

Bylaws Guide

Prepared by Sport Manitoba

(Revised November 2011)

This guide, accompanied by a Bylaws Template, provides suggestions that may help in writing your bylaws. Your bylaws should reflect your organization and generating bylaws is very organization-specific.

Disclaimer of Liability

This document, information and templates have been collected and prepared as a general guide for the users' convenience but should not be used as a substitute for the legislation itself or in no way legal advice. Despite the care taken in preparing this document, information and templates, Sport Manitoba and its employees, contractors, managers, directors and other officers can in no way be held responsible for damages caused directly or indirectly by use of this document, information and/or template. Persons accessing this information assume full responsibility for the use of the information and understand and agree that Sport Manitoba is not responsible or liable for any claim, loss or damage arising from the use of this information.

This guide was created with help from the following (with permission where required):

- Rachel Corbett, Sport Law & Strategy Group
- Steve Indig, Sport Law & Strategy Group
- Mel Gill, Synergy Associates – Governing for Results (CD-ROM)
- Linda Wood Edwards, Canadian Society of Association Executives – Understanding Bylaws: A guide for Directors of Not-For-Profit Organizations (Book)
- Priti Shaw, PRAXIS Conflict Consulting – Building Better Board Bylaws and Board Member Handbooks (Seminar)

Constitution and Bylaws

Sport organizations are private tribunals which have the power to write rules, make decisions and take actions which affect their members. At law, tribunals:

- Are private, legal entities;
- Write their own rules;
- Have a legal responsibility to follow their own rules; and
- Can, and typically do, write rules which impose obligations and responsibilities on members.

As private tribunals, sport organizations derive their authority from their own constitution, bylaws, policies, procedures, rules and regulations. Taken together, these are the governing documents of the organization and form a 'contract' between the organization and its members. This contract provides the organization with the legal authority to establish the rights, privileges and obligations of membership. When an individual joins the organization and becomes a member, he or she accepts the authority and the terms of this contract.

The terms constitution and bylaws are often used interchangeably. Technically, they are not the same thing. When an organization incorporates, it must submit two different documents: the first is an application for incorporation which includes a short document setting out the name of the organization and its purposes; and the second is a more detailed document setting out how the organization will govern itself.

Under the *Manitoba Corporations Act*, the first document is called the "Articles of Incorporation". This second document which sets out the procedures the organization will use to govern itself is called "bylaws". In this guide, the term "constitution" is used to refer to the first document (as statement of the name and purposes of the organization) while the term "bylaws" is used to refer to the second document.

Bylaws are the most important legal document of any organization, whether it is a corporation, association, or partnership. Bylaws outline, in writing, the governance principles used for your organization and provide comprehensive guidelines to keep things running smoothly. If anyone wanted to see how you are organized or the exact duties your organization expects from its Board of Directors, that person's best bet would be to look at a copy of your bylaws.

Bylaws outline the structure of an organization and should be customized for each organization. Bylaws establish and protect the rights, and specify the duties and responsibilities of an organization's members, Board of Directors, executive committee, and others. They determine how those in charge are nominated or elected and they help settle any disputes among parties. Finally, bylaws must be formally adopted and can be amended as necessary.

Articles of Incorporation

Articles of Incorporation generally provide information such as the name of the person organizing the organization, the fact the organization is incorporating as a non-share capital corporation (i.e., a non-profit organization), the names of the organization's Board of Directors, and the location of the organization. Like bylaws, Articles of Incorporation vary between organizations, but they do not go into detail about the organization's operations or structure, which is handled by the organization's bylaws. Articles of Incorporation are filed with the Province and cost money to amend.

What should be in a Constitution?

A written constitution is a simple document setting out the name of the organization and its purposes, or objectives. Written constitutions are fairly simple and straightforward; although great care should be taken in setting down on paper the purposes, or objectives of the organization.

Broadly worded purposes will give the organization the authority to pursue different activities as its needs dictate but will also widen the organization's corresponding responsibilities and liability. Narrowly-worded purposes will restrict the scope of responsibility but may not provide the needed flexibility to change with the times.

Developing Your Bylaws

Bylaws should be written in plain language rather than legalese. Make sure that the various sections are clear, easy to understand, and contain no contradictions. Sections should be written in an active voice rather than the passive voice. Short sentences and short paragraphs should be the norm, with no more than one idea expressed in a sentence.

Typically the minimum provisions of bylaws include:

- Rights and obligations of membership, including how members are admitted and how they may be expelled;
- Procedures for holding meetings of the directors and members, including quorum and rights of voting;
- Election, appointment, powers, duties, remuneration and removal of directors and officers;
- Audit of accounts;
- Execution of contracts;
- Borrowing powers;
- Preparation and custody of minutes of meetings and books and records; and
- Methods for changing bylaws.

All bylaws must set out these minimum provisions. Alone and properly worded, these provisions may provide a satisfactory minimal framework for governing an organization. In reality, many bylaws go into unnecessary detail on committee design and structure, committee names and mandates, directors and officers job descriptions, staffing structure and program areas. The result is often a complex and internally inconsistent document that does not meet the organization's current needs.

Bylaws represent the will of the membership and can only be changed by the membership acting as a whole. This is a cumbersome, expensive and time-consuming process and having to do it frequently results in inefficiency and ineffectiveness.

Lean bylaws are bylaws which contain the minimum requirements of legislation as well as clauses to delegate power to the board, committees and members to carry out the work of the organization. Lean bylaws should not contain any references to staff, the organizational structure, or programs. Provided the organization is governed by a balanced and competent board, all of these are better expressed in written policy which is separate from the bylaws and may be revised by the board as external circumstances dictate.

Standard of Presentation

For ease of reading, it is recommended that you divide the sections into headings. Number the sections and paragraphs so that it's easy to locate articles in question. Definitions should be at the front of the bylaws and should

not be repeated elsewhere. Use short sentences. One thought or idea per sentence. Items that are legitimately areas of Board policy should not be found in your bylaws.

What to Avoid¹

Bylaws must be flexible enough to permit the Board of Directors to make policy in the best interests of the organization. To be able to do that you will want to avoid:

- a) Absolutes – Avoid absolutes unless they are absolutely necessary
- b) Budgets and Fees Approved by the Members – Financial decisions such as budgets and fees are the responsibility of the Board. Bylaws that require membership approval for budgets and annual dues/fees often result in the Board being hamstrung with respect to directing the organization, and ultimately the whole organization suffers
- c) Dates – it is preferable to use ranges (e.g., within three months of the fiscal year end)
- d) Gender – it is preferable to neuter your references to members, directors, officers, etc.
- e) Singular and Plural – It is sufficient to write your bylaws in the singular or in the plural, but you do not need to continually reference both
- f) Staffing Matters – Almost everything related to staff, with the exception of the Executive Director being an ex officio director and officer, belongs in policy and is not written in the bylaws

What is in the Bylaws?

In addition to the minimum provisions which are required by legislation, an ideal set of bylaws would include these provisions:

- An express statement of the power of the board, including the power to delegate its power to others;
- A concise definition of who is a member and how one becomes a member, so it is clear who is subject to the organization's authority;
- Clear direction that disputes will be handled according to policies established by the organization (there policies would include discipline procedures, appeal procedures and provisions for alternative dispute resolution); and
- Clear and fair procedures for removing members, directors, officers, and others from positions of leadership.

As an overview, each set of bylaws will be specific to each organization, but the basic components of bylaws are as follows:

General

Name & Purpose

- What is the name of your organization?
- What is the reason for your organization's existence?
- Is this consistent with the articles of incorporation?
- Governing legislation?

¹ Adapted from Understanding Bylaws: A guide for Directors of Not-for-Profit Organizations; written by Linda Wood Edwards, CAE; published by Canadian Society of Association Executives

Definitions

- Have you provided a description or meaning/definition for terms contained within the bylaws, such as Act, Director, Member, Ordinary Resolution, Special Resolution, and Registrar, etc.?

Office

- Have you stated specifically where your office(s) are located or how the office location is determined?

Members

This section should detail the various aspects of membership, including the different types of members, the membership selection process, members' voting rights, and the procedures for disciplining and/or removing members.

- What are your categories of membership?
- What rights does an individual or organization receive by being a member?
- Are all categories of membership clearly defined and privileges noted?
- How does one become a member?
- What are the rights and obligations of members?
- How can membership be revoked or terminated by either the member or by the organization?
- Are the dues different for the different classification of memberships?
- When are the dues payable?
- To whom does one pay the dues?
- When are the dues delinquent? (NOTE: the dues (fees) should be set by the Board and the amount should not be included in bylaws)

Good Standing

- How is a member in good standing defined?
- Is there a requirement to comply with the bylaws, policies, rules and regulation of the Corporation?
- Are there any other restrictions on being a member in good standing? (e.g., the "member" doesn't owe the corporation any fees or other monies; isn't subject to disciplinary action, etc)

Meetings of Members

- When and where is the time and place of meetings?
- How are members notified?
- What is the time frame for notification?
- Who can call or request a meeting?
- Has quorum been established?
- What is the voting procedure?
- Will proxy voting be allowed?
- If proxy is allowed, what will be the restrictions on proxy?
- What business can be transacted at a meeting?

Board of Directors

- How many directors will there be?

- Is there a minimum or maximum?
- What qualifications must someone have to serve as a director?
- How does one become a director, and for how long?
- Can a director be re-elected?
- How does a director resign or be removed?
- If a vacancy occurs, how is it filled?
- What are the duties of a director?

Committees

- What, if any “standing” committees will the organization have?
- Who is on the Executive Committee?
- How does someone become a member of a standing committee?
- What other committees can be established? The bylaws should indicate that the Board has the power to establish ad-hoc committees by appointing members; outlining committee duties, and delegate to any Ad-hoc committee any of its powers, duties, and functions
- What authority does each committee have?
- How will these committees report to the Board and or the Membership?

Officers

Officers are generally members of the Board who perform specific functions such as President, Secretary, Treasurer, etc.

- What officer positions will there be?
- How are the officers selected?
- What are the duties, responsibilities and powers for each officer?
- How are the officers selected?
- What are the procedures for removing an officer and also for filling vacant officer positions?
- What is the length of time for an officer’s term?

Meetings

- When will meetings be held?
- Who can call a meeting?
- Are there any procedures in place to deal with non-attendance at board or committee meetings?
- How many board members will be required for quorum?
- What are the requirements for notification of meetings?
- Will electronic meetings be allowed?
- What are the rules for electronic meetings or proxy voting?
- Will decisions in lieu of meetings be allowed, and how will these decisions occur?

Conflict of Interest

- When members declare conflict of interest, how will it be dealt with?
- What procedures are established to ensure the member is not involved in discussion and voting?

Amending Bylaws

- What are the specific rules for amending the bylaws?
- Is there a process for adopting, repealing, and enacting the bylaws?

Other Items

Finance & Management

- Do the bylaws establish the fiscal year?
- Do the bylaws stipulate that an auditor is appointed at each Annual General Meeting?
- Who is able to sign cheques, legal documents, and contracts on behalf of the organization (i.e., who is the signing authority?)?
- Can the association borrow funds or acquire property?
- Are there any restrictions on these actions?

Indemnification

- Are the members of the Board protected by providing for indemnification through the bylaws?

Dissolution

- How will the organization's assets be distributed if the association ceases or dissolves?

Rules of Order

- What set of rules will the association follow when the bylaws don't speak to the situation?

Various other items may need to be included based on requirements of funders, and other interested parties such as a National Organization. Always remember that your bylaws are yours and must be based on what is best for your organization. Do not simply copy another organization's bylaws and adopt them as your own. Likely, in some way, they won't be appropriate for your organization and in fact may cause your organization trouble.