

# Non-Profit Organization By-Laws



The by-laws<sup>1</sup> that are required for legal incorporation in many jurisdictions constitute the formal rules outlining the governance structure and democratic processes by which an organization will operate. They generally provide minimum guidance; most organization will need additional board policies that go further in specifying the responsibilities of officers and other directors and that dictate what kinds of financial and human resource management practices the organization will abide by.

The following association or society by-laws are one example. This particular version draws heavily from the model by-laws provided by the Registry of Joint Stocks of the Province of Nova Scotia<sup>2</sup>. The province requires incorporating societies to file the by-laws with the Registry and has the power to approve or deny incorporation if the by-laws do not meet the requirement of the legislation. The language of this set of by-laws has been simplified somewhat, although it is hardly a plain language version. Here footnotes have been added to explain many of the elements.

If you are incorporating a new non-profit organization these sample by-laws could be used as a template. An electronic version without comments or footnotes is available on our web site. It should be compared to what your incorporating legislation requires, as well as examples from other organizations. If you are amending the by-laws of an existing organization this document may be helpful in reviewing what you now have.

Voluntary organizations put themselves at risk if their practices are at odds with their incorporating by-laws. A Board should annually review, and if needed revise, their by-laws. In this example the by-laws are divided into the following sections:

- Definitions
- Membership
- Fiscal year
- Members' meetings
- Directors (Board of Directors)

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<sup>1</sup> For some organizations by-laws are referred to as their *constitution*.

<sup>2</sup> Incorporation in Nova Scotia requires the filing of two documents. These are the Memorandum of Association describing the purpose of the organization and the names the first "subscribers" and the By-Laws.

- Directors meetings (Board meetings)
- Officers
- Audit of Accounts
- Miscellaneous

## Society By-Laws

### Definitions

1. In these by-laws:

- a) "Society" means \_\_\_\_\_  
(Society name)
- b) "Registrar" means the Registrar of Joint Stock Companies appointed under the Nova Scotia Companies Act.
- c) "Special Resolution" means a resolution passed by not less than three-fourths of such members entitled to vote as are present in person at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given.

### Membership

*The idea of membership or association is central to the concept of non-profit organizations and this section asks that the Society clearly define who constitutes this membership.*

2. Those to whom the Society is ultimately accountable shall be the members of the Society. This will include a minimum of five (5) subscribers to the Memorandum of Association incorporating said society, and other such persons as described below.<sup>3</sup>
3. Every member of the Society shall be entitled to attend any meeting of the Society and to vote at any meeting of the Society and, if of legal age, to hold any office.<sup>4</sup>
4. Membership in the Society shall not be transferable.<sup>5</sup>
5. Membership in the Society shall consist of those who support the objects of the Society<sup>6</sup> and/or
  - a) Contribute to its support in an amount to be determined<sup>7</sup>, and/or

<sup>3</sup> In this example the members include the subscribers or founders of the society. Although legislation may not prohibit this, the sample by-laws suggest that the membership is a larger group than the board of directors. This example as written here infers that members are individual persons; it ought to be reworded here and elsewhere if organizations are accepted as members.

<sup>4</sup> The "legal age" in most jurisdictions is 19. To encourage community involvement by youth, governments may not make this a requirement or alternatively, will require parental or guardian consent especially for the eligibility of a person to serve as a director. See sample by-law # 20 that follows.

<sup>5</sup> This means that one cannot transfer his/her membership to another person.

<sup>6</sup> Incorporation usually requires that by-laws specify the conditions of membership. The conditions of membership can be very general or very specific. Articles 2 through 7 here represent one approach, other criteria might be specified.

- b) Reside in \_\_\_\_\_ and/or  
c) \_\_\_\_\_

6. No formal admission to membership shall be required and the entry in a Register of Members by the Secretary of the name and address of any individual shall constitute admission to membership in the Society.<sup>8</sup> Organizations may be admitted to membership in the same manner.

7. Membership in the Society shall cease upon the death of a member, or if by notice in writing to the Society, he/she resigns his/her membership, or if he/she ceases to qualify for membership in accordance with these by-laws.

## **Fiscal Year**

*Non-profit organizations are required to identify the period that will constitute, for reporting purposes, their financial year. It can be the calendar year or any twelve month period.*

8. The fiscal year of the Society shall be the period from \_\_\_\_\_ to \_\_\_\_\_  
(month/day) (month/day)

## **Members' Meetings**

*Given the importance attached in legislation to nonprofit organizations being membership-based organizations, this section refers to membership meetings, not board of directors meetings.*

9. Every member shall have one vote and there shall be no proxy voting<sup>9</sup>.

10. Members meetings will include:

a) Any ordinary or special general meetings of the members called by the board chair or the directors may be held at any time, and shall be called if requested in writing by \_\_\_\_\_ (% or #) of the members.

b) The annual general meeting (AGM) of the Society which shall be held within three months after the end of each fiscal year of the Society.

11. Seven (7) days notice to members is required for an ordinary *general* or *special general meeting* of the

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<sup>7</sup> Many organizations require the payment of a membership fee

<sup>8</sup> This states that there is no formal admission requirement but that the Society maintains a list of members. Many non-profit organizations, including professional associations, do have a formal admission process. Others, such as community centres often have no formal admission process and do not maintain a list of members; residents of the area are assumed to be the members. For some the board of directors and the members are one and the same.

<sup>9</sup> No proxy voting means that one must be present at a meeting and must vote for themselves. Members cannot, ask another member to represent them in voting at a meeting. Proxy voting is common in forprofit shareholder meeting situations.

members. The notice must specify the date, place and time of the meeting and in the case of special business, the nature of such business shall be given to the members. Such notice is to be given to the members by means deemed by the directors to be effective. This may include the use of newsletters, newspapers, television, radio, public bulletin boards, e-mail and/or other electronic means. The non-receipt of any notice by any member shall not invalidate the proceedings at any general meeting

12. One (1) month's notice is required for an *annual general meeting*. The notice must specify the date, place and time of the meeting and, in the case of special business, the nature of such business shall be given to the members. Such notice is to be given to the members by means deemed by the directors to be effective. This may include the use of newsletters, newspapers, television, radio, public bulletin boards, e-mail and/or other electronic means. The non-receipt of any notice by any member shall not invalidate the proceedings at any annual general meeting.

At the annual general meeting of the Society the following items of business shall be dealt with and shall be deemed *ordinary* business:

- a) Minutes of the previous annual general meeting
- b) Consideration of the annual report of the directors and other reports
- c) Consideration of the annual financial report of the Society and, if required by these by-laws, the appointment of auditors for the ensuing year.
- d) Election of directors (*and, if required by the by-laws, election of officers*<sup>10</sup>)
- e) Special Resolutions (e.g. changes in by-laws)

All other types of business transacted at an ordinary general, annual general or special general meeting of the members shall be deemed *special* business.

13. No business shall be transacted at any members' meeting of the Society unless a quorum of members is present at the commencement of business and such quorum shall consist of \_\_\_\_\_ (# or %)

14. If, within one-half hour from the time appointed for a members' meeting, a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved. In all other case it shall stand adjourned to such time and place as a majority of the members then present shall direct. At such adjourned meetings the members present shall constitute quorum only for the purpose of winding up the Society.

15. The Chair, or in his/her absence, the Vice-Chair, or in the absence of both of them, any member appointed from among those members present, shall preside as Chair at members' meetings.

16. At a members' meeting the Chair shall have a vote as any other member. In the case of an equality of votes, the motion shall be lost.

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<sup>10</sup> The wording here will vary depending on whether or not officers are elected at the annual general meeting or by the directors following the annual general meeting.

17. The Chair may, with the consent of the meeting, adjourn any meeting at any time and no business shall be transacted at any adjourned meeting.

18. At any members meeting, unless a poll is demanded by at least three members, a declaration by the Chair that a motion or resolution has been carried and the entry in the minutes shall be sufficient evidence of the fact, without proof of the number or proportion of the members recorded in favour of, or against, such a resolution. If a poll is demanded it shall be held by show of hands or by secret ballot as the Chair may prescribe and the result of such a poll shall then be deemed to be the will of the Society.

## **Directors (Board of Directors)**

19. Unless otherwise determined by special resolution of the members, the number of directors shall not be less than five (5) or more than \_\_\_\_#. The minimum of five (5) subscribers to the Memorandum of Association shall be the first directors of the Society.<sup>11</sup>

20. Any member of the Society of legal age (or with guardian consent) shall be eligible to be elected a director of the Society.

21. Directors shall be elected by members at annual general meetings of the Society as per bylaw #12 (d). If organizations are admitted to membership, the members may elect, as a director, a representative nominated by each of the organizations.<sup>12</sup> The remaining directors shall be elected at large by the members.

22. At the annual general meeting (AGM) of the Society, the directors shall retire from office but shall hold office until the dissolution of the meeting at which their successors are elected. Retiring directors shall be eligible for re-election.

23. In the event that a director resigns his/her office or ceases to be a member in the Society, the vacancy thereby created may be filled for the unexpired portion of the term by the Board of Directors from among the members of the Society<sup>13</sup>.

24. A majority of Directors may, by special resolution, remove from the Board any of their number before the expiration of the period of office. The directors may, with respect to this article, develop a code of conduct for board members or a job description which may provide grounds for such removal.

25. Directors who have, or could reasonably be perceived to have, a conflict of interest with respect to the affairs of the society, have a duty to declare this interest. Such a declaration is to be made to the members upon nomination or, if serving as a director, to the Board, when the possibility of a conflict is realized.

A conflict of interest does not preclude a member from serving as a director provided that he/she withdraws

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<sup>11</sup> The minimum number of directors required may less than five in some jurisdictions

<sup>12</sup> By-laws may specify a representative structure

<sup>13</sup> If there is no formal membership requirement then anyone elected to serve a a director is automatically a member. Otherwise directors must be chosen from amongst those formally admitted to the membership as indicated in article 5.

from decision making on matters pertaining to that interest and that such withdrawal is duly recorded.<sup>14</sup>

26. Directors are not entitled to remuneration for service but may be reimbursed for reasonable expenses incurred in the conduct of their duties. Such expenses maybe specified in advance by a policy of the Board of Directors.<sup>15</sup>

27. The responsibility for the management of the activities of the Society shall rest with the directors who, in addition to the authorities and responsibilities outlined by these by-laws or otherwise expressly conferred upon them, may exercise, within the limits of the law, all powers as may be required by the Society to achieve its purposes. In particular, the directors shall have power to set policy to guide the management of the society, engage staff, and to determine their duties, responsibilities and remuneration. The directors may appoint an executive committee and other committees consisting of directors and/or other such persons as required.<sup>16</sup>

### **Directors' Meetings (Board Meetings)**

28. Meetings of the Board of Directors shall be held as often as the business of the Society may require but not less than quarterly. A meeting of directors may be held at the close of every ordinary or annual general meeting of members of the Society without notice. Special board meetings may be called by the directors. If notice is required it shall specify the time and place thereof and shall be given either orally or in writing to each director within a reasonable time before the meeting is to take place. Non-receipt of such notice by any director shall not invalidate the proceedings at any meeting of the Board of Directors.

29. No business shall be transacted at any meeting of the Board of Directors unless at least \_\_\_\_\_ (# or %) the directors are present at the commencement of such business.<sup>17</sup>

30. The Chair or, in his/her absence, the Vice-Chair or, in the absence of both of them, any director appointed from among those directors present shall preside as Chair at meetings of the Board.

31. At a directors' meeting, the Chair shall have a vote. In the case of an equality of votes, the motion shall be lost.<sup>18</sup>

### **Officers**

32. The officers of the Society shall be a Chair, a Vice-Chair, a Secretary and a Treasurer. The offices of

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<sup>14</sup> A conflict of interest clause is not required under the Societies Act of Nova Scotia. Alternatively such a policy might be passed at the Board level.

<sup>15</sup> The Societies Act of Nova Scotia is silent on the matter of remuneration of Directors. This clause however reflects popular understanding. Difficulties with reimbursement of expenses (e.g. travel expenses) can be avoided if the Board establishes clear policy and guidelines.

<sup>16</sup> This is the only by-law that expressly addresses the day-to-day management of the society.

<sup>17</sup> Most organizations choose a majority of directors as a quorum. If there are only five (5) directors, a quorum would then be three (3).

<sup>18</sup> This is an alternative to the chair only voting in the event of a tie or having two votes, one as a director and a second in the event of a tie.

Treasurer and Secretary may be combined.<sup>19</sup>

33. Board may elect one of their number to be the Chair of the Society. The Chair shall be responsible for the effectiveness of the Board of Directors and shall perform such other duties as may be assigned to her/him by the Board from time to time.

34. The Board may also elect from their number a Vice-Chair. The Vice-Chair shall perform the duties of the Chair during the absence, illness or incapacity of the Chair, or during such period the Chair may request him/her to do so.

35. There shall be a Secretary of the Society who shall be responsible for the minutes of the meetings of members and directors, and shall perform such other duties as may be assigned to him/her by the members. The directors may also appoint a Recording Secretary who is not a Director, for the purpose of taking minutes.

The minutes of all the meetings of the Society and other legal books and records of the Board of Directors Shall also be the responsibility of the Secretary.<sup>20</sup>

36. The Board shall also appoint a Treasurer of the Society who shall be responsible for overseeing financial management practices, insuring that the Directors understand the financial situation of the Society and may carry out other such duties as the Board may assign.<sup>21</sup>

## **Audit of Accounts**

37. The directors are responsible for insuring that all members receive annually a written report on the financial position of the Society. This statement shall be in the form of a balance sheet showing the particulars of its liabilities and assets, and a statement of its income and expenditures for the past year. A copy of the financial report, as a true and fair account of the society's financial affairs, shall be signed by the auditor or, if there is no auditor, by two directors and shall be filed with the Registrar within fourteen days after the annual general meeting in each year as required by law.<sup>22</sup>

38. An auditor for the Society may be appointed annually by the members of the society at the annual general

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<sup>19</sup> Organizations may choose to have co-chairs and/or additional officers such as past chair, but these four offices are generally the ones required. The titles President and Vice-President may be used but may convey responsibilities not formally given.

<sup>20</sup> This may include responsibility for, if not physical custody of, the Minute Book, incorporation and charity registration documents and important contracts.

<sup>21</sup> This item goes beyond what may be required in describing, in the by-laws, the duties of the Treasurer..

<sup>22</sup> This article specifies that annual financial statements must be prepared either by the society itself or by an independent auditor (Chartered Accountant). In Nova Scotia, financial statements prepared by an independent auditor are not required by the Registrar, although they may be by funders or by the organization itself. Should an organization choose to rely on audited statements as suggested in By-Law 38, this should be stated in this section of the by-laws. For organizations managing a large amount of money (e.g. \$100,000 or more) an independent auditor is generally recommended.

meeting and, on the failure of the members to appoint an auditor, the directors may do so.

## Miscellaneous

39. The Society has power to repeal or amend any of these by-laws by a special resolution passed by the members, subject to the approval of the Registrar<sup>23</sup>.

40. The Society shall file with the Registrar, with its Annual Financial Statement, a list of its directors with their addresses, occupations, and dates of appointment or election, and, within fourteen days of a change of directors, notify the Registrar of the change.

41. The Society shall file with the Registrar a copy in duplicate of every special resolution within fourteen days after the resolution is passed.

42. If the Society has a seal it shall be in the custody of the Secretary and may be affixed to any document upon a resolution of the Board of Directors.<sup>24</sup>

43. The annual financial statements and minutes of membership and directors meetings may be inspected by any member with one week's notice at the registered office of the Society. All other financial records of the Society may be inspected by any member at any reasonable time within two days prior to the annual general meeting at the registered office of the Society .<sup>25</sup>

44. Contracts, deeds, bills of exchange and other instruments and documents may be executed on behalf of the Society by the Chair or the Vice-Chair and the Secretary, or otherwise, as prescribed by a resolution of the Board of Directors.

45. The borrowing powers of the Society may be exercised by special resolution of the members.

46. The Board shall insure that the Society's assets are protected against damage and loss, and, if it is determined that considerable risk is involved in the operations of the society, the directors themselves are adequately protected against liability resulting from a legal action, suit or proceedings in respect to the pursuit of the organization's mission.<sup>26</sup>

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<sup>23</sup> In Nova Scotia the Registry of Joint Stocks requires that changes in the by-laws be files with their office and the have a sample special resolution form which may be used to specify the change. Unless the change contravenes the legislation, it is normally approved.

<sup>24</sup> Most nonprofit organizations do not have an official seal. This custom involves the use of a mechanical device which embosses the paper with the stamp of the organization.

<sup>25</sup> It has been argued that non-profit organizations are accountable to the public and therefore anyone should be allowed access to the Annual Report of the Society and the Minutes of Board meetings. At the very least, this clause, if it is to be included, supports a case for a clear definition of who is and is not a "member" and what records, other than personnel or client files, are open to their scrutiny.

<sup>26</sup> This item must be regarded as a controversial by-law item, in part because of Directors and Officers Liability Insurance is an increasingly visible and costly item. Few jurisdictions require an item such as this as a by-law and the wording here may pose inadequate from a legal perspective.

