



McKEAN & PARK LAWYERS

Common Faults in Existing Incorporated Rotary Club Rules

Many Rotary Clubs which have incorporated under the *Associations Incorporation Act* have adopted seriously flawed Rules. Unfortunately legal flaws frequently go undetected until something happens to highlight the flaw by which time it may be too late to correct it. Some common flaws in Rotary Club Rules and the legal problems they can cause are as follows:-

1. Incorporating under the Model Rules

RI provides its own Rules (Constitution and Bylaws) for all Rotary Clubs to use. It is, however, difficult to incorporate using these Rules. Many Clubs therefore resort to incorporating under the Model Rules but in fact use Rotary Rules in subsequently running the Club. This is similar to having two sets of accounts and is just as legally unacceptable. In registering as an incorporated association, a Club creates an artificial but nevertheless, legal 'person' (the incorporated club) and in so doing must disclose to the world the rules under which that 'person' will operate so that anyone dealing with the 'person' knows what to expect. That is why the practice of registering a "dummy" set of Rules is deceptive even though this is unintended.

Consider the result. For example, where the Club proceeds to terminate the membership of a member, which set of Rules does it operate under and what will the result be? The first of these questions is impossible to answer. An equally valid case can be made out to support the proposition that either set of Rules is appropriate. The second question is far easier. Whatever the selection is, a court is almost certain to hold that the other Rules should have been used.

2. Multiple Document Rules

Many other Rotary Clubs incorporate using a 'document' purporting to draw together the Constitution, the Bylaws and a further document that includes provisions required by law that the RI documents don't deal with. It also attempts to resolve which of the documents takes precedence. The result is referred to as "Multiple Document Rules". Consider some of the results that flow from this:-

2.1 Whatever happened to the Bylaws?

The new document has the effect of making all three documents Rules within the meaning of the Act. The question then is does the Club have the power to make further Bylaws that are not Rules? It would seem probably not. The result, in many cases, is that every time the Club wishes to "enact" something that would normally be part of its Bylaws and consequently easy to alter, revoke or extend, it becomes impossible to do so. Everything the Club wishes to enact becomes a Rule and must be dealt with accordingly.

2.2 Altering the Rules.

By making all the Bylaws part of the Rules the Club becomes seriously inconvenienced. For example, if it wants to change its weekly meeting arrangements this requires a special resolution. Twenty one days' notice has to be given and the motion has to be approved by a 75% majority at a general meeting. Even then, the resolution has no legal effect at all until it has been approved by the Registrar. To obtain that approval a form has to be completed and an entirely new set of Rules (including the amendment) prepared and lodged with the Registrar for approval. There is a fee to be paid, as you would expect. The whole process is unlikely to be completed for at least two months which makes it difficult if the intended change in the weekly meeting arrangements are scheduled to come into operation earlier.

2.3 Implied Rules.

Many Rotarians are unaware of the fact that subsection 21 (3) of the Victorian Act says clearly that where the Model Rules contain a provision and the Club Rules contain no provision in that area at all, the provision in the Model Rules is deemed to be included in the Club Rules. This doesn't mean that the Club is unable to enact a provision in that area contrary to the provision of the Model Rules but simply that the Act does not permit Club Rules to have "blank spaces".

Now, consider this provision in the context of Multiple Document Rules. Not only do the three written documents involved in the Multiple Document Rules have to be considered in order of precedence but the application of sub section 21 (3) needs to be considered as part of the equation. The result is that a legal opinion may be necessary in order for the Club to proceed. Alternatively, the Club proceeds at its own risk. This is one of the key reasons why Registries throughout Australia may not favour Multiple Document Rules. They are too difficult to understand and tend to confuse those who have to use them. With this type of document the possibility of the Club making legally unacceptable decisions is far greater than it should be.

2.4 CoL Amendments

Every 3 years RI through its Council on Legislation makes amendments to its Constitution. These amendments have no legal effect for an incorporated Rotary Club until registered with the State/Territory Registry including the lodging of an updated version of the Multiple Document Rules. One problem is the possibility of conflict between a CoL amendment and State/Territory law. Another is that before registering the amendment the Club needs a legal review of its Multiple Document Rules to be certain the amendment doesn't conflict with clauses other than those in the Constitution.

In the case of Clubs using the Model Rules the problem is even greater because the CoL amendments have no application at all to the Model Rules.

2.5 Amending the Rules

One of the major problems with Multiple Document Rules is the contradictions that occur between each of the documents involved and with the rules implied under section 21 (3). Nowhere is this more evident than with the provisions for amending the Rules where the Act, the Constitution and the Bylaws each contain very different provisions despite the fact that all documents are supposedly equally rules of the Incorporated Rotary Club.

3. Cancellation of Registration

All incorporated Rotary Clubs need to be aware that the Registry has power to 'de-register' them. One of the grounds for de-registration is that incorporation was obtained "by mistake or fraud". Clubs that have incorporated using the Model Rules should reflect on this provision very carefully. Another ground occurs when, in the opinion of the Registrar, circumstances exist which, in the public interest, justify the winding up of the incorporated association. It is within the bounds of possibility that such circumstances already exist where CoL amendments to the Rules have consistently not been registered or where the Registrar forms the opinion that a Club's Rules are so badly prepared as to no longer, in the public interest, justify continuation of registration.

4. Rotary International

Finally it must be remembered that RI is a worldwide organisation that needs to maintain, as far as possible, the same rules in every country in which it operates. The changes required for incorporation need to be minimal and acceptable to RI in every case.

Unfortunately, those are but a few of the flaws McKean & Park Lawyers have been confronted with. That doesn't mean that all Club Rules are flawed – we know of some that are not. It appears, however, that the possibility of legal flaws is far higher than might have been anticipated.

Ross Blair

P.S. This paper was prepared in respect of the Victorian Associations Incorporations Act and some comments may not apply in respect of all other state/territory legislation.