



Sample Bylaws for Nonprofit Boards

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INTRODUCTION

The following sample by-law is provided to assist you in developing or adapting the bylaw of your own organization to suit your needs and approach to governance. It deals with key bylaw clauses and issues that may require adaptation for different organizational types and governance models.

This is not a legal document nor does it purport to provide or replace the advice of legal counsel. Review of periodic bylaw amendments by your legal counsel is always advisable. Such advice is especially essential during the process of incorporation. The Institute makes no representations or guarantees with respect to use of this material. Its use is subject to the general disclaimer for use of any material on this website.

The bylaw clauses here contain certain wording common to all organizations. Different governance models, may require alternative wording similar to that suggested in certain of the clauses in this sample.

Compiled by Mel Gill under contract with the Institute On Governance

More on governance models can be found on the Institute on Governance's Board Governance Learning Tools web site.

NAME OF THE ORGANIZATION

Date

By-Law # 1

A By-law relating generally to the organization and transaction (*or conduct*) of the affairs of the name of organization.

WHEREAS by Letters Patent, dated _____, the name of organization, was incorporated;

BE IT ENACTED as a by-law of the name of organization as follows:

1. INTERPRETATION

Note: Every By-law should have an interpretation section such as the following:

- 1.01** In this by-law and all other by-laws and resolutions of the name of organization, unless the context requires otherwise: (*examples of sub-clauses*)
- a) The singular means the plural;
 - b) The masculine shall mean the feminine (*or vice versa*);
 - c) 'Act' means the Canada Corporations Act, Revised Statutes (*RS*) of Canada, 1964-65, c.52, s. 2 (*or other federal or provincial legislation with appropriate citation*), as amended and any statute enacted in substitution therefore from time to time; (*if the organization operates under the authority of more than one statute the wording of this clause may need to be further adapted*);
 - d) 'Board' means the Board of Directors of the name of organization;
 - e) 'The Corporation' means the name of organization as incorporated under the Act;
 - f) 'Immediate family' means parent, spouse, son or daughter and brother or sister;
 - g) 'Member' means a member as defined in articles **7.01** and **7.02**;
 - h) 'Name' (*e.g. abbreviated to CCSD, Centre, Association, Society, etc.*) means the name of organization;
 - i) (add any other definitions appropriate to your organization; normally in alphabetic order).

2. HEAD OFFICE

The head office of the name shall be in the name of municipality, in the province of _____ at such place therein as may from time to time be determined by the Board.

3. TERRITORIAL JURISDICTION

The name shall have jurisdiction in the municipality/province/Canada under the authority of its Letters Patent (or special purposes legislation if the organization is created under the authority of such...e.g. Health, Education, Crown Corporations, etc.)

4. **CORPORATE SEAL**

The seal impressed on the right (or left) margin of this by-law shall be the corporate seal of the name.

5. **PURPOSE**

This should be a succinct statement of the purpose of the organization such as might be contained in a mission statement or, in the case of an organization with a specific legislative mandate, a statement of the essence of that mandate. It identifies, in a general sense, what benefit the organization will provide to whom.

E.G. To reduce the incidence of:

- The harmful effects of environmental pollutants, or
- *Name any disease or disability*
- Child poverty or teen suicide or drunk driving

To increase the rate of literacy or high school graduation or internet use, etc.) in geographic area

To provide name the services to members or the general public or specific groups.

6. **OBJECTS (or OBJECTIVES)**

This provides a more specific statement of objectives or primary activities through which the purpose will be accomplished.

E.G. The objectives of the Corporation are to:

- a) Conduct research
- b) Conduct public (or member) education
- c) Accreditation services or group insurance benefits to members
- d) Provide treatment for children with mental health problems
- e) Provide employment opportunities for youth

7. **MEMBERSHIP**

Note: Members may be either:

- a) Individuals (from the general public or a particular interest group and/or staff and/or consumers and/or producers) depending on the purpose of the organization and the non-profit type (**link to non-profit types**). For example,

collectives may open membership to staff and consumers or consumer alumni as well as the public. Co-operatives may open membership only to consumers or producers. The degree of public interest or investment will influence the breadth of membership. Organizations incorporated under special purposes legislation may have membership criteria defined for them.

AND/OR

- b) *Organizations* or, in the case of national non-profit federations or associations, networks (e.g. provincial or regional) of organizations.

7.01 Classes of Members and Entitlements

The Corporation shall have four classes of membership – regular, associate, honorary and statutory.

- a) A ‘Regular’ member shall be an individual who supports the objectives of the Corporation OR an incorporated (or unincorporated) organization (or group) whose objects are similar to those of the Corporation and carries on related business or activities in a municipal, provincial or regional sub-district within the geographic jurisdiction of the Corporation. A Regular member shall have full rights to vote in the affairs of the Corporation and otherwise enjoy the benefits of membership as from time to time defined by resolution of the Board of Directors;
- b) An ‘Associate’ member shall be an individual (or organization) that generally supports the objectives of the Corporation but does not otherwise qualify as a Regular member. An Associate member may enjoy the benefits of membership as from time to time defined by resolution of the Board of Directors but shall not have a right to vote in the affairs of the Corporation;

Note: This is the most appropriate membership category for organizations that wish to recognize employees of the corporation in their membership structure. Collectives and cooperatives are a noted exception where they might more appropriately fall under the definition of ‘regular’ member.

- c) An ‘Honorary’ member shall be any person or organization that, by resolution of the Board of Directors, is deemed to have given distinguished service or support to the Corporation. An Honorary member shall enjoy such entitlements to benefits and votes as from time to time defined by resolution of the Board of Directors;
- d) A ‘Statutory’ member shall be any person appointed to the membership or Board of Directors under the authority of *name the special purposes legislation and/or regulations*.

7.02 Eligibility for Membership

Membership in the Corporation is open to any person who:

- a) Is a resident of Canada (*may be more specific to municipal or provincial jurisdiction*) and/or carrying on business in (*the specified territorial jurisdiction*);
- b) Is at least eighteen (18) years of age;
- c) Has paid the membership dues set by the Board of Directors (*or membership*);
- d) Has, in the opinion of the Board, a genuine interest in the objectives of the Corporation and whose application for membership has been approved by the Board;
- e) Is not an ‘un-discharged bankrupt’;

AND/OR

- f) Any corporation (*may be non-profit or for-profit*) having its head office or carrying on business in the territorial jurisdiction of the Corporation.

ALTERNATIVE WORDING: “Membership in the Corporation shall be available to persons and associations, whether incorporated or unincorporated, interested in furthering the objectives of the Corporation and whose application for admission as a member has received the approval of the Board.”

Note: This section should also contain clauses that specify the membership year and the process for establishing membership dues.

8. DIRECTORS

8.01 Board of Directors

The affairs of the corporation shall be governed by a Board of Directors comprised of number(*no fewer than three*) Directors elected by the members of the corporation (*and/or appointed by the appointing body*). (*Optional provision: ... “and the Past Chair who shall be a director ex officio.”*)

Note: If more than one process is used for selecting Directors then the number selected through each process should be specified. Provisions are sometimes also made for ‘Directors-at-large’ to be appointed or elected to the Board of Directors by the Directors or the members. In such case the Interpretation article should include a definition of the term. The term of office and election/appointment process should be defined in Articles 8.03 and 8.04.

ALTERNATE WORDING for Collectives and Co-operatives: “The affairs of the Corporation shall be governed by a Board of Directors comprised of number Directors elected by the members of the Corporation. In addition, up to number employees elected by members of the staff of the Corporation may be recognized by the Chair and participate fully in the discussions of the Board but shall not be Directors nor shall they be entitled to a vote on questions put to the Board.”

Note: Special purposes legislation (e.g. crown corporations, hospitals or cooperatives acts) in some jurisdictions may allow the CEO or other senior managers to serve as directors with voting rights. This note also pertains to the next clause.

8.02 Eligibility

Any person is eligible to be a Director of the Corporation who:

- a) Meets the eligibility requirements for membership in the corporation set out in Article **7.02**;
- b) Is not an employee of the Corporation; and
- c) Is otherwise legally competent to conduct business and enter contracts under the laws of Canada and its provinces.

8.03 Term of Office

Directors shall hold office for a term of *number* years (*normally two or three*) so long as they remain eligible under the terms of Article **8.02**. Terms of office shall be staggered so that twenty percent (*or one-quarter or one-third*) of the terms expire each year. No director shall be eligible to serve more than two consecutive terms (*optional provision: except in the case of a Past Chair who may hold office during the term of his successor*). A member who has served two full consecutive terms shall not be eligible to serve again as a Director before the passing of one (*or two*) year(s).

Note 1: The term of office for 'Directors-at-large' may vary from that of other Directors but should be subject to the same maximums.

Note 2: A mandatory twenty percent annual turnover is advised since normal attrition related to resignations for other reasons will typically increase the actual turnover rate.

8.04 Election of Directors

Directors shall normally be elected by a majority of the members in attendance personally (*or by proxy if allowed*) at the annual general meeting of the corporation. (*Some organizations make provision for election by mail-in ballot*). The election of Directors shall be conducted by secret ballot. The candidate or candidates with the largest number of votes shall fill director vacancies where the number of candidates exceeds the number of vacancies to be filled.

8.05 Nomination of Directors

Nominations for vacant Director positions shall be submitted in writing to the Chair of the committee responsible for nominations at least *number* days in advance of the meeting at which the vote is to be held. It shall contain the signature of two members of the corporation in good standing and a signed acceptance of the nomination by the nominee.

8.06 Vacancies

Any vacancy in a Director position, however caused, may be filled by a majority vote of the remaining directors so long as a quorum of directors remains in office. A Director so elected shall remain in office for the duration of the vacant term (*or until the next meeting at which directors are to be elected*). The directors shall not fill a vacancy in the manner specified in this clause during the ninety (90) day period immediately preceding an annual general or special meeting. If there is not a quorum of directors, the remaining directors shall forthwith call a meeting of the members to fill the vacant Director positions.

8.07 Meetings

Meetings of the Board of Directors may be held at such times and at such places within the territorial jurisdiction of the corporation as the board may from time to time determine. The Board shall meet *number* times each year. The Board may use teleconferencing as an alternative to meetings in person but, in no instance, shall it meet in person less than three times a year. *Note: Anything less than three times per year is unlikely to satisfy the requirements for due diligence. National organizations with scarce resources may find it difficult to meet more often. However, eight to twelve meetings per year are advised where resources and geography permit.*

8.08 Removal of a Director

A director shall automatically cease to hold office if:

- a) A resolution to that effect is passed by a two-thirds majority of the members of the Corporation voting at a meeting duly called for that purpose; or
- b) The director otherwise ceases to be eligible as a member under the terms of clause 7.02 of this by-law.

8.09 Conflict of Interest

Where a director, either on his behalf or while acting for, by, with or through another, has any pecuniary or personal interest, direct or indirect, in any matter, or otherwise has a conflict of interest, as a director, he:

- a) Shall disclose his interest fully at a meeting of the directors in the manner prescribed by the Canada Corporations Act (*or other legislation under which the corporation is incorporated*);
- b) Shall disclose his interest and the general nature thereof prior to any consideration of the matter in the meeting;
- c) Shall not take part in the discussion of or vote on any question in respect of the matter; and,
- d) Shall not in any way whether before, after or during the meeting to influence the voting on any such question.

The pecuniary or personal interest, direct or indirect, of an immediate family member shall, if known to the director, be deemed to be also the pecuniary interest of the director.

Every declaration of interest and the general nature thereof shall be recorded in the minutes of the meeting.

Note: Non-profits incorporated under cooperatives legislation as consumer and producer cooperatives not necessarily subject to pecuniary interest provisions such as those provided in this clause.

8.10 Remuneration of Directors

The directors shall receive no remuneration for acting as such and no director shall directly or indirectly receive any profit from his position. Directors may receive reasonable compensation for expenses incurred by them in the normal course of their duties.

Note: Special purposes legislation (e.g. acts governing establishment of crown corporations, hospitals or cooperatives) in some jurisdictions may allow the CEO and/or other senior managers to serve as directors with voting rights.

8.11 Additional Clauses re: Directors

Additional clauses should be inserted to provide for Notice of Meetings, Attendance at Board and committee meetings, Voting, Quorum, Minutes and Special Meetings.

9. POWERS OF DIRECTORS

9.01 General and Specific Powers

The directors, acting together in their capacity as a Board, shall have the authority to exercise any of the powers prescribed by the *Corporations Act*, or by any other statutes or laws from time to time applicable, except where such power is contrary to the statutes or common law regarding charities and, without limiting the generality of the foregoing, shall have the following powers in particular:

Additional clauses should be inserted here to cover specific powers such as the Power to Accumulate; Invest; Solicit Donations and Grants; Hold and Dispose of Real and Personal Property; Hire Employees and Engage Agents; Sue and Settle Claims; Set Remuneration and Fees; Issue Cheques; Make Policies, Rules and Regulations; and any Restriction on such Powers.

9.02 Powers of Individual Directors

No individual director shall have any authority to act on behalf of the Board with respect to agents or employees of the corporation except as provided in this by-law or by resolution of the Board. No individual director shall have any authority to act on behalf of

the corporation with respect to the transaction of the affairs of the corporation except as provided in this by-law or by resolution of the Board.

9.03 Directors' Accountability

The Board and individual directors represent the membership of the Corporation and are directly accountable to said membership. They also have a fiduciary duty to those who provide funds to the Corporation and to its staff for the sound administration of the Corporation. In addition, they have a general duty of trust to those served by the Corporation and to the general public.

Every director of the Corporation shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the Corporation, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in similar circumstances.

10. OFFICERS AND DUTIES

10.01 General

The Board shall annually, or as often as may be required, elect a Chair, Vice-Chair, Secretary and Treasurer or Secretary-Treasurer from among its members.

(Note: Organizations may have more than one Vice-President, may prefer to combine the duties of Secretary and Treasurer, and may choose to have other officers who should then be identified in this clause and whose duties should then be outlined in this Article.)

(FAQ: Why should the Board elect its own Chair and Officers? This is more likely to ensure that the Chair and Officers have the respect and support of other board members that is essential to the effective functioning of the Board. Some organizational types, co-operatives in particular, may choose to have the general membership elect the Chair to maintain membership influence on, if not control of, the board.)

10.02 Chair (or President)

The Chair shall, when present, preside at all meetings of the Corporation and, along with the Board, generally oversee and supervise the governance of the Corporation including the signing of by-laws, special resolutions and other such documents requiring his signature and such other duties as may from time to time be prescribed by resolution of the Board or that are otherwise incidental to this office. The Chair shall be elected for a term of one (*or two*) year(s) and shall not be eligible for re-election for (*or more than two*) consecutive terms.

10.03 Vice- Chair (or Vice- President)

The Vice- Chair shall, in the absence of the Chair, preside over meetings of the Corporation and of the Board and its Executive Committee and otherwise exercise all the powers and duties of the Chair. The Board, in the absence of the Chair and Vice-Chair, may appoint from among its numbers, an Acting Chairperson.

10.04 Secretary

The Secretary shall be responsible for giving notices; keeping the corporate seal; keeping records of all meetings of the members, the Board and its Executive Committee; signing of minutes; and, such other duties as may from time to time be assigned by resolution of the Board.

10.05 Treasurer

The Treasurer shall keep full and accurate accounts of all receipts and disbursements of the corporation in proper books of account and shall deposit all monies or other valuable effects in the name and to the credit of the corporation in such bank or banks as may from time to time be designated by the Board.

The Treasurer shall, under the direction of the Board, disburse the funds of the Corporation, taking proper vouchers therefore and shall render to the Board at regular meetings thereof, or whenever required, an account of all such transactions and the financial position of the Corporation.

10.06 Executive Director (or Chief Executive Officer)

The Board may appoint an Executive Director (*or Chief Executive Officer*) to manage the affairs of the Corporation under the general direction of the Board. The Executive Director (*or Chief Executive Officer*) shall hold office at the pleasure of the Board or until he resigns the office.

He shall be accountable to the Board for the proper and legal conduct of the business of the corporation according to the policies from time to time established by the Board. He shall be responsible for the organization of the work of the Corporation and for the engagement, supervision, direction and discharge of all employed personnel in accordance with the personnel policies from time to time established by the Board.

Note: Organizations functioning with an operational, collective or management model of governance and smaller cooperatives may appoint a senior staff coordinator or manager to coordinate some of the work of the organization but remain involved more directly in some of the financial and personnel management functions. However, once a position has been designated as Executive Director then full delegation of management functions is essential in order to avoid undermining the authority of that position.

10.07 Executive Director an Officer

The Executive Director shall, ex officio, also be an officer of the Corporation and shall be entitled to receive notice and attend all meetings of the Board and its Executive Committee.

11. INDEMNIFICATION

Every director or officer of the corporation and his executors, administrators and estate shall be indemnified and saved harmless, out of the funds of the corporation, from and against:

- a) All costs, charges and expenses whatsoever that the director sustains or incurs in or about any action, suit or proceeding which is brought, commenced or prosecuted against him, or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him, in or about the execution, in good faith, of the duties of his office or in respect of any such liability;
- b) All other costs, charges and expenses which he sustains or incurs in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by his own willful neglect or default. The corporation shall carry such sufficient indemnification insurance as is currently available and can be reasonably afforded by the corporation.

12. EXECUTIVE COMMITTEE

(FAQ: The 'Policy Governance' model advises against use of standing committees. Operational Boards and Collectives may find use of an Executive Committee needlessly duplicates the work of the Board and staff or is inconsistent with the fundamental values of the organization. Other organizations may choose not to use an Executive Committee because there are too few board members for this to be a practical use of volunteer time. An Executive Committee is advisable when it will enhance the efficiency of the Board. It tends to concentrate power in a small group of board members. This works to the advantage of the organization if the Executive Committee has the trust and confidence of the Board but may also impair the functioning of the Board if the Executive Committee takes decisions that are not generally supported by other Board members or if it acts without the transparency essential to building trust.)

12.01 Composition

The Executive Committee shall be the Officers of the Corporation including the Executive Director. The Executive Director shall be a 'non-voting' member. *(Note: Some organizations also include Chairs of other committees who are not officers.)*

12.02 Selection

The officers of the corporation shall be appointed by resolution of the Board at its first meeting following each annual meeting of members at which the directors are elected. Any other members of the Executive Committee designated as such under this by-law shall be appointed no later than at the next subsequent meeting of the Board. In the event

of a vacancy in any elected position on the Executive Committee, the Board shall, by election from among the members of the Board, fill such position within sixty (60) days of the vacancy occurring.

12.03 Authority

During the intervals between meetings of the Board, the Executive Committee shall possess and may, subject to ratification by the Board, exercise all the powers of the Board in the governance and direction of the Corporation in such manner as the Executive Committee shall deem best for the interests of the Corporation subject to any specific directives imposed by the Board, this by-law or any other statutory or common law.

13. NOMINATING (or GOVERNANCE) COMMITTEE

Note: Nominating Committees, with the duties outlined in this section, are in most common use. However, there is a growing use, in the non-profit, public and private sectors, of Governance Committees that subsume the functions of Nominating Committees along with additional responsibilities. Examples of such responsibilities include board (and board member) orientation, development and evaluation, development and review of by-laws and governance policies and monitoring compliance with the requirements of these.

13.01 Composition

The Board (or members) shall annually elect a Nominating Committee which shall be comprised of a Chair, who shall be the past Chair of the Board, if there is one, and one (or two) additional member(s) of the Board and one (or two) additional member(s) drawn from the membership of the Corporation. The Executive Director shall, ex officio, be a non-voting member of the Nominating Committee.

13.02 Nominating Process

Candidates for the office of director must be recommended by the Nominating Committee or in writing by at least two members of the Corporation. The Nominating Committee shall take into consideration candidates who adequately represent the constituency served by the Corporation and make recommendations with respect to any vacancies on the Board.

The Nominating Committee, prior to the annual meeting of the corporation, shall:

- a) Fully explain to potential candidates their duties and responsibilities as directors;
- b) Obtain from each candidate a written consent to the nomination; and,
- c) Recommend a slate of candidates to be elected to vacant director positions;

The Nominating Committee shall ensure that the attendance of directors at meetings of the Board is monitored and that regular reports are submitted to the Board regarding attendance. The Nominating Committee or its designate or the Chair of the Board shall

consult with those directors who are not meeting the attendance requirements of the Board and shall make recommendations to the Board with respect to such non-attendance.

14. OTHER COMMITTEES

The Board may, from time to time, by resolution, establish such other ad hoc committees with such duties and powers as it deems to be in the interests of the Corporation. Except as otherwise established in this by-law, each such committee shall be chaired by a director, have the committee membership and terms of reference approved by resolution of the Board, shall consider such matters as are referred to it by the Board, shall keep records of its activities and recommendations, and, shall report to the Board at such intervals as required by the Board.

15. MEETINGS OF MEMBERS

15.01 Annual Meeting

The annual meeting of the Corporation shall be held within fifteen (15) months of the last preceding annual meeting at such date, time and place within the territorial jurisdiction of the Corporation as determined by the Board for the purpose of:

- a) Considering and approving the minutes of the previous annual meeting and any special general meeting that may have been held since the last annual meeting;
- b) Receiving and considering audited financial statements for the preceding fiscal year;
- c) Receiving and considering such other reports and statements as are required by the Corporations Act (and other legislation);
- d) Electing directors;
- e) Appointing the auditors for the next fiscal year;
- f) Transacting any other business properly brought before the meeting.

15.02 Special General Meeting

The Secretary shall call a special general meeting of members at the request of the Board or upon receiving a written request signed by ten (10) percent of the members and stipulating the purpose of such meeting. Such meeting shall be scheduled within thirty (30) days of receipt of the request at a date, time and place within the territorial jurisdiction of the Corporation as determined by the Secretary.

15.03 Notice and Agenda

Notice for any meeting of members shall be given at least fifteen (15) days (*more if additional time is reasonably required for travel arrangements*) in advance of the date of the meeting and shall include the date, time, place, agenda and general nature of business to be transacted. Only business on the agenda or related thereto shall be transacted at such meeting unless:

- a) A notice of motion to place an item on the agenda shall have been delivered to the Secretary at least ten (10) days prior to such meeting; or
- b) Subject to the Corporations Act, the notice provision is waived by a majority vote of those present and entitled to vote at such meeting.

15.04 Additional Clauses re: Meetings of Members

Additional clauses should be added to set the quorum, chairing, voting procedures and eligibility criteria.

16. ADJOURNMENTS

16.01 Notice

Further notice of any adjourned meeting of the Board and its committees or the annual meeting of the Corporation is not necessary if the date, time and place of such adjourned meeting has been announced at the meeting which was adjourned and if this has been properly recorded in the minutes of that meeting.

16.02 Transaction of Business

Any business may be transacted at any adjourned meeting that might have been transacted at the original meeting from which the adjournment took place.

17. ERRORS OR OMISSIONS IN NOTICE

An accidental error or omission in giving notice of any meeting required by this by-law or the non-receipt of such notice by any director or by the auditor or any error in any notice not affecting its substance shall not invalidate such meeting or void the proceedings and decisions of that meeting. Any director, member or the auditor of the Corporation may waive notice of any such meeting and may ratify and approve of any or all proceedings taken at such meeting.

18. AMENDMENT OF BY-LAWS

The By-Law of the Corporation not embodied in the letters patent may be repealed or amended by by-law enactment supported by unanimous consent of each and every Director of the Corporation signified in writing and shall hold force and effect until it is sanctioned by an affirmative vote of at least two-thirds (2/3) of the members at a meeting duly called for the purpose of considering the said by-law. If such by-law enactment is not so sanctioned it shall cease to hold force and effect immediately the resolution proposing such amendment is defeated.

Note: The Corporations Act does allow for a board to approve by-law amendments that remain in effect until approved by the members at the next annual meeting. This is obviously not a problem if the only members of the corporation are its directors. However, real problems might be created in an organization with a larger membership

base where the members do not ratify such amendments. Organizations should carefully consider whether they wish to include this authority in their by-law.

19. ADDITIONAL ARTICLES

Additional Articles should be added to establish rules for keeping of Books and Records; Execution of Documents; Banking; Borrowing; Appointment of Auditors; Rules of Procedure; and, Dissolution of the Corporation.