance and management

There are clear differences between governance (the setting of policy) and management (the implementation of policy). If one observes that distinction, it may help in deciding whether the members generally should deal with an issue (involving the setting of policy) or whether the committee should deal it (something of a more administrative nature). What may be best for a particular entity will depend on the type of organisation, what it does (and how), the way it has evolved, and the abilities of the people belonging to it.

Too many entities are governed and administered by people who fail to read and understand the entities' constitutional documents, and who are simply incapable of doing a competent job. This is no new phenomenon, but in recent years a number of scandals in the voluntary sector in New Zealand have become very public, most of which can be traced back to poor governance or administration by people without the skills, training, aptitude and/or mental attitude to do a proper job; leading to misappropriation or misuse of (often taxpayer) funds. The New Zealand Rugby League, for instance, has been bedevilled by governance issues over a lengthy period, and a SPARC (Sport & Recreation New Zealand) report, "Rugby League - Contributing to New Zealand's Future" (February 2009), commented that "The success of any organisation is dependent upon strong governance," identifying "absence of basic governance disciplines," stating that "Effective governance ensures the Board of Directors provide leadership, direction and oversight to the Chief Executive and management with respect to defining, resourcing and securing the strategic goals and agreed outcomes which will underpin the success of the sport," emphasising the "need for strong, high integrity, experienced governance with transparent processes and modus operandi," and confirming the need for directors who are "people with strong empathy for the sport code, but with the ability to bring business disciplines to the table."

SPARC has produced a useful and comprehensive guide to effective governance for sports and recreational organisations, but applicable to any society or trust, "Nine Steps to Effective Governance; Building High Performing Organisations," accessible from <http://www.sparc.org.nz/filedownload?id=637d4871-7d11-46b1-92e5-bfe1abcd2416>.

Typically, the larger the membership of an entity or the more complex its activities the less its governance, management and administration will be directly handled by the members at large.

Record-keeping

Apart from any personal records kept by officers, the organisation's secretarial and financial records should always be carefully maintained in chronological order in a permanent filing system. Such records are important in maintaining the continuity of any organisation. In addition, the Registrar of Incorporated Societies (but not of Charitable Trusts) has powers of inspection, but an organisation's auditor may need to inspect these records, and members, too, may be entitled to inspect records.

Recurrent requirements

Every registered society must hold an annual general meeting of members, and at that meeting the society's officers are normally elected and annual reports (including financial statements) are usually presented and adopted. Charitable societies and trusts registered with the Charities commission must file annual returns with the Commission, and societies registered under the Incorporated

Societies Act 1908 (but not under the Charitable Trusts Act 1957) must lodge annual financial statements with the Registrar unless they are charitable and file them with the Commission. Apart from those minimum requirements:

- Legislation such as the Income Tax Act 2007, the Goods and Services Act 1985, and the Sale of Liquor Act 1989 contain requirements for the filing of applications and returns.
- The society's rules may provide for other regular events.

Meetings

Meetings should be run efficiently and in accordance with proper meeting procedure, while avoiding the wasting of time (see *Members' Meetings*, Mark von Dadelszen, LexisNexis, Wellington).

The secrets for success

A club or society will thrive if it meets its members' needs and wants, if it is well-run, and if it complies with its obligations. As most clubs or societies are run by volunteers, much depends on the enthusiasm and ability of the officers and committee.