



Steve 3:20

Paul Horvath, welcome to Sports Community podcast.

Paul Horvath 3:25

Thanks very much Steve.

Steve 3:27

As I said in the introduction, we're really keen in this year's series to really explore the legal, the compliance issues that volunteers are faced with and often don't know until they kind of hit upon them, and when we were thinking about, who should we get to become a regular guest on the sports community podcast, there was really only one choice and that was the person that has the website, sportslawyer.com.au and that's your good self Paul, so thanks for joining us, and thanks for joining us for the year. I guess before we get stuck into the roles and responsibilities of committees. Do you want to just give us a little bit of your background in sports and sports law and sports administration?

Paul Horvath 4:11

Yeah sure. Thanks for the opportunity and nice to be speaking to your audience members, and I truly hope that I can bring some value to your organisation. I guess I've been involved in sports law for about 12 to 15 years now. I've completed a master's degree in sports law at the University of Melbourne. I've been involved in all sorts of cases from professional sports, anti-doping cases. The Essendon supplements case, I represented a few people in that case, including Bomber Thompson, lots and lots of amateur sports cases, which includes disciplinary hearings, which includes drafting policies for those organisations, whether it's member protection policies, whether it's codes of conduct, whether it's constitutions, and just about every sports organisation has to have a constitution. And then giving advice and seminars to organisations on good governance and things of that nature. So I've both worked in many cases in a variety of sports, working with a team, I think you have some sympathy with Richmond football club. And also, other sports that are at the amateur level, the non-professional and so on, on a variety of issues.

Steve 5:50

Yeah, well, that just makes you the perfect person to be the guest, or to be a regular on the sports community podcast. And while today's session Paul, we're going to start at the start a little bit and explore roles and responsibilities of committee members and self-induction process and that sort of information that often people feel is dry and a little bit boring it's so vitally important. But as we progress through the year, I'm really excited that we'll get to explore those topics that you talked about. Selection issues, disciplinary issues coming at it from a committee level that the traveling teams and that brings into the discussion end of season trips and what's the committee's role and responsibility there, child safety,

Steve 6:43

There's a whole range of other areas that we can really get into, so I'm really excited for the year ahead. Just as you're talking, you were obviously alluding to the work you did with the Richmond Football Club and it's back when we last did the podcasts was 2016, late 2016 and Richmond wasn't so great but in the time that we've been off the air Richmond have won a couple of flags which has been really exciting for me but I'll get back on to script.

Paul Horvath 7:18

Well, I hope that's not a sign moving forward, otherwise we may need to go off air again.

Steve 7:24

We may need to stop! Well we better get back on to script. Script, that would imply that this podcast has a script, Paul so we better not say that. The one area that I did think it was appropriate to really backtrack and look at the roles and responsibilities of committee members, particular at community sporting clubs, community associations, and then going into their peak bodies etc. But I mean, look at the typical scenario. What we say all the time is that the people they go to their AGM they stand and they become elected to their committees, and they have very little idea about the actual role or responsibility. The other characteristic that we see all the time in clubs is that there's very few clubs that do a handover of information from one committee to the next. I wanted to tackle those two areas. So just at a high level at the moment, what were the key responsibilities of a committee member of a I guess an incorporated association or a sports club?

Paul Horvath 8:38

Yeah. Well, I guess, Steve, the first thing I would say is that what is crucial for a committee or board member to remember is that make sure that wherever possible, you are part of an incorporated association. So that you're Bacchus Marsh Football Club Incorporated, because it's a real red flag for us lawyers, if it's an unincorporated association, because then the committee members are personally liable for the debts of the organisation and anything that might go wrong.

Steve 9:19

It's a great place to wipe it up. Because a lot of clubs actually aren't incorporated. So that means that really, as you say, it's not just the debts, potentially can open up to negligence and liability and all sorts of other issues, isn't it?

Paul Horvath 9:37

One hundred per cent. So an example of something that I was going to take us to later, but I'm happy to go to now is the question of personal injuries liability. So, for example, two things that having an incorporated association automatically gives you is number one, and I suppose it's fair, from my point of view to say that you're going to have some sort of consistency and minimum standards in your constitution because it has to be approved by

Paul Horvath 10:14

Consumer Affairs Victoria, and there's a tick-list of minimum things that have to go, so it's gonna be a reasonable constitution to start with, okay. And there was a major review of the Associations Incorporations Reform Act in 2012. So there's a new sort of template constitution that clubs need to follow. So that's a pretty good guideline document. So you first of all, you get a reasonable constitution if you're approved by Consumer Affairs Victoria. Second of all, is that you get a number of protections. So first of all, all committee members or board members are not going to be personally liable for their acts and their conduct in representing and acting on behalf of the incorporated association. So no matter what decisions they take as board members, they have protection from being personally legally liable and the legal liability falls onto the incorporated association. And so I think, you know, we both know that a lot of incorporated associations don't have significant funds. And there's a range of them. But you know, if your assets might be 10, 20, 50 grand, 100 grand, that is the extent of your legal liability. So that's number one. Number two, there's what's called volunteer immunity under the wrongs act. And the wrongs act deals with things where people get injured, and personal injuries and so on. And so people who are volunteers at incorporated clubs, so for example, you're a coach, you're a team manager, etc, and someone gets injured if a player gets injured at training. Again, you have legal protection from being sued for that injury. Does that make sense?

Steve 12:21

Yeah. It does absolutely

Paul Horvath 12:22

And the only exceptions to that are if, for example, you come to training and you're drunk or something like that, then you lose that immunity from prosecution. Or if you're in the course of committing a crime, like breaking into the club rooms or something like that and you cause injury to someone else, then again, you wouldn't be covered by that immunity from being sued. So there's a couple of quick points as to why there is very important benefits for in having your club or association incorporated.

Steve 13:03

So what would you say to volunteers that have jumped onto the committee to find that their club is not incorporated? Is it to really start the process to consider the process or how do they protect themselves if they find themselves in that, because many clubs actually aren't incorporated.

Paul Horvath 13:25

Well, I guess you just got to consider your risk. You can suggest to other club members that the organisation become incorporated. Yeah. If they're against that, you then need to have a hard think about whether you're prepared to expose yourself to that legal risk. And then it's also a question of whether you can obtain insurance, such as director and officer

Paul Horvath 13:55

insurance, which might provide protection to you from anything that might happen. So there's some complex insurance questions that you'd need to speak to an insurance advisor. But again, that's one of the very important starting points. One, from my point of view, is that you are incorporated wherever possible and two is that you have insurance okay? Even if you're an unincorporated association, but otherwise, you've got to understand that you could potentially be personally liable if something goes wrong.

Steve 14:33

Yeah. All right. So we're on the committee and we've ticked that box one way or another. So then what are the other responsibilities that I as a committee member have to either, well as a committee member to the club or to legislation or whatever else, I might be responsible to?

Paul Horvath 14:51

Look, in a practical sense, I guess, the main one that comes to me, and I'll run through a few dot points. And you can tell me if you want to expand on them at all in a moment. Yeah. But really, your main one is financial, management and security of the organisation. And by that, I mean that as a committee member, you need to say satisfy yourself that you're asking questions as to what's happening with the money that's going through the association's or club's bank account. And that any reports as to the state of finances of the organisation accurate and that no misappropriation is occurring, etc, etc. Because that is probably the greatest area of exposure for a potential or sorry, rather of a committee member is that if something goes financially wrong, and let's say on a company that's providing, whether it's uniforms to the organisation and I'm owed \$20,000 or something, and then all of a sudden, someone's been pinching all of the money from the organisation, and that happened that a metropolitan football competition in Victoria about nine or 10 years ago. And the organisation went belly up. And so they had to start the organisation, again from scratch. But what the law says is that if directors or committee members have been asleep on the job or haven't been properly inspecting the accounts, there's a real risk that they could be personally liable. So you've just got to ask appropriate questions and satisfy yourself that the money situation's under control. So ask proper questions when you have committee meetings and so on. And it's not enough just to say well is an accounting person on the board or committee, and I let them sort of make sure that they're comfortable with everything that's going on. And whilst that's an important step, I think as an individual committee member, you still need to be comfortable overall, that the books are in order.

Steve 17:17

Yeah, and it's one of the sad realisations over the last seven years with sports community is the level of theft or fraud that happens at community sports club level, because community sports is really built off a platform of trust. And in our financial management, training

Steve 17:41

programs and modules and workshops, we always make the statement. If you don't have strong financial reporting processes to the committee, it's not a matter of if you will be a subject to fraud or theft, it's a matter of when. And inevitably, as soon as we say that someone will put their hand up and tell a story every single session.

Paul Horvath 18:04

Can I just add to that Steve? There are levels of complexity of reporting back into Consumer Affairs Victoria for incorporated associations, depending on whether you've got \$100,000 turn-over, 100 to 250, over 250 to a million and over a million dollars. There's different levels of reporting, and some might require having the books of account audited each year. And so obviously, where you've got all external auditors who are checking the books, then you know, that's a pretty strong indicator that, you know, a close eye is being kept on the books of the organisation. So, you know, it's important that there be trust in whoever's providing the books of account and annual audit figures for the organisation.

Steve 18:54

Absolutely. And the different states and territories around the country have all got their different responsibilities relating to review an audit of their accounts. What, what you said - If you're a committee member then the other thing that is really staggering from our perspective is such the diversity of information that's being provided to committees by treasures. From zero, absolutely nothing, to the bank statements to the bank balance all the way through to full financial accounts, cash flow projections, budgets, etc. What as a minimum if I'm coming on to the committee, what is a minimum I'd be expecting, information that you'd be expecting for me to receive. To ensure that I'm fully informed about the financial position of the club?

Paul Horvath 19:52

Well, I guess I recommend that organisations provide and new committee members asked for what amounts to an induction pack. So that could include a copy of the constitution, a copy of any key policies. For example, there might be some sort of a code of conduct for the committee. And that's what I've had on a recent committee I've joined. You might ask for a copy of the annual books of account or audit from the previous financial year, so you've got an idea as to where the finances sit. And you might also ask for a copy of the director insurance policy. You know, other little things might be a copy of the member protection policy if there is one. And then if there's affiliation agreements with a parent, sporting body, like say, if you're a football club in a competition, or a league, you might be affiliated to AFL Victoria or something like that, or Football Federation Victoria in the case of soccer, and so, you know, you might have a look at the affiliation agreement, that's probably not as crucial, but they're the sorts of documents you could ask for, to get an idea as to what are the key rules that sit around the work that you're going to do as a committee member

Paul Horvath 21:21

and at its basic level the constitution is what sets out the power for board members to do what they do.

Steve 21:31

What's the role of the club rules or club constitution depending on which state or territory around the country we were in? What is the role because lots of clubs that we work with don't even know where their constitutional rules are. So what's the effect of that?

Paul Horvath 21:47

Well, the constitution is what sets up how you become an organisation and what you are allowed to do. So every single decision that you make, and everything that you're allowed to do comes from its core from the constitution. So it's crucial that you know that. Now, if you don't have your constitution, you can go to Consumer Affairs Victoria do a search there. I think you can do it online for about \$50 or \$60 from memory and they can email you out a copy of the current constitution. Another little pointer is that organisations who have made changes to their constitution over time may have forgotten to register that change that might have been voted in at an AGM, forgotten to register those changes with Consumer Affairs Victoria. And if they weren't registered within a certain period of time after they were approved by the AGM, then they don't apply. They are not valid. So the only valid and current version of the constitution that's enforceable is whatever has been most recently lodged with Consumer Affairs Victoria.

Steve 22:58

Yeah, and that's if you're a Victorian club, if you're from elsewhere in the country, then it's the relevant state body that oversees the incorporated association in that state or territory, which is, it's frustrating for us because it's a state based legislation and oversight, which makes it challenging because they're all different rules in different regions.

Paul Horvath 23:18

Yes, sorry. Forgive me for talking Victoria based that's where I am based. I've got a working knowledge of the rules in other states as well, and I'll try and apply interstate rules wherever I can.

Steve 23:33

Well, and it's interesting that with Victoria doing their revision in 2012, of the incorporated association act, lots of states and territories have followed around the country and pretty much adopted a lot of the philosophies in the Victorian one, which does make it a little bit simpler. So if we tick the financial management box, what's the next one that you've got on your responsibilities that the committee members got to be aware of?

Paul Horvath 24:01

I guess we've touched upon personal injury. And then the next one that I've got is child safety. So just having an acute awareness of child safety issues, so if you've got children in and around your club, which I expect most of the clubs we're talking to do, there needs to be a child safety policy because certainly in Victoria, there's been a royal commission recently. And we've seen that at the national level into child sexual abuse. And so the laws have tightened up significantly in the last couple years. So jail will apply to people who have a knowledge of, or turn a blind eye to inappropriate, particularly sexual misconduct that occurs to people within clubs, and you can be jailed for that sort of thing. And the laws have also tightened up to increase the financial penalties so that organisations can more easily be sued. And we've seen religious institutions that have been the subject of very significant financial and legal claims over the last 10, 20 years. And the laws are just tightening up all the time to make sure that people can avoid legal responsibility if they're involved in those matters. So you just have to be very careful if you think something's going on, you must report it up the line both internally within the club. There's also state bodies in Victoria, there's the commission for children and young persons, which takes reports about these types of matters. They've got codes of conduct, and so on, and clubs must report certain types of sexual misconduct to them within a very short period of becoming aware of that type of conduct, and these potential consequences if they don't. And there's also a National Office of Child Safety where organisations have to also report certain acts of sexual misconduct to and then also, of course, in parallel, if you've got suspicions that someone's been sexually abused, you can also potentially get into trouble for failing to notify the Victoria police or the police in your state of a suspected sexual assault against a child.

Steve 26:19

Yeah, I think this is a topic that we'll spend a full episode on coming up delving into that. But for the sake of getting people up and running on these topics very quickly, just about all peak sporting bodies now also have incorporated into their member protection, improvements and changes relating to child safety. So again, when you're inducting yourself coming onto the committee that's also a policy that you really need to understand, even if you're just a senior club only, because you may or may not have children around so behavior is a really important part whether it's parental behavior, player behavior, Coach behavior, spectator behavior. Again, that's one of the big areas of responsibilities, isn't it?

Paul Horvath 27:10

Absolutely. And just before are you thinking about moving towards, towards the parents, tried to behavior and so on Steve? If I can just briefly wrap up on the on the committee member duty, it's worth making the point that one of the important background things that committees and clubs can have or should have is some sort of a future plan. And I call that a strategic plan to say, what we're going to do what we plan to do over the next two or three years, it's good to think about those things, because it makes it much easier to put those into effect. And then to transfer those over as new people come onto the board.

Paul Horvath 27:48

And some people go, off and so on, it just helps you to have a direction that you're going in. You've got to make sure you comply with all the laws and the ones we've all spoken about, but there's sometimes employment discrimination laws etc. And just make sure that your constitution is up to date and registered and so on. And then directors have a range of duties which is to act in accordance with the constitution and avoid conflicts of interest and so on. So, and acting honestly and in good faith that is also a legal requirement, but also common-sense requirement, so there is a degree of common sense, but that's all I really wanted to say about committee's people's duties.

Steve 28:29

One area that creates a lot of confusion is that conflict of interest. So does conflict of interest relate purely to if I am a committee member and I have influence on a decision. Does it relate to solely financial decisions? Or could it be non-financial decisions as well? For example, one interesting scenario came up in a racing environment where the committee members were getting access to the track and where the normal members of the club weren't getting access to the track and so that was deemed to be a conflict of interest in one regard, or is conflict just linked to money? Or is it just a gray area?

Paul Horvath 29:32

Yeah, look, it's a complicated area, but certainly financial is one of the main one. Another one might be for example, selection. So team selection. You know, you'd have a conflict if your child's one of the people vying for selection and that, you know, it can come up regularly. Another obvious one is where there's a disciplinary hearing that's coming up and you know, or your club played against the team that's being disciplined in the relevant game. And so, you know, you've got an interest in getting into the finals over them. So they're the sorts of obvious conflicts of interest that come up from time to time.

Steve 30:11

Paul, I'm really conscious of your time but the two areas that I do just want to touch on in preparation or in prelude to more in-depth episodes coming up during the year, one is obviously behavior of different stakeholders within the club. And the other one that's coming up all the time is social media, what's the community's responsibility inside and outside the club's social media space. So, again, it's more teasers for the next episodes coming up in the future, because these are complex issues. But these are issues we are coming across all the time. Start with behavior. And I guess if we finish on social media and we'll go from there.

Paul Horvath 31:05

Well, I'll cover both topics on the one sort of dot point in this way, social media and codes of behavior can both be found on the [Play by the Rules](#) website. So there are free policies available there. And that's a good place to start in terms of having a, for example, parents

Paul Horvath 31:22

code of behavior, or in terms of having a social media policy. You need that sort of policy and you need it to be probably put on your website of your club or organisation, to make sure people are aware of it, and certainly any members of the club need to sign in their membership agreement, that they agree to abide by and comply with all rules, policies, and the constitution of the organisation. And especially things like social media policies, and where possible, parents could have behaviors, it's ideal that people have to sign a copy of the policy to say that they've read it because then they can't claim if you go to discipline them at a hearing. I didn't know about the policy and I haven't read it. So wherever possible, copies of the documents are provided to people, and they sign it. And you can also run seminars at which you distribute those policies, you might write down who's got the policy, and then seek that people provide them back to you or they sign something to say, yes, I've received and I've read the policy, and then they can be held to account and disciplined, including suspension, if the situation arises.

Steve 32:40

And I guess that's one of the things that the people coming onto the committee just don't realise is that they actually have a responsibility for ensuring safe behavior of everyone involved in the club. Whether that's physical or non-physical kind of behavior.

Paul Horvath 33:01

Yeah, absolutely. And the sorts of options that can be available vary depending on the type of sport and things like that. So for example, I've had cases in tennis where, because a lot of tennis might be played at venues which are open to the public. The Tennis Association say we've got to punish the child for the parent's behavior. So where the parents behave badly and they're abusing the opposition competitor, the child unfortunately ends up wearing the suspension for the parent's bad behavior. And I've also seen that happen in other sports, such as go-karting and so on. So that's one way of enforcing it. And another way is that if the sport or competition controls the access to the venue, and this can apply to a club as well, the way you can impose the penalty on the parent if they refuse to sign a code of conduct, or refuse to attend a tribunal is that you ban them from entering the particular sports arena, for example, that might be a basketball ground, or controlled netball courts or a velodrome or something like that, where you can control who comes in and out. And that's one way of enforcing discipline where you haven't got that code of conduct, where the person agrees to any penalties that might be imposed against them.

Steve 34:28

Yeah, absolutely. And I think, at the risk of probably, this session, and I didn't really mean it to be, but it's kind of turned into that negative connotation session, or the negative consequences of what can go wrong. And I think the best protection Paul, and correct me if I'm wrong, if I'm a community member, or a new committee member coming in is certainly just making sure you're informed about, just picking up on your points before, the club

Steve 35:00

rules, the constitution, the policies, the procedures, informing yourself about what the processes are, and then ensuring that the club is operated in those processes, according to those policies, procedures and rules, but I think it's important to finish on the fact that there's lots of support out there, so particularly through the peak bodies, PlaybytheRules.net.au, which you've mentioned is a fantastic website, which really covers all those behavioral topics. And we'll look to get Peter Downs from [Play by the Rules](#) onto the podcast very soon as well. So there's lots and lots of support and lots and lots of information. There's also a huge amount of information about roles and responsibilities on the sports community website. So it's, I think it's important for to just let people know that it's not rocket science running your club and I think you use the terminology common sense.

Paul Horvath 36:00

Yeah, absolutely.

Steve 36:01

And sticking to that and what's right and you can't go too far wrong from there.

Paul Horvath 36:07

And listen to your gut feel if you've got a concern that something doesn't feel quite right, ask questions and challenge and talk to someone about it because that's the best way to make sure, yep, I've raised it and, you know, sort of tried to sort something out. But I totally agree with you that there's lots of resources out there. So go to your state association who might have resources for the clubs and policies such as the member protection policy. And what I'll say as well is I strongly encourage organisations to have education seminars, have club education seminars for parents, players, club officials, etc, where you have discussions and the importance of those is it sets the positive culture and tone of the organisation. And it motivates people to stick to those standards. And if anyone steps outside those standards, then people are more inclined to call them out, and then you can make your club as positive and productive as you want it to be.

Steve 37:07

I think that's a brilliant way to finish on. And it's a challenge to clubs define the behaviors you want. Don't just define the behaviors you don't want. And I think that's just a fantastic way of finishing Paul. We had a list of questions at the start that I think we've kind of gone through about a third of them. And I've just written down 20 questions as we've been going and I guess that highlights why we were so keen to over the year, and have you come back and we delve into some of these, these areas that are becoming more and more relevant to volunteers. So Paul, thank you so much for being a part of this Sports Community Podcast.

Paul Horvath 37:54

It's a pleasure Steve.

Steve 37:58

And we'll make sure everybody has in the show notes has got all your contact details Paul, so your website SportsLawyer.com.au, your [Twitter](#), [Facebook](#) and [LinkedIn](#) profile. So if they want to see the great information that you're putting out, the resources that you're putting out, they can do that as well. And we'll feature them regularly in the [Sports Community Newsletter](#) as well. So, Paul, until next time, thank you very much.

Paul Horvath 38:21

Thanks, Steve.

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