

Memo

To: Josie Welch

From: Annemarie Mora

Date: 24 April 2024

Client: Society for Creative Anachronism (New Zealand)

Subject: Incorporated Society Query

1. Thank you for contacting us with your query regarding the likely status of people in various positions who play a role in the Society for Creative Anachronism (New Zealand) (SCANZ), which is an incorporated society. Thank you also for taking the time to speak with us on 23 April to clarify what prompted your query.
2. We have looked into this matter and provide the following information.
3. On the face of it, it appears less likely that the positions of King and Queen would be deemed officers compared to Territorial Baronages and to a lesser degree the Branch President and Treasurers, which might count as ‘officers’ per [section 5\(1\)\(a\)\(i\) Incorporated Societies Act 2022](#) (the Act):

“...a natural person occupying a position in the society that allows the person to exercise *significant* influence over the management or administration of the society.”
4. New Zealand legislation is increasing the obligations that apply to people in charitable governance roles. The obligations are becoming more closely aligned to the governance obligations that apply to company directors.
5. The definition of ‘officer’ in the Act is now similar to the definition of a ‘director’ in the Companies Act (CA). Under the CA the term director encompasses people in accordance with whose directions or instructions a person on the Board may be required or is accustomed to act (section 126(1)).
6. The aim of the CA definition is to ensure that anyone who behaves in a governance-like-manner ([shadow or de-facto directors, or others](#)) is obliged to follow the same rules as formally elected directors. If something goes wrong and a non-elected ‘director’ was instrumental, that ‘director’ might be open to prosecution, despite not being formally elected. A key point is whether the person in question has genuine influence over the actual management or administration decisions that are being made by the statutory officers of the Society.
7. Regarding your society, we note that the King and Queen roles are short-term roles of six months and that the position holders may not be based in New Zealand and are not formally part of the committee. They have the power to make and amend group rules, but may not make rules contrary to the law. So unless the Crown roles exerted significant influence over the actual management or administration decisions that are made by the statutory officers, it is unlikely they would be regarded as officers.

8. Regarding the positions of Territorial Baronages, we note these are longer-term roles (3 to 5 years) and that the nature of their roles means they can exert significant influence in group dynamics, although this largely depends on the individual in the role. Accordingly, we believe there is more potential for those in these roles to be regarded as officers.
9. We also note that the Branch President and Treasurer positions are typically held for two years and have a certain degree of influence although they report to their Kingdom-level superiors and SCANZ treasurer. We suggest people in these roles may also be regarded as officers due to the length of their services and degree of influence.
10. However, the key consideration as to whether the positions might be considered 'officers' relates to the amount of influence they have, per paragraph 3. To our knowledge the concept of 'significance' as it applies to incorporated societies has not been tested in the courts yet. However, we can extrapolate what might be considered 'significant' based on case law that considered whether certain people were influential but not elected directors of companies. For each of the positions you have described, the position holders might be regarded as having 'significant influence' if they:
 - (a) Influenced the officers or members significantly in how to vote on important society decisions.
 - (b) Influenced the officers or members to deviate from the society's stated purposes, as this would be a significant breach of the society's rules.
 - (c) Permitted members to benefit financially from the society, also a significant breach of the society's rules.
 - (d) Or someone in a close relationship to them benefited from decision making, again a significant breach of the rules.
 - (e) Dominated and/or were overtly influential in communication out to members, if this resulted in major decisions being made or breaches of the society rules.
 - (f) Were given special rights despite not being elected officers.
11. A key implication of this wider definition of 'officer' is that people who operate in an officer-like-manner and who have significant influence, irrespective of where they reside or what their official title is, may be called to account as an officer, in the event that something goes wrong.
12. In the event that an internal dispute arose about the status of someone and whether or not they would be an officer, we can also advise that in our experience the Incorporated Societies Registrar typically expects societies to manage their own governance issues and are reluctant to intervene unless the matter relates to offences or other matters it has specific oversight of in the Act. The Act, which was amended in 2022, now requires society's constitutions to include disputes resolution procedures. If your constitution does not have a procedure for managing disputes, you can use the one in [Schedule 2 of the Act](#).
13. I trust the above explanation is helpful.