



# **Stripe**

**Clubs: Corporate vs. Unincorporated**

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**Rugby Canada Development Department**



## **Clubs: Corporate vs. Unincorporated**

Rugby clubs are not-for-profit organisations. There is no legal requirement for the legal format they must take. But there are essentially two options:

Incorporation: A club can be incorporated. In some provinces the organisation is called a society (for example, BC, Alberta, Nova Scotia); in others it is called a not-for-profit corporation (for example, Ontario). Although some of the details of the governing law may vary, societies and not-for-profit corporations are essentially the same, regardless of the nomenclature.

In each case, an incorporated club is a legal entity separate from its members. Its name is formally recognised. It has a board of directors, elected by its members, and it is governed by bylaws or similar document. It must file a tax return (even though, if operated properly, it is a tax-exempt entity). It enters into contracts in its own name, and the bylaws generally regulate who is allowed to sign documents and commit the club to legal obligations on its behalf.

Unincorporated Association: If a group of people come together to form a club without creating a society or not-for-profit corporation, they have formed what's called an unincorporated association.

Such a group is merely a group of individuals linked by a common goal, doing 'business' under the club name. The group has no separate legal existence; it exists through the individual members. Often the arrangement is governed by a membership agreement or similar document and the activities are run by one or more committees of members. The arrangement is simpler and involves fewer formalities and legal and tax compliance. Technically, any contract or other document has to be signed by every member (though this requirement is frequently overlooked, and outsiders rely on some loose concept of ostensible authority to bind the club). Club assets are technically co-owned by every person who is a member from time to time – so the ownership changes every time a member dies or otherwise leaves, and every time a new member is admitted.



The key advantage of incorporation stems from the separate legal entity status explained above. To quote a couple of provisions of the BC *Societies Act*:

- A member of a society is not, in that capacity, liable for a debt or other liability of the society.
- A society has the capacity, rights, powers and privileges of an individual of full capacity.

If a club is sued, it is the society or not-for-profit corporation that is sued; if the lawsuit is successful, the litigant has recourse against the assets of the society/not-for-profit corporation. The members of the society are not exposed and cannot be held liable on behalf of the club. By contrast, if an unincorporated association is sued, each individual member is the object of the lawsuit and his or her assets are exposed if the lawsuit is successful.

There are other implications – including the club's ability to be the registered owner of land, the optics to sponsors of dealing with a more formal structure, added ease in opening and maintaining bank accounts.

It is important to note that the fact that another organisation's insurance may cover a claim against a club and protect the members from financial exposure (such as Rugby Canada because the club's members are registered participants) does not change the fact that the club's members are actually the ones who are liable. If a claim is something that is not covered by the insurance (for example, a claim by a supplier for breach of contract or by an employee for wrongful dismissal), or for some reason the insurance company refuses to provide coverage, then it will be the individual members who must pay up.