

Your dog and the law



ILLUSTRATION: STEPHEN MACEACHERN

Should your club incorporate?

by Gail H. Forsythe, LL.M.

Breed or all-breed, too few bother — yet in a crisis, members could be on the hook for major debts.

You are a member of the Fluffy Dog Club. The club is known for its large and prestigious shows and trials. Although the club is suffering financially, it is determined to host this year's show. The club rents a large outdoor show site. It cuts back its expenses by reducing the number of rented shade tents and hired parking personnel. The club is hoping to draw a large entry because of the foreign judges on the panel; it is also counting on a significant profit from the gate.

On the day of the show, it is unusually hot and humid. Unexpected problems

develop. A foreign judge collapses in the ring. Due to the shortage of tents, and the large entry, the judge was required to use a ring without shade. The unconscious judge is taken by ambulance from the show site. The ambulance attendants are delayed in arriving at ringside because of congestion in the parking lot. The judge is hospitalized for several days.

In another ring, an exhibitor trips over a tent rope while gaiting a dog. The exhibitor falls to the ground. During the fall, her head grazes the grooming table in the ring. Before anyone can

assist, the exhibitor stands up. She appears dazed, shaken and bruised. Despite the judge's request that the exhibitor leave the ring and seek medical attention, the woman puts the dog on the grooming table and insists: "I paid my entry. Here's my dog. Go ahead, I'm fine." The judge obliges.

Back near the ring without shade, a Bulldog collapses in the heat. There are no buckets filled with water or ice at ringside. The Bulldog dies.

Lastly, the weather takes a sudden turn for the worse. Severe thunderstorms strike; everyone leaves in a panic

and the grounds are flooded. The show is cancelled and is an economic disaster. After the show, the club receives:

- A letter from a foreign attorney demanding the fee payable to the foreign judge, plus the judge's medical, ambulance and extra travel costs. Total claimed: \$5,000 (the judge had no medical or travel insurance);
- A Statement of Claim filed by an attorney retained by the exhibitor who tripped. It claims that the exhibitor is now unemployable due to a severe head injury sustained at the show. Damages claimed: over \$500,000; and
- A Small Claims Summons filed by the owner of the dead Bulldog: \$5,000. Total exposure: \$510,000! If these claims are upheld, each member could be personally liable for all, or part, of the amount claimed plus legal costs because the club is not incorporated! If the club is insured against such losses, the policy deductible or application-of-exclusion clauses may still result in a financial hardship for the members.

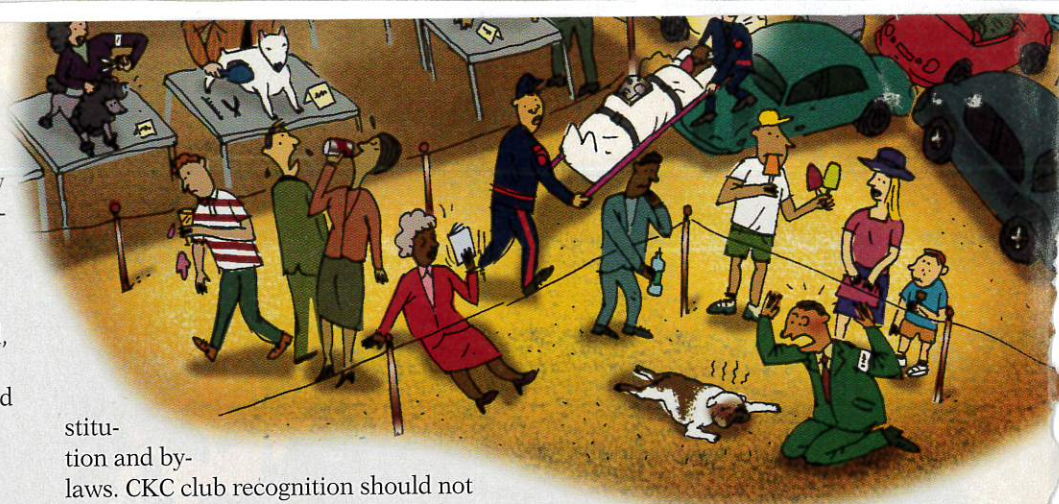
If the club was incorporated, the provincial or federal equivalent of the B.C. Society's Act would apply to protect each member: "A member of a society is not, in the member's individual capacity, liable for a debt or liability of the society." (*Societies Act*, RSBC 1996, c.433, s.5)

People recognize that limited liability is one of the benefits of incorporating a company. The same principle applies to non-profit clubs. Even so, most dog clubs fail to incorporate because members perceive that step as too complex or too costly.

Who can incorporate and what does it take?

A society may be incorporated for any "lawful purpose." Section 3(1) of the B.C. statute provides that "5 or more persons may apply for incorporation by sending all of the following to the Registrar:

- a copy of the club constitution and bylaws;
 - a list of persons who will be the first directors, including their names and addresses;
 - the address of the proposed society; and
 - the prescribed fee." [usually nominal compared to incorporating a business]
- Most clubs operate pursuant to a con-



stitution and by-laws. CKC club recognition should not be confused with incorporating under provincial law or, if your club operates on a national basis, federal law. The incorporation formalities, yearly returns and cost are nominal when compared to the Fluffy Dog Club claims!

Which claims are likely to be successful?

Let's look at the claims of the foreign judge and the Bulldog owner. A court may conclude that the club was negligent for failing to provide adequate shade and water for the judge and the Bulldog. Further, the club has a duty to ensure that people and dogs can obtain medical attention quickly. If the judge's (and the Bulldog's) collapse was exacerbated because of the club's failure to address these reasonably foreseeable needs, then the club is likely to be held liable. If the judge (or Bulldog owner) failed to protect their person (or their Bulldog), the judge (or Bulldog owner) may be held contributorily negligent to some degree. If so, the club's obligation would be reduced accordingly.

The exhibitor's claim for personal injury leads us to the topic of releases. Releases are part of the "contract" that is created when you enter a dog show. A release is an attempt to limit claims by injured persons. If a release is clearly worded and a competitor has adequate opportunity to consider its impact before signing, and signing is a normal part of the conditions that an exhibitor expects for an event, then a release will usually be upheld. How carefully have you read a premium list lately for a CKC-approved show? Canadian premium lists contain a form of release.

In the case of *Karroll v Silver Star Mountain Resorts* (1988) the B.C. Supreme Court noted that ski-resort operators have been quite successful in limiting their liability by including a release in the body of ski-resort day

tickets or season-pass applications. In *Karroll*, the court concluded that the release on the season's pass application was effective because the wording suggested that it was an important legal document; that the person signing "waives certain legal rights, including the right to sue." If a person signs such a release, it will govern even if the person did not read it – unless one of three exceptions apply: 1) the person's act was not their own – i.e., signed under duress; 2) the agreement is misrepresented or induced by fraud; or 3) the person who will benefit from the release knew the person signing was mistaken as to its purpose.

The 1999 B.C. Court of Appeal case of *Kettunen v Sicamous Fireman's Club* illustrates that if a person is required to quickly sign a release as a condition of entry to show grounds, and that person does not have a reasonable opportunity to read, understand or be informed about the release, then it will not be binding.

The outcome of the injured exhibitor's case will turn on the wording of the release and the circumstances around its signing. There is a good chance the club's defence will be successful but that the unincorporated club (and its members) will incur significant legal costs along the way.

If your club is going to host events, take two protective measures: 1) incorporate; and 2) include a properly worded release in your event documents.

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