

# By-Laws

Modern and Flexible?

A presentation to Leagues Alive 2017

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# What are By-laws?

- Rules for governing and operating an organization or entity
- Authority to make the rules comes from a statute created by a law-making authority: provincial or federal governments
- In Alberta, not-for-profit organizations are generally created by the *Societies Act* or Part IX of the *Companies Act*
- The incorporating document is called the 'articles' and they contain the entities 'purpose' or 'objects'
- By-laws are a separate incorporating document. Generally by-laws are found in the "Minute Book"
- Not-for-profit organizations that have 'charitable purposes' can also be registered as a charity

# What should be in your By-laws?

## 1. Membership in the Society

- Terms of Admission\*
- Rights and Obligations\*
- Conditions of Withdrawal\*
- Expulsion\*

## 2. Meetings

- Mode and time of calling general and special meetings\*
- Quorum\*
- Rights of Voting\*

*\*these must be dealt with (Societies Act)*

# What should be in your By-laws? (continued)

## 3. Governance Structure of the Society (directors and officers)

- The board of directors\*
- The executive
- The committee(s)
- Appointment and Removal\*
- Duties and Powers\* (directors and officers)
- Remuneration\*

*\* these must be dealt with (Societies Act)*

# What should be in your By-laws? (continued)

## 4. Management and Financial Matters

- Registered Office
- Seal of the Society\*
- Financial Records and Books\*
- Inspection of books and records by members\*
- Borrowing Powers\*
- Audit\*
- Indemnities

## 5. Altering, Rescinding and Adding By-laws\*

*\* these must be dealt with (Societies Act)*

# Modernization - Possibilities

- How to give notices to members and directors
- How to conduct meetings with some or all members not physically present
- How to conduct votes
- How to sign documents
- How to obtain approval for decisions
- How to protect directors from liability

# Sample Provisions:

## How members and directors are given notice

- a bylaw could say: “Notice of the time and place of a meeting .... shall be given to each member entitled to vote at the meeting by telephonic, electronic or other communication facility...”
- “If a member requests that the notice be given by non-electronic means, the notice will be sent by mail, courier or personal delivery.”

## Sample Provisions: How meetings are conducting with some or all of the participants not physically present?

- A bylaw could say: “If the Society chooses to make available a telephonic, electronic or other communication facility that **permits all participants to communicate adequately with each other** during a meeting of members, any person entitled to attend such meeting may participate in the meeting by means of such telephonic, electronic or other communication facility. A person participating in a meeting by such means is **deemed to be present at the meeting**. Notwithstanding any other provision of this by-law, any person participating in a meeting of members pursuant to this section who is entitled to vote at that meeting **may vote** by means of any telephonic, electronic or other communication facility that the Society has made available for that purpose.”
- And “... may determine that the meeting shall be held entirely by means of a telephonic, electronic or other communication facility **that permits all participants to communicate adequately with each other** during the meeting.



## Sample Provisions:

How votes are conducted (for people not in attendance)

- a bylaw could address absentee voting: “... a member entitled to vote at a meeting of members may vote by means of a telephonic, electronic or other communication facility if the Corporation has a system that:
  - a) enables the votes to be gathered in a manner that permits their subsequent verification, and
  - b) permits the tallied votes to be presented to the Corporation without it being possible for the Corporation to identify how each member voted.”
- **Note:** this is not available to Alberta societies or Part IX companies

# Sample Provisions: How Documents are signed

- A bylaw could say: “...the board may from time to time direct the manner in which and the person or persons by whom a particular document or type of document shall be executed.”
- Also, “Any signing officer may certify a copy of any instrument, resolution, bylaw or other document of the Society to be a true copy thereof.”

# Sample Provisions: Resolutions in lieu of a meeting

- Bylaws can say: “Notice of a meeting shall not be necessary if all of the directors are present, and none objects to the holding of the meeting, or if those absent have waived notice of or have otherwise signified their consent to the holding of such meeting...”
- or “Notwithstanding anything to the contrary in these By-laws, a resolution in writing signed by all the directors shall be valid and effectual as if it had been passed at a meeting duly call and constituted.”

# Sample Provisions: Indemnification

- The Society must indemnify a Director, a former Director, and their heirs and legal representatives against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment reasonably incurred by them, in respect of any civil, criminal or administrative action or proceeding to which they is made a party by reason of being or having been a Director of the Society if:
  - a) they acted honestly and in good faith with a view to the best interests of the Society;  
and
  - b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, they had reasonable grounds for believing that their conduct was lawful.
- This by-law does not prevent any person from claiming indemnity from the Society on grounds not set out in this by-law.
- **The Society may purchase and maintain insurance for the benefit of any person referred to in section X (a) against any liability incurred by him or her in their capacity as a Director of the Society.**

# Flexibility

- Irregularities
- Relationship between board management / governance and the power and authority of members
- Different types of boards: governance or governance and operational
- Board Committees, Staff and the Administrator

# Sample Provisions: Irregularities/Omissions and Errors

- “The accidental omission to give any notice to any member, director, officer, member of a committee of the board or public accountant, or the non-receipt of any notice by any such person where the Society has provided notice in accordance with the by-laws or any error in any notice not affecting its substance shall not invalidate any action taken at any meeting to which the notice pertained or otherwise founded on such notice.”
- “All acts done by any meeting of the Board of Directors, or by any person acting as a Director, or by a resolution in writing of the Board of Directors, are valid and subsisting even if it is subsequently discovered that there was some defect in the appointment of any Director or that one or more persons elected to the Board of Directors were not qualified to be Directors.”

# Flexibility: Board and Membership

- The board has the power:
- “... to manage the affairs of the society” or
- “The Board of Directors has full control and management of the affairs of the Society, subject to the Bylaws or directions given it by a majority vote at any members meeting properly called and constituted.”

# Flexibility: Board and Membership

- Subject to the membership's ultimate authority to elect the board
- Members have authority in the areas of 'fundamental change'
- The desire for flexibility must be balanced with a respect for the 'balance of power' between the members and the directors



# Flexibility: Governance & Operations

- Two types of boards:
  - governance only
  - governance and operational
- By-laws can contain provisions providing for the role of a staff administrator (Executive Director) and for a committee structure. Often these are included, but they are options and seldom mandatory.
- All boards have the governance function. That means that they set policy (which are not in the by-laws). How those policies are implemented depends if there is staff and volunteers to operate the programs or if the board members themselves also operate programs.

# Tips for the By-law review project

- Patience
- Diverse working group
- Bad experiences can make for bad by-laws
- Keep 'policies' out of by-laws
- Realize that some provisions cannot be changed
- Plain language is good, but some 'legalese' is unavoidable
- Find the balance between frequent and infrequent reviews

# The Muttart Foundation

Obtain the Board Development guidebook “Drafting and Revising Bylaws for Not-for-profit Organizations in Alberta” from the Muttart Foundation

(Go to Muttart.org and click under ‘resources’)

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