

The Muttart Foundation



BOARD DEVELOPMENT



Drafting and Revising Bylaws
for Not-for-profit Organizations
In Alberta

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**Drafting and Revising Bylaws for
Not-for-profit Organizations In Alberta**

A Guidebook

The Right to Copy this Workbook

Permission is given to any not-for-profit organization to photocopy any or all of this workbook for use within their organization, provided credit is given to the source.

An Important Note Before You Get Started

Not-for-profit organizations vary considerably in their make-up, their objectives and their methods of operation.

The information in this workbook is written generally and may not exactly fit the needs of your organization. It is meant to be a starting point for you to deal with some of the issues which face many not-for-profit organizations.

The publisher does not give legal or other professional advice. Therefore, if you are doubtful about acting on any information in this workbook or want clarification, you may wish to seek professional advice to make sure it answers your concerns and issues.

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© The Muttart Foundation and Alberta Culture and Community Spirit
ISBN 0-9697939-3-6
Printed in Canada
First Printing 1994
Revised Edition Printed 1996
Second Revised Edition Printed 1997
Third Revised Edition Printed 1999
Revised Edition 2003
Revised Edition 2008
Revised Edition 2009

Published by:

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Acknowledgements

This workbook was developed by the Board Development Program of Alberta Culture and Community Spirit in collaboration with The Muttart Foundation. The contributions of all those involved in the Board Development Program, including Grant MacEwan College, the Wild Rose Foundation, and the volunteer instructors who deliver the program to not-for-profit agencies across Alberta, are also acknowledged. Agencies across Alberta are also acknowledged for their contributions to all versions and to the 2007/2008 Review Committee that lead to the version published in 2008.

Introduction

HOW TO USE THIS GUIDEBOOK

Welcome

Welcome to the Drafting and Revising Bylaws Guidebook. This Guidebook is designed to give you:

- An overview to the incorporation of not-for-profit societies within the province of Alberta
- Guidelines to consider when incorporating a society and drafting bylaws and incorporation documents for a society

This booklet is only a guide. All suggestions and ideas and techniques within this booklet are offered to you as a set of tools to help you get started. Many of the specific matters and bylaws suggested are not the only way to deal with the issues discussed. There are many possible and desirable alternatives to fit your particular situation. You will need to tailor many of the ideas and suggestions

in this booklet to your particular society. This guidebook is designed to help you do that.

Note: This Guidebook assumes that your not-for-profit organization will be incorporated under the *Societies Act*. This is the statute most often used by not-for-profit organizations. For that reason, this Guidebook will only cover incorporation under the *Societies Act* in Alberta.

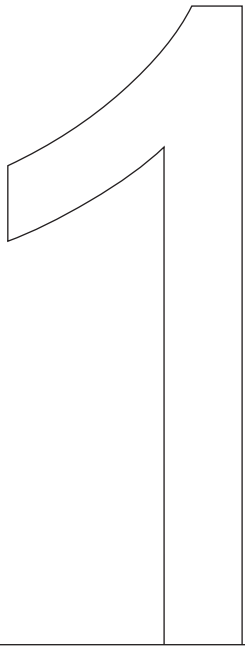
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HOW THIS GUIDEBOOK WORKS

This Guidebook has nine chapters. Each chapter gives you information by answering questions. You will find tools, techniques and tips to help you make decisions and draft a good set of bylaws.



What You Need to Know About Incorporation

WHY INCORPORATE?

Should your organization be incorporated at all? Before answering this question, review and compare the following advantages and disadvantages of incorporation.

A. Advantages to Incorporation

Limited Liability

Incorporation of an organization provides some protection to its members from various debts and obligations for which the organization may become responsible. Lawyers often refer to this as limited liability. What it means is that an incorporated organization becomes, in the eyes of the law, a separate and distinct entity, with its own powers, rights and privileges. As a separate entity in law, the incorporated organization is the one liable for contracts and debts entered into or incurred in its name.

The *Societies Act* states:

“21. No member of a society is, in the member’s individual capacity, liable for a debt or liability of the society.”

This limited liability is the most important reason why persons entering into business incorporate their businesses into separate limited companies. Not-for-profit organizations can enjoy similar protection by incorporating.

Permanency

Incorporation gives organizations greater permanency. As long as the organization files the required documents with the appropriate government body, pays the required fees and complies with all requirements of the governing legislation, the incorporated body continues to exist forever (unless it is otherwise dissolved for any other reasons set out in the governing legislation).

Formal Structure

Incorporation structures the affairs and activities of the organization. The basic framework and governing rules of the organizations are defined. This formal structure helps to resolve conflicts. Such structure can be very helpful to an organization, especially one whose membership constantly changes.

Dealing with Outsiders

Many businesses and lending institutions feel more comfortable dealing with an incorporated body. An organization that is not incorporated will often be asked the following questions:

- Who are you?
- Who am I contracting with?
- What is your position with this organization?
- How do I know you are authorized to do this?

In contrast, an organization that is incorporated tells outsiders the following:

- What the incorporated body is
- Whether the persons in charge of the incorporated body have authority and permission to do that which they are trying to do.

Funding Agencies

Many funding agencies and governments insist that organizations be incorporated before any grants and/or financial assistance are given. For example, the Gaming Commission requires organizations to be incorporated before issuing licenses for raffles, casinos and related fund-raising activities.

Charitable Status

The Canada Revenue Agency (CRA) registers qualifying organizations as charities. In most cases, in order to receive registered charitable

status an organization must first be incorporated as a not-for-profit and meet all of the requirements for registered charities as set out in the *Income Tax Act* and its regulations.

B. Disadvantages to Incorporation

Cost

There are minimal costs to incorporating.

Initial Incorporation

The initial act of incorporating does take time. Incorporation can often seem confusing to people who are not lawyers.

Statutory Requirements

Once incorporated, the organization must follow the requirements of the statute under which the organization has been incorporated. This makes running the organization more complex.

However, this is often the very reason why incorporation is desired. Incorporation requires everyone involved to be more careful in the way the organization is governed and what activities are carried out.

Administrative Filings

The society's annual return is due on the last day of the month immediately following the anniversary month. It must include two copies of each of the following:

- The address of the registered office of the society; if there has been a change;
- The full name, address, and occupation of each officer and director of the society; and
- The audited financial statement presented at the last annual general meeting.

Special Resolutions must be forwarded to Corporate Registry and are not in effect until they are registered (for more information on Special Resolutions see p. 57).

C. Recommendations

Most not-for-profit organizations should seriously consider incorporation. The advantages far outweigh the disadvantages. Not-for-profit organizations, and those who are involved with them, may run unnecessary risks if they are not incorporated.

WHAT ARE THE OPTIONS FOR INCORPORATION?

There are several options to consider when incorporating. Some options available to you are listed below.

A. Societies Act

Most not-for-profit organizations in Alberta incorporate under the *Societies Act*, a statute of the province of Alberta. Incorporation under this statute is the simplest and least costly way to become incorporated.

This means that an organization incorporated under the *Societies Act* cannot be engaged in any type of active ongoing business operations, especially if these business operations are significant. For example, if an organization operates a business that generates significant revenues, even if it is a not-for-profit organization,

the organization may not be able to incorporate under the *Societies*.

Important Note: A society incorporated under the *Societies Act* may declare a trade name for an activity that they wish to undertake in order to raise funds, as long as this activity is not the sole reason for incorporating. In addition, the funds raised from this activity must go to support the objects for which the society was incorporated.

B. Alberta Companies Act

Many not-for-profit organizations in Alberta are incorporated under the *Alberta Companies Act*. One of the main advantages of incorporating under this Act is that an organization can engage in business activities. The *Societies Act* restrictions on such activities do not apply. See Appendix 1 for more information on the *Alberta Companies Act*.

Important Note: If your not-for-profit organization is, or will be, involved in a significant business operation of a permanent nature, seriously consider the *Alberta Companies Act*. A second-hand store to raise funds is an example of a business that a not-for-profit organization might be involved in.

C. Canada Corporations Act R.S.C. 1970, c. 32 (Part II)

A not-for-profit organization may incorporate under a federal statute called the *Canada Corporations Act*. Organizations that are national in scope and operate in many provinces are the only ones which should consider incorporating under this Act.

Incorporating under the *Canada Corporations Act* is similar to incorporating under the *Alberta Companies Act*.

D. Other Special Statutes

There may be other special statutes under which incorporation can or should occur. The following are two examples:

- Organizations that operate using cooperative principles can consider the *Cooperatives Act*
- Religious congregations desiring to incorporate for the purpose of holding land can consider the *Religious Societies Land Act*

These statutes are for special situations. Therefore they are not usually relevant to most not-for-profit organizations.

E. Private Act of the Legislature

A not-for-profit organization can be incorporated by a private act of the Legislature. This means a specialized act of the province of Alberta is tailor made for a particular organization. This act must be sponsored by a member of the Legislature who introduces it as a private bill. The procedure is rather complex and usually involves lawyers.

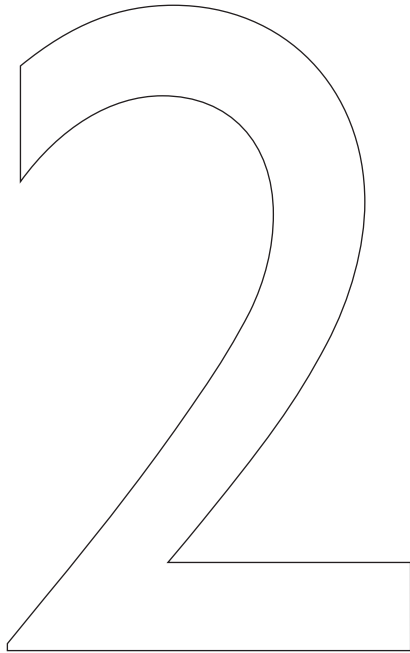
This option is usually only used by a major organization which needs specialized legislation.

RECAP

Most not-for-profit organizations should consider incorporation because the advantages of incorporation far outweigh the disadvantages.

The statutes that may be used to incorporate your not-for-profit organization are the *Societies Act* of Alberta, the *Alberta Companies Act*, and the *Canada Corporations Act*.

Other types of not-for-profit organizations are incorporated under other legislation, such as the *Cooperatives Act*, the *Religious Societies' Land Act*, and the *Condominium Property Act*.



How to Apply for Incorporation

WHAT ARE THE STEPS FOR INCORPORATION?

A. Documents

An organization must submit four documents to become incorporated under the *Societies Act*:

- The application for incorporation
- Bylaws for the society
- NUANS report
- Notice of address

This chapter will focus on the first document, the application for incorporation. See Chapter 3 for information on the bylaws for the society.

B. Steps

1. The organization submits its application for incorporation and the bylaws for the society to the Alberta Government Corporate Registry
2. The Registrar's staff reviews the documents and rejects or accepts them, in the name of the Registrar.

C. Application for Incorporation

In order to obtain information about obtaining application forms, you can visit the Service Alberta website or contact the Corporate Registry Customer Care Centre at 1-877-427-4088.

WHAT INFORMATION DOES THE APPLICATION REQUIRE?

The application specifies the most fundamental aspects of the proposed society. There are three parts to the application:

- Part I – Name of the Society
- Part II – Objects of the Society
- Part III – Incorporators of the Society

A. Part I – Name of the Society

You must give the name of the society in Part I of the application. When you consider a name, you need to be aware of the rules and principles involved. It is not uncommon for your first name choice to be rejected by Corporate Registry. Therefore, you need to make certain the Registrar will accept the name you have chosen before you advertise it widely or spend money on letterhead and signs.

You can check ahead of time to find out whether the name you have selected is acceptable by having a Newly Updated Automated Name Search (NUANS) report performed by a NUANS Registered Member. You also need to send the results of the NUANS report with your application for incorporation.

- In order to obtain information about how to name your society, you can visit the Service Alberta website or contact the Corporate Registry Customer Care Centre at 1-877-427- 4088. To find the NUANS Registered Member closest to you, visit the Government of Canada website or www.nuans.com

Required words

The name of the society must contain one of the following:

- Society
- Association
- Club
- Fellowship
- Foundation
- Institute
- Guild
- League
- Committee
- Council
- Board
- Centre
- Bureau

If using one of these words causes problems for your organization, consider incorporation under the *Alberta Companies Act*. This Act does not have such a rule and is more flexible.

Descriptive Element

The name must have a descriptive element. The name must specifically describe the type of activities in which the organization will be involved.

For example, if the activities of the organization relate to folk dancing, the words folk dancing should be included rather than just the word dancing. Folk dancing better describes the type of activities of this organization.

Distinctive Element

The name must have a distinctive element. The name must be unique enough to distinguish the organization from other organizations, companies and businesses.

For example, trying to incorporate a society under the name Alberta Motorers Association would be rejected because it is too similar to the well known group that operates under the name Alberta Motor Association.

Even though you incorporate a society under a certain name, this may not prevent someone from challenging the name in the future. This can happen even if the organization incorporated under that name has been using it for a while. The Registrar rejects only the most obvious names, which are too similar to a name on file. In such a case, the organization may be forced to change its name or be held liable for damages if someone has suffered as a result.

Organizations often use an abbreviation, an acronym or a part of their name in their daily operations.

For example, the Society for the Prevention of Cruelty to Animals is more commonly known as the SPCA. When doing this, societies must be careful in contracts and other important documents to show the full name under which they are incorporated.

Special Permission

If the name you choose suggests association with any other organizations, you will need to get permission of those organizations. The main associations to be aware of include:

- Royalty
- A government agency
- A university, college or technical institute
- A professional or occupational association
- The Olympic Games or its organizing committees

For example, the name University of Alberta Recreational Association would require permission from the University of Alberta.

If the chosen name uses a person's name, the organization needs permission from that person or their heirs or executors.

For example, the name Peter Lougheed Foundation for the Arts would require permission from the former Premier of the Province, Peter Lougheed, before it could be used.

NUANS Report

You need to submit a report from the Newly Upgraded Automated Name Search (NUANS) dated not more than 90 days prior to the submission.

B. Part II – Objects of the Society

Part II of the application describes the basic objects of the organization. These are the most fundamental goals and objectives of the organization. The objects also include the reasons the organization has been formed and its long-term goals.

Important Note: Though the Objects are required as part of your application for incorporation, they should be submitted separately from your organization's bylaws.

Drafting Objects

Keep the objects short and descriptive of the fundamental goals and objectives of the organization.

The following example shows the difference between writing the objects well and not writing them well. The first draft shows the objects written poorly. Those objects are too broad and do not clearly explain the purpose of the society. The second draft shows

the objects written well. These objects specify the purpose of the society and give direction about how it is to be accomplished. The objects for both examples below are for a society formed to operate a day care centre for the Armed Forces personnel in Edmonton.

Poor Example

- a. To help children of the Armed Forces and to provide facilities for their upbringing and education so as to better their condition and make model citizens of them.
- b. To educate these children properly and to help and assist their parents.
- c. To organize field trips, excursions, vacations and voyages for these children.
- d. To promote these children's learning and worthwhile values for today's and tomorrow's society.
- e. To make good leaders of these children.
- f. To lease property, to raise and borrow funds, and to use funds in pursuit of these objects.

Below is a better way to describe the objects of this particular society while still making the objects flexible enough to accommodate changes.

Good Example

- a. To establish and operate a day care centre for the children of the Armed Forces personnel in the Edmonton area.
- b. To provide programs that meet the physical, emotional, moral and intellectual needs of the children attending the day care centre.
- c. To provide a safe and secure environment for the children in the day care centre's care.
- d. To support the family unit through educational programs related to the children attending the day care centre.

- e. To lease, purchase or acquire facilities to house the Society and its daycare.
- f. To raise funds in any way to achieve the objects of the Society. This includes accepting gifts, donations, grants, legacies, bequests and inheritances.
- g. To borrow funds and lease, mortgage, sell and dispose of property of the Society and establish a line of credit to achieve the objects of the Society.

Limits

The objects set the overall limitations on what the organization can do. Unlike a corporation under the *Business Corporations Act*, a society does not enjoy all of the rights and powers of a person. In the eyes of the law, a society can only do the things which are within the limits of the objects stated in the application.

For example, a society incorporated for famine relief for the starving in Africa would not have the power to organize a relief operation in Asia. Also, the society could not start raising funds to organize an education campaign to promote literacy in Africa.

Outsiders dealing with a society on important matters will check the objects for the society.

For example, if a society is asking a bank for a loan, the bank will check the objects of the society. If the bank is doubtful about whether the purpose of the loan falls within the objects of the society, the bank will refuse the loan.

You need to strongly consider drafting objects of a society that will allow flexibility. The technique most often used is described below:

1. Set out the particular objects the society will be pursuing
2. Set out broad objects which apply to the society
3. Combine the broad objects with a clause which says that each of those objects is to be read independently.

Broad objects allow an organization to radically change directions at the will of the new instant majority, or at the will of the board of directors if the general membership is not very active. It may be that you do not want your society to have broad objects. Therefore, you need to draft the objects to fit your situation.

Wording of Charitable Objects

Take special caution if your society wants to become registered as a charity under the Federal *Income Tax Act*. Under this Act, a society must be pursuing charitable purposes and nothing else. Canada Customs and Revenue Agency easily rejects registration for charitable status if the objects are not drafted narrowly enough. If you want to apply as a charity, draft the specific objects to pursue only the charitable purpose or purposes involved. Any extra objects must tie directly to the specific objects.

For example, an organization for operating a food bank in Red Deer might consider the following objects:

1. To operate a food bank to assist the poor within the region of Red Deer, Alberta.
2. To promote amongst the public the giving of assistance to the poor.
3. To cooperate and collaborate with and to assist by gift or otherwise other persons and organizations involved in assisting the poor within the region of Red Deer, Alberta.
4. For the purposes of furthering the objects above, but only for such purposes (and only to the extent permitted under the provisions of the *Income Tax Act* in respect of charitable organizations):
 - i. To solicit, receive, acquire and hold donations, gifts and bequests;
 - ii. To lease, purchase or otherwise acquire physical facilities to house the Society and its works;
 - iii. To borrow funds and lease, mortgage, sell and otherwise dispose of property of the Society.

These objects have been drafted very narrowly, and all the objects have been tied in to strictly charitable purposes.

If your society wants or needs to become a registered charity under the *Income Tax Act*, you may want to get a ruling from the Canada Revenue Agency (CRA) before you incorporate as a society. Since it can often take at least six months for the CRA to make a ruling, if you do want to get a ruling prior to incorporation as a society, it is suggested that you contact the CRA as soon as possible after draft bylaws have been agreed upon.

C. Part III – Incorporators of the Society

Part III of the application requires the names and addresses of at least five persons.

These persons become the incorporators of the Society.

- Each person must sign the application in front of a witness
- The witness signs his or her name

There may be different witnesses for different persons signing the application. If any signature is illegible, the name of the person should be printed below the signature. In the event the bylaws are signed, they must be signed by the same individuals who sign Part III of the application.

It is possible to incorporate a society which is controlled by another society or corporation. In the eyes of the law, a person includes natural persons as well as corporations and societies in general.

The new society can be incorporated with one of the incorporators as an existing society and the other incorporators as individuals or other corporations. Bylaws can be drafted to make the existing society, which has been named as one of the incorporators, the only member of the new society with the right to vote. You then have a society with at least five persons who have incorporated it, but in reality the society is controlled by an existing society which has all the voting rights.

All sorts of variations are possible on this theme. For example, the existing society could have 51% of the voting rights, with other members having the remaining 49%.

RECAP

You may feel that all of this is too complex. However, all you need to keep in mind are three parts:

Part I – Name of the Society

- a. One of the required words, or legal elements found on page 14 of this workbook
- b. A descriptive element
- c. A distinctive element

Part II – Objects of the Society

The objects of the society must be drafted clearly and precisely because they define what the society has the power to do. If your society wishes to apply to the Canada Revenue Agency in order to receive charitable status under the *Income Tax Act*, all of your organization's objects must be charitable.

Part III – Incorporators of the Society

At least five persons (either individuals or other incorporated bodies or a combination of both) must sign the application for incorporation as the incorporators of the society.

3

What You Need to Know About Bylaws

WHAT ARE BYLAWS?

The bylaws of your society are the second document which you must submit with the application.

Bylaws are the fundamental governing rules and regulations of any society. The bylaws state how the society is to be governed and how the powers of the society are to be exercised.

Organizations must use the terminology used in the *Societies Act*. Therefore, the term 'bylaws' must be used where, in the past, it was acceptable to use the term 'Constitution', 'Charter', or 'Rules and Regulations'. However, if there are Rules and Regulations which govern members of the society, the society should include them in the bylaws.

The word bylaws is used here because it is referred to in the *Societies Act*.

Keep the bylaws as one document.

Dividing the bylaws into two documents can be confusing and can be contradictory. When amendments are made to the governing rules, it is easy to forget to amend the proper document or make several documents conform to each other. You can avoid this by having one document which includes all of the governing rules and regulations.

WHAT ARE THE MINIMUM REQUIREMENTS?

The topics listed in the section "What are the Contents of Bylaws?" on page 21 must be covered in your bylaws or the Registrar's Office will reject your application.

HOW DO YOU DRAFT A GOOD SET OF BYLAWS?

Drafting a good set of bylaws is easier than you may think. You need to be aware of the different kinds of bylaws you can draft, how they fit into your society, and how you can draft the bylaws to make them work for your society.

Some items in bylaws are standard to all societies, while other items may differ from society to society.

For example, if the society has only a few members, the rules for calling meetings can be very simple. If the society will have hundreds or thousands of members, the rules may need to be very elaborate. The governing principles for a small society will differ from those for a large society.

The following techniques will help you draft a good set of bylaws.

A. Plan

Your first step is to develop a general plan.

1. Develop an outline of the rules and regulations you want your bylaws to contain. Do not worry about the order yet. Brainstorm with other people in your society to come up with a list of rules and regulations.
2. Sequence your rules and regulations so that they flow logically from one area to another.

B. Be Clear

Bylaws must be clearly stated. After all, the bylaws are intended to specify the governing rules of the society. They are often consulted in the event of difficulties or differences of opinion. The last thing you want is an unclear bylaw which not only does not resolve the difficulty or conflict, but may also add to it.

1. Write the bylaw without editing it. Just get the ideas down.
2. Read the bylaw and ask yourself if it says what you want it to say and if someone else will understand it. Re-write the bylaw if there is any confusion.
3. Read the bylaw again and ask yourself about the language you have used. Is the language clear? Can it be misinterpreted? If someone can misinterpret it re-write the bylaw so that it is clear.
4. Give the bylaw to other people and ask them for their opinions. Ask them to tell you what they think it means. This will give you a good idea of whether the bylaw is open to interpretation.

WHAT ARE SPECIFIC TECHNIQUES FOR DRAFTING BYLAWS?

A. Definitions

Put a glossary at the beginning of the bylaws. Define all the terms you are using, including acronyms. The definitions will help you avoid repetition of terms. They will also help you to be consistent when using a defined term.

B. Plain Language

Use short sentences, 8-15 words in length. Use only one idea per sentence. Instead of using semi-colons, use two sentences.

Use short paragraphs, 2-5 sentences in length. Use point form to break up longer paragraphs. Do not use paragraphs that run on forever with qualifiers, ifs, buts and exceptions. If a paragraph starts getting too long, try to break it down. The advantage of short paragraphs is that when amending the bylaws it will be easier to isolate the exact paragraph being amended.

C. Numbering

Number each separate paragraph. You will find it easier to refer to a particular paragraph when internal references within the document are made or when the paragraph needs to be referred to.

Use any well ordered numbering scheme. The one used in the example in Appendix 3 provides the greatest ease of reference.

For example, paragraph 3.3.2 is unique. If you refer to paragraph 3.3.2, anyone should be able to find it quickly and easily.

WHAT ARE THE CONTENTS OF BYLAWS?

Bylaws differ from society to society. They need to be tailored to the specific needs and objectives of your society. The bylaws should cover the following subjects. The chapter number where these topics are covered in this Guidebook is given below.

Topic	Chapter in Guidebook
1. Name of the Society*	2
2. Bylaws*	3
3. Definitions	4
4. Membership in the Society <ul style="list-style-type: none">• Terms of Admission*• Rights of Obligation*• Conditions of Withdrawal*• Expulsion*	5
5. How to Draft Your Bylaws <ul style="list-style-type: none">• Mode and time of calling general and special meetings*• Quorum*• Rights of Voting*	4, 5, 6
6. Governance Structure of the Society <ul style="list-style-type: none">• The board of directors*• The executive• The committee• Appointment and Removal*• Duties and Powers*• Remuneration*	7
7. Management and Financial Matters <ul style="list-style-type: none">• Registered office• Seal of the Society*• Financial records and books*• Minute books and other records*• Borrowing powers*• Audit*• Indemnities	8
8. Amendments*	9
9. Dissolution	9

*These are the minimum requirements of the *Societies Act*.

RECAP

When you write a general draft of bylaws you need to:

- a. Brainstorm to identify the matters that need to be covered
- b. Get those ideas down on paper
- c. Fit the ideas to your particular society
- d. Re-draft the ideas until they are clear
- e. Organize the bylaws into a logical and well-ordered document.

4

How to Draft Bylaws: Introductory Articles

WHAT ARE INTRODUCTORY ARTICLES?

An article is a distinct part of a written document. Your bylaws will contain articles dealing with different topics. Some of those articles will be introductory articles. Introductory articles contain general information about your society.

A. What is a Preamble?

A preamble is an introductory part of a written document. It is a good idea to begin your bylaws with a preamble. This can be short paragraphs that tell people:

- The name of your society
- That this document is the bylaws of your society

This information is useful if you use only one document to describe your society.

Here is an example of a preamble:

Article 1 – Preamble

- 1.1 The name of the Society is The Society for the Promotion of English Literature, or SPEL.
- 1.2 This document is the general bylaws of SPEL. These bylaws regulate the transaction of business and affairs of SPEL.

B. Why are Definitions Important?

Another useful introductory article defines terms and sets out rules for interpreting the bylaws. These help people to clearly understand the bylaws. Be sure to define the words and acronyms you use throughout the bylaws.

See the sample bylaws in Appendix 3 for examples of useful definitions.

Remember these tips for definitions:

- Use precise definitions
- Be sure to use a defined term consistently throughout the bylaws

For example, do not define the board of directors as the Board and then later call it the Directors or the Board of Directors or the Administrators.

- Capitalize the terms that you define. This helps people know that this term has a defined meaning

A definition makes a term clear. If you need a long explanation to define the term, put it into an article by itself.

C. Will You Include the Objects?

The objects of a society define what activities that society can pursue. The lawful objects of the society are those listed in the application for incorporation. *See Chapter 2 for more information about objects.*

It is highly recommended that your society’s application contain 2 distinct documents. The first document is the application, which should include the objects. The second document is the bylaws, which should contain only the bylaws. You may want to include an introductory article advising the reader where the objects can be found. The objects should not be detailed in the bylaws.

RECAP

Give careful thought to these issues:

- Introductory articles are the most common introductory matters to bylaws.
- A preamble is useful to introduce what the document is about.
- Definitions save time and paper. Definitions must be drafted carefully and used consistently.

5

How to Draft Your Bylaws: Membership

WHAT IS IN THE MEMBERSHIP ARTICLE?

This section of the bylaws states the basic rules about membership in your society. This article describes:

- Who the members are
- How they become members
- What their rights and duties are as members

WHAT ARE CATEGORIES OF MEMBERS?

Categories of members describe the makeup of your society. You must choose the basic structure of members for your society. There are two broad categories: individual members and member clubs or societies.

A. Individual Members

Your society can be made up of individual members. Persons apply for and become members of your society after meeting certain criteria.

There can be different categories for individual members. Many different terms can describe these categories. The choice of terms depends on what your society wants and the reasons you need the term.

Here are some examples often used in societies:

Voting Members
Honorary Members
Affiliated Members
Junior Members
Life Members
Active Members
Non-Voting Members
Associate Members
Senior Members
Young Members
Sustaining Members
Full Members

For example, a society of a particular ethnic group may want to allow different types of members. Persons who belong to this particular ethnic group can become full members. These are the only ones who can vote at meetings of the society.

Other persons who are not members of this ethnic group may be married to or related to a member of this ethnic group. These people may become non-voting members. They can support the society but do not have the right to vote. Persons who have been members of the society for a long time may become life members.

Here is an example of the membership article in bylaws for a society serving the German community:

Article 5 – Membership

5.1 Categories of Members

5.1.1 The Members of the Society are:

- a. Full members;
- b. Life Members; and
- c. Associate Members.

5.1.2 An individual who is of German heritage and who speaks and understands German fluently is eligible to become a Full Member.

5.1.3 An individual who is not of German heritage or who does not speak and understand German fluently is eligible to become an Associate Member if the individual is married to, or the child or grandchild of, a Full Member.

5.1.4 A Full member who has been a member of the Society for 10 years and who is at least 65 years of age is eligible to become a Life member.

There are many possible variations. The criteria for each category must be clearly stated. Clearly explain the rights and privileges associated with each category.

B. Member Clubs or Societies

You can structure your society in a different way by having local, regional or provincial bodies, as well as entire clubs, as part of your membership. Both individuals and other incorporated bodies can be members of a society.

For example, a provincial sports association could be made up of local sporting clubs from across the province. The local clubs themselves are the members of the provincial society.

This structure can be complex. Be careful if you organize your society in this way. Establish the exact rights of each member club, especially how many representatives from each club may attend meetings and vote.

HOW DOES A PERSON BECOME A MEMBER?

You must decide how persons may apply for membership in your society. The bylaws must contain clear rules on how a person can become a member. The *Societies Act* requires you to explain the terms of admission of members.

Membership bylaws can be rigid or flexible. You may want tight control over membership. If so, use the bylaws to provide various mechanisms for approval of members.

For example, you might require each member to be sponsored by an existing member.

You may require approval by a membership committee of the society, or the directors, or the society itself through a general meeting. If you do this, the approving body should approve such applications as a regular meeting item.

You can require majority or a greater than majority vote for approval.

Your bylaws must also describe members' rights and privileges.

For example, the bylaws can require someone to be a member of the society 30 days before the Annual General Meeting in order to vote.

Your society may not want to rigidly control membership. If so, the bylaws can simply state that once the person meets certain objective criteria, the person can become a member once he or she pays a given fee for the year.

See the example of objective criteria for the German society on the previous page.

Often you can compromise. A standard provision states that a person can become a member by meeting basic eligibility and by gaining the approval of the board of directors of the society.

See the example in Section 4.2 of Appendix 3.

HOW DOES A PERSON WITHDRAW FROM THE SOCIETY?

You must describe how a member can withdraw from the society. Section 5(4)(b) of the *Societies Act* states:

5(4)(b) The by-laws that accompany the application shall contain provisions for all the following matters: (b) the conditions of withdrawal of members and the manner, if any, in which a member may be expelled.

Decide how to answer these questions:

How can the member withdraw?

You can require a notice in writing delivered to a named officer or the registered office of the society. This tells you whether a member has withdrawn or not.

What is the effective date of the withdrawal?

This is important in deciding what makes up a quorum. It tells you whether the member can or cannot participate in a certain meeting or activity.

What remaining rights or privileges does the member have once he or she has withdrawn?

A former member has no rights or privileges effective the day following the date of withdrawal or the day following the date the withdrawal application is accepted.

For example, members of a recreation society may have paid heavy dues to build a club house. The society may want to provide a cash rebate to a member when he or she withdraws.

What continuing obligations does the member have?

Bylaws normally provide that the member has no continuing obligations, except for existing personal debts to the society.

See Section 4.8 of Appendix 3 for an example of a standard clause.

HOW IS A MEMBER SUSPENDED OR EXPELLED?

Bylaws often include rules for suspending a membership or expelling a member. This is optional, since the *Societies Act* states that the bylaws may, but do not have to, contain such provisions.

Should your society include this power in its bylaws? There are arguments for each side of this issue. It is a dangerous power, but it can be equally dangerous not having this power. Unruly members who refuse to accept the will of the majority and who take actions to upset things can destroy a society.

There is a compromise that avoids these dangers. You may include a power to suspend or expel a member, but only if more than a simple majority of the board of directors or membership of the society approves of the action.

If you think that the directors alone should not have the power, let the general meeting of the society decide. The board can make the initial decision, but the annual or a special meeting of all the members can reverse this decision with a special majority of two-thirds, three-quarters, or more. In this way, a few people in the society cannot suddenly try to throw out members who legitimately disagree with certain matters.

If you include powers to suspend or expel, be sure to answer these questions:

- What are the reasons to suspend or expel a member?
- Who makes the decision? Does the executive or the board decide? Do members decide at a general meeting?
- How is the decision made? Is there a special meeting? Does the affected member receive notice? What kind of majority must there be?
- Will there be a right of appeal? If the board makes the initial decision, is it final? Can the member appeal to a meeting of all the members?
- When does the suspension or expulsion become effective?
- What obligations will the suspended or expelled member continue to have, if any?
- What rights and privileges will the suspended or expelled member continue to have, if any?

See Sections 4.5 and 4.6.4 of Appendix 3 for examples.

ARE MEMBERSHIP FEES IN THE BYLAWS?

Bylaws explain the process for deciding membership fees.

The actual amount of the fees should not be in the bylaws. If you include the amount, you have to amend the bylaws each time the fees change. Instead provide that the board of directors or the annual meeting of the society can decide the fees as needed.

The section on fees should answer these questions:

- Who decides the fees?
- What is the membership year of the society?
- When are the fees due?
- What happens if a member does not pay the fees? Is this a reason for automatic suspension? Is there a grace period? Must the board move to suspend the member?

See Section 4.3 of Appendix 3 for an example.

WHAT ARE THE RIGHTS AND OBLIGATIONS OF MEMBERS?

Bylaws need to explain what rights and obligations the members have. You may include some of these rights and obligations in other places in the bylaws. However, you should include a general statement of the rights and obligations of the members in this section.

Be sure to answer these questions:

What rights does each category of membership give?

You must clearly describe the rights and privileges for each category of membership. Who can vote? Who can attend meetings? Who can inspect the records and books of the society? Who can participate in the activities of the society?

What happens if a member is not in good standing?

Bylaws can state that any member not in good standing loses the usual benefits and privileges of membership. You must define what actions cause a member to be not in good standing. Use only clear-cut matters for this situation.

For example, it is not wise to state that a member who does not adhere to the bylaws is not in good standing. Who decides if that is the case? A clear-cut example is to state that non-payment of fees is a basis for a member to not be in good standing.

Another way of dealing with this issue is to have well defined grievance procedures for board members to deal with suspending or expelling a member.

There may be other controversial problems when you deal with members. The way to deal with these problems is to use the powers in the bylaws to suspend or expel members.

See Sections 4.5 and 4.6.4 of Appendix 3.

What is the limitation on the liability of the members for the debts and obligations of the society?

Section 21 of the *Societies Act* states:

21 No member of a society is, in the member's individual capacity, liable for a debt or liability of the society.

This is one of the main reasons why individuals incorporate as a society.

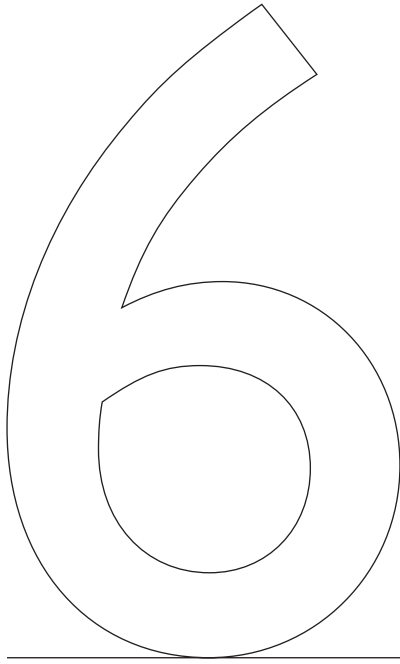
It is not necessary to repeat this in the bylaws of the society. However, this statement can reassure members that they will not be liable for the obligations of the society.

RECAP

Societies usually need active memberships to accomplish their objectives.

Give careful thought to these issues:

- Categories of members
- How persons can become members
- What fees members pay
- How persons can withdraw from the society
- How persons can be expelled or suspended
- What rights and obligations come with each category of members



How to Draft Your Bylaws: Meetings of the Members of the Society

WHAT IS IN THE BYLAWS ABOUT MEETINGS?

The issue of meetings of all the members of a society is very important. When are the meetings? Who calls the meetings? What are special meetings? What is the procedure at general meetings? You must answer all of these questions in detail.

It is recommended that you use the terminology of the *Societies Act* when describing your meetings. If you do not, ambiguity and misunderstanding within your society may result.

For example, the *Societies Act* term ‘special’ meeting may be referred to by a different name in a society’s bylaws, causing confusion among that society’s members who consult the *Societies Act* to confirm the validity of the meeting. If your society wants to give a different name to a ‘special’ meeting,

it is recommended that you clearly state that this meeting is intended to be the same as a ‘special’ meeting by including a statement similar to the following: “For the purpose of XYZ... a special meeting of the general membership as defined in the *Societies Act*”.

WHAT IS THE ANNUAL GENERAL MEETING (AGM)?

Section 25 of the *Societies Act* states:

“25 A society shall hold an annual general meeting in Alberta and shall present at that meeting a financial statement setting out its income, disbursements, assets and liabilities, audited and is signed by the society’s auditor.”

The Annual General Meeting is often simply called the AGM.

A. When Does the AGM Happen?

To answer this question, you must consider:

- The nature of your society
- The timing of your society's major activities
- The purpose of the annual general meeting for your society

You may want to hold your AGM at the end of the calendar year. The meeting can then serve as a review of that year.

You may want to hold your AGM at the beginning of the season of the society. This is a way to bring people together to launch the year.

You may want to hold your AGM shortly after the end of the fiscal year of the society. This allows you to review the annual reports, especially the financial report.

The bylaws should allow the Annual General Meeting (AGM) to take place as long as four months after the end of the fiscal year. It often takes that much time to prepare financial statements. Be sure to have your financial reports available for your AGM.

There is no right or wrong time to hold your AGM. It is a matter of preference. What is the best time for your particular society?

B. How Does the AGM Happen?

You must make very specific rules about calling the meeting and what notice members receive.

Be sure to answer these questions:

Who calls the AGM?

You must state who calls the AGM and who chooses its actual time and place. The board of directors usually calls the meeting and selects the date and place for the meeting. However, the executive or the president may also make these decisions.

What notice do members require?

Most societies prefer to give notice of the meeting in writing, such as a letter to each member. Do not use the telephone to notify members unless you are a small and informal society.

You may notify members of the meeting using:

- A notice in a newsletter or newspaper published by the society
- A notice published in newspapers at large
- A notice may be circulated by e-mail
- Posters placed in a location where most members gather

Make certain that the type of notice is effective and that it attracts the attention of all members.

An easy way to clarify the purpose, intent and format for a notice is to include it in the definitions that are given in the bylaws. For example: "Notice – An announcement in a newspaper, flyer, a community bulletin board, a facsimile or e-mail. The notice must be published by one or more methods with the intention of reaching all members. Telephone calls, voice mail and text messages are not acceptable transmission for a notice."

How much time is there between the notice and the date of the meeting?

You must specify the length of time required for notice. Be careful that the time is not too short. This prevents those in charge, or a disgruntled minority, from calling a quick meeting that members cannot attend. Also, the time for notice must not be too long. Members may forget the date of the meeting.

Choose the exact length of time after considering the type of your society and how large your membership is. Notice periods normally run from a few weeks to one month.

You must give your members a minimum of 21 days' notice for a special resolution. This includes special resolutions presented at an AGM. A simple way to address this issue is to require 21 days' notice for your AGM and to include any special resolutions in the meeting notice. See Chapter 9 for more information about issues requiring a special resolution.

C. What is the Agenda for the AGM?

You must decide what business happens at the AGM.

Should your society allow members to raise any subject and present any motion? Should your society address only those matters on the agenda for the meeting? Some members of societies think that the AGM should address any issue to be democratic. This can cause problems.

For example, there can be a crisis situation if a group of members, who have a particular intent and who constitute a majority vote in the meeting, comes to the AGM,

without warning, with the intention of either taking over the society or passing resolutions that would be unacceptable to the traditional membership or leadership of the society.

It is better for most societies to restrict the business of the meeting. However, make sure there is a way to give notice for any subject that a member wishes to raise. This is a better way to serve democracy within the society. Members with strong feelings on a subject have a way to raise an issue. All members then get notice of the issue before the meeting.

Therefore, your bylaws should include:

- A standard agenda for the AGM
- Other agenda topics added by the board of directors
- Other specific motions that any member has given notice of before the meeting is called

See Section 5.1 of Appendix 3 for an example.

WHAT ARE OTHER REGULAR GENERAL MEETINGS?

Your society may hold more than one regular general meeting during the year. Larger societies rarely hold more than one and that is the annual general meeting. Smaller societies may hold several general meetings, one of these being the AGM.

If your society has more than one general meeting per year, you must include all the information listed in the previous section for those meetings.

WHAT ARE SPECIAL MEETINGS?

You may want to have a special meeting when there is an unusual or urgent matter to address that cannot wait until the AGM. The bylaws must state how to call a special meeting.

There are many reasons that issues may not wait until the AGM. These include:

- The bylaws of a society sometimes prevent the society from doing something very useful or even necessary. A special meeting can deal with the issue and allow for changing the bylaws. The board of directors usually calls these meetings to address the issue.
- In some instances, it may not be possible to wait for the AGM to settle matters that affect the whole organization. For example, borrowing money by debenture issued by a society requires the consent of the general membership at a special meeting or AGM.
- There may be times when members are unhappy with a specific decision made or the direction the society is taking. The fairest and most democratic way to resolve the problem is to call a special meeting to air the differences and allow the membership to vote on an issue.

However, special meetings can be dangerous if members use it to try to take over the society or block something that the majority truly wants. Be careful when you choose to call a special meeting and what issues to address.

These questions are especially important:

Who can force the board to call a special meeting?

You must decide how such a meeting can take place. Bylaws usually state that the board of directors may call a special meeting.

You may also allow a sufficient number of directors or a sufficient number of members to ask for such a meeting in writing. This number must be large enough to make sure that a few disgruntled persons cannot call a meeting. The number must not be so large that it prevents a significant minority from forcing a meeting. Be careful to choose these numbers for your society.

For example, a good number for a society with 300 members is 20% of the membership. If sixty persons sign a petition calling for a meeting, this probably indicates a strong need for a meeting to air the differences and resolve the problem.

What business can occur at this meeting?

A board calls a special meeting for a specific purpose. The bylaws should state that the persons calling a meeting should submit a detailed agenda describing exactly what business will occur. The bylaws should state that the meeting will address only those matters, and no other matters.

This allows members to know the purpose for the special meeting and allows any member who cares enough about the issue to attend. It also helps to prevent a run away majority from doing irregular things at the meeting.

For example, it is not appropriate for members to petition for a meeting to consider the finances of the society. These persons could raise all sorts of complaints, from not spending money on a new photocopier, to firing all the employees of the society, to closing down complete operations of the society. In this case, their petition should state exactly what issue they want to raise. Will it be the photocopier? Will it be firing designated employees? Will it be shutting down a particular operation? Will it be a call for a special audit of the books? The petition calling for a meeting must list the issue(s) to address, including motions.

What notice do members require?

The notice for this meeting includes the exact agenda. This tells any member who cares about the disputed issue to attend. If the usual requirements for notices of meetings are fairly formal, you need no other special rules. If the usual requirements for notices are very informal, you must make more requirements for special meetings.

Since the *Societies Act* states that you must provide a minimum of twenty-one days notice for a special resolution, good business practice suggests that you also provide twenty-one days notice for a special meeting.

WHAT ARE THE PROCEDURAL RULES FOR GENERAL MEETINGS?

The bylaws must contain a set of rules that regulate procedure and voting at meetings.

You must address these questions:

What is the quorum for the meetings?

A quorum is the number of members of your society who must be present in order to legally transact business.

Think about your quorum. It should not be so low that only a few members can call and hold a general meeting. However, it should not be too high. Many societies set too high a quorum, and have to call meeting after meeting to get a quorum out.

A good working number is 20% of the membership.

You may want to state that the chairperson may adjourn a meeting to another date if a quorum is not present in the first half-hour. In this case, you may want to adjust the quorum requirement for the later meeting. However, it is not wise to set a quorum of zero for a delayed meeting.

Are the meetings open to the public?

Most societies allow the public to attend their meetings. If you open your meeting to the public, the bylaws should state that members, on a majority vote, can close all or a portion of the meeting to the public or anyone else who is not a member.

When this happens, the society is holding its meeting *in camera*. This can be used when the society discusses personal matters, such as expelling a member, firing an employee or removing a director from the board.

When the bylaws provide for an *in camera* session they should also define the content which will be recorded in the minutes. For example, a society which meets *in camera* to discuss an employee's salary or the suspension of a member may only want to record the decision(s).

Who chairs the meetings?

Traditionally the President chairs the meetings. The Vice-President chairs in the absence of the President.

However, you may want another officer to chair the meeting. In some very large societies, or for meetings with much controversy, the President may prefer not to chair. The President may want to name a chairperson who knows parliamentary procedure well.

You must decide who chairs the meetings if the officer who usually presides is absent or refuses to chair.

How does the meeting adjourn?

Some bylaws state that the chair can adjourn a general meeting from time to time. This is useful if an item of business takes too long to settle. If the adjournment is for a long period, bylaws sometimes state that the society must send out a new notice with the time and place of the adjourned meeting.

The bylaws must state that the only agenda items are those specific topics left for the adjourned meeting. At the adjourned meeting, you can deal

only with the issues on the original agenda. This prevents any irregular or inappropriate business happening at the meeting.

How does voting occur?

Will voting be by show of hands? Will it be by secret ballot? Will it be by some other means? You must decide what is best for your society.

The most common way to vote is by show of hands. However, you can have a vote by secret ballot, when demanded by a certain number of the members present.

Is there a special structure for voting?

Most bylaws state that all voting members of a society may attend the general meeting and that each voting member may cast one vote.

An alternative is voting by delegate. This may work for a society composed of member locals or clubs or some other sub groupings. Depending on the size of the group, there can be one delegate for each local or club, several delegates or a different number of delegates. The delegates can cast more than one vote each, which means there is a different weight for the votes.

You can choose the best structure for your society. Make these structures clear, especially if they are complex.

Is voting by proxy allowed? If so, can one person collect many proxies?

Proxy is the authority or power for another person. Voting by proxy means that Person A gives Person B the power to vote for Person A when Person A is absent.

Most societies do not allow voting by proxy.

If you want to allow voting by proxy in unusual circumstances, use the bylaws to state how to do it. You may want to state that a proxy must:

- Be in writing
- Be given to the Secretary at a time before the meeting
- Clearly express who is the holder of the proxy

You must also decide if only another voting member can hold the proxy. Decide if and how a member can cancel a proxy.

What majority do you need?

Bylaws set the majority required to pass any motion. You must choose whether it will be a simple majority, a two-thirds majority, a three-fourths majority or unanimous vote.

The *Societies Act* requires a special majority called a Special Resolution for certain matters. Items requiring special resolutions are:

- Changing the objects
- Amending the bylaws
- Issuing debentures
- Surrendering the Certificate of Incorporation

When an item of business requires a Special Resolution there must be a majority of 75% of the votes cast at the meeting.

Be careful when you write the requirement for voting. Decide what votes to count in relation to what group.

Your society may decide that ordinary motions require a majority vote.

Does this mean a majority of the members of the society? Does it mean a majority of the members of the society present at the meeting? Does it mean a majority of the members of the society present at the meeting who cast their votes? Since each of these cases is different, the bylaws should be specific.

For example, suppose that a society has 100 members. There are 60 members present at the meeting, but only 55 of them cast votes on a resolution. The number of votes to pass the resolution will change depending on the bylaws.

Here are the possibilities for passing this resolution:

- 51 votes, if the bylaws state that it must be a majority of the members of the society

A majority of the members of the society means the entire membership of the society, not just those present and voting. A simple majority is 50% plus one. It might be impossible to get a majority on any issue if only a few members attend the meeting or if even a few members oppose a motion.

- 31 votes, if the bylaws state that it must be a majority of the votes of the members present at the meeting.

This means all members of the society who are present at the meeting, not just those voting. There must be a count of the total number of persons present at a meeting even if they do not vote. This could be a problem.

For example, in a large meeting, persons may be constantly moving in and out of the room. If the vote is close, the organizers must adopt special measures to freeze everyone in the room to allow a count. The organizers must also have a way to distinguish members from observers.

- 28 votes, if the bylaws state that it must be a majority of the votes cast by the members present at the meeting.

This is the most straightforward way to count votes. This is what most of us mean when we talk about a majority vote.

This applies to any type of majority, whether it is a simple majority, a two-thirds majority or a three-fourths majority. The bylaws should state the necessary majority of those present and voting.

Does the President vote?

Some societies want the President to vote, or to have a casting vote. A casting vote is a deciding vote cast by the President to break a tie. Others want the President to not vote and remain neutral. Consider what advantages there are for your society. The choices include:

- The President never votes except in case of a tie
- The President votes as a regular board member

If the President votes, will he or she have a casting vote in case of a tie? Giving the President a second vote is not recommended because it gives the President more votes than other board members. An option is to consider the motion defeated if there is a tie.

What happens if a member does not get notice of a meeting?

The meeting is invalid if there is a deliberate lack of notice to members. However, there may be circumstances when members do not get notice. The person doing the mail-out, whether by post or e-mail, may accidentally omit a member, or there may be problems with delivery. You may want to state that a meeting is not invalid due to accidental omissions.

You do not want to write the bylaws in such a way that people can interpret that deliberate omissions are acceptable. You must give notice to all members.

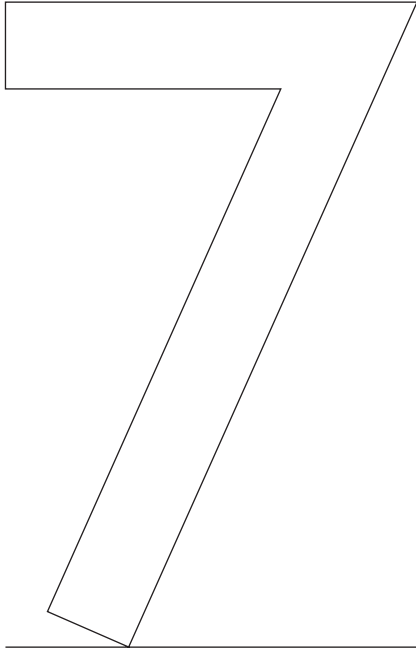
What is a signed resolution?

Some small societies do not hold a meeting if all the voting members sign a written resolution. This is an easy way to avoid the expense of a meeting when everyone is in agreement on a matter. However, a resolution does require the signature of every single member with the right to vote. If anyone cannot sign, or refuses to sign, the society must hold the meeting. This gives every member a chance to give his or her views in a meeting.

RECAP

The bylaws must specify the basic rules for meetings of the society. This includes:

- When to hold meetings
- Who calls the meetings
- Who votes
- How votes occur



How to Draft Your Bylaws: Governance Structure

WHAT IS GOVERNANCE STRUCTURE?

This section of the bylaws explains the basic governance structure of your society. Governance structure means the body or bodies that govern the affairs of the society between general meetings of the society.

WHAT IS THE BASIC STRUCTURE?

What does the basic governance structure of your society look like? Will the society have only a board of directors? Will it have a smaller executive body to run things between board meetings? Will it have even more levels of government? Will it have committees? How will these function? Will there be a paid administrator? What is the relationship between the board and paid administrator?

You must decide what structure will work best for your society. Use experience and carefully written objectives as a guide.

What type of board do you have?

There are two types of governing boards: Policy Governing and Administrative Governing. Both types of boards have the same role, responsibilities and functions. Both make policy. They are different from each other in how they carry out these functions.

The Policy Governing Board governs the organization by making policy. This policy determines the long-term direction of the organization. The board hires an administrator such as an executive director to implement the board's policies and to manage the day-to-day business of the organization. The executive director is accountable to the board. Front-line staff and service volunteers are accountable to the executive director. These staff members and volunteers implement programs and services.

The Administrative Governing Board also governs through policy-making. However, it may implement some of the policies and plans itself. The board may assign its executive committee to implement policies and manage the organization. The executive committee is accountable to the board as a whole. An administrative governing board has no paid administrator to manage the organization. However, it may have other paid staff, such as cashiers, bookkeepers or day care workers, to implement programs and services.

Your bylaws need to reflect the type of board your organization has.

- Board of Administrators
- Central Council

No matter what you call it, you must have a body equivalent to a board. This is the body that administers the society between general meetings of the society.

What are the powers and duties of the board?

The bylaws state what general power the board of directors has to administer the society. The bylaws also state what matters the board has the power to decide. Explain these things clearly to avoid any confusion. Decide if there are any restrictions to the board's power that require approval by a general meeting of all the members.

The *Societies Act* requires a general meeting of all the members to address certain important business. The matters are:

- Amending the bylaws (s. 15)
- Amending the objects (s. 16)
- Issuing debentures (s. 18)
- Surrender of Certificate of Incorporation (s. 34)
- Winding up (s. 35(1))

Sections 15, 16, 18 and 34 of the *Societies Act* state:

“15(1) The bylaws of a society shall not be rescinded, altered or added to except by special resolution of the society.

16(1) A society may, by special resolution, alter its objects.

18(2) The power of a society under subsection (1) shall be exercised only under the authority of the by-laws of the society and in no case shall debentures be issued without the sanction of a special resolution of the society.

34(1) A society may, by special resolution, surrender its certificate of incorporation.”

WHAT IS THE BOARD OF DIRECTORS?

Every society must have a board of directors. Section 9(4)(d) of the *Societies Act* states:

“9(4)(d) The bylaws that accompany the application shall contain provisions for all of the following matters: (d) the appointment and removal of directors and officers and their duties, powers and remuneration.”

You must address these questions:

What do we call the board of directors?

The *Societies Act* requires a board, but it does not state what you must call it. This Guidebook uses board of directors. However, you may want to use another name. Some possibilities are:

- Executive
- Council
- General Council
- Board of Governors

Unless there is a restriction in the bylaws, the board of directors can legally deal with all other matters.

Be careful about including extra restrictions. In theory, restrictions are attractive. In practice, they can cause difficulties in running a society.

For example, outsiders working with a society will examine the bylaws. If there are restrictions, the outsiders will require the society to meet the requirements to the letter. This may mean requiring special meetings at an expense to the society.

Include restrictions rarely and only after much thought. The restrictions in the *Societies Act* are usually enough for most societies.

What size is the board of directors?

The size of your board depends on several factors:

- The size of your society
- How complex the affairs of your society are
- Whether your society has distinct elements or sub groups that the board must include.

The *Societies Act* does not require a minimum number of directors. Therefore, your board can have from one member to a very large number of members. Most societies have a minimum of three board members.

For example, large organizations with thousands of members may in theory have 50 or 60 board members. Balanced regional representation or other special factors can influence this decision. Remember large boards are difficult and expensive to operate. Smaller societies with only 50 or 60 members usually have five to ten board members.

Who are the directors?

The *Societies Act* does not restrict who can become a director. The bylaws usually state that directors be drawn from the membership. However, this is not a requirement. Although directors can be persons who are not members of the society, this should only be permitted when the board has a clear requirement for expertise not readily available within the society.

For example, an association for the blind, with membership restricted to blind persons, may want some outside directors to provide expertise and to encourage wider community support.

Your bylaws may allow persons under the age of 18 to be directors. As directors, these individuals have the same responsibilities and liabilities as directors who are 18 years and older.

How do we elect the directors?

The bylaws must explain how to elect the directors. Consider these questions:

Can we re-elect a director?

The membership can usually re-elect a director. However, there is usually a limit to the number of terms the director may serve. This promotes stability and makes sure that the same group does not run the society forever.

What are the terms of the directors?

Directors usually serve for one, two or three year terms.

If the terms are longer than one year, it is a good idea to have staggered terms of office. Terms of the directors overlap so that a proportion of the board comes up for election each year. The membership influences the

makeup of the board and indicates whether they want change. However, there is stability, since the entire board will not change in any one year.

For example, assume your board has nine members. You want to have directors serve three-year terms, with three directors elected every year. In the first year of the society, or in the year you amend the bylaws to provide for staggered terms, you would elect:

- Three directors for one-year term
- Three directors for two-year terms
- Three directors for three-year terms

In year two, and in all the following years, there will be three vacancies on the board to fill at the AGM.

Are there other requirements for electing directors?

Complex societies with geographical or sectional membership can elect directors in a different way. The bylaws can state that certain groups of the membership must elect the directors.

For example, a provincial organization with regional groups in Alberta can ask that the regional groups elect the members of the board. The members from each region can assemble and vote for a director at the AGM. As an alternative, the members from each region can hold separate meetings at different times and places to elect the directors.

The bylaws can specify that there be a number of directors from certain sectors, even though the membership at large elects the directors at the AGM.

For example, in an organization with ordinary, senior and junior members, the bylaws might specify the board makeup. The board must have at least two directors from the senior members and at least two directors from the junior members.

There are other possibilities. The entire membership may vote by write-in vote. Persons could become directors by virtue of their office, such as presidents of regional bodies.

Persons serving as directors because of another office or position they hold are called *ex officio*. Voting eligibility for *ex officio* directors needs to be addressed in the bylaws.

The *Societies Act* is flexible on electing directors for your society. You may devise any system that is logical and workable, as long as the bylaws explain it clearly.

Can a director resign? How can we remove a director from office?

The bylaws must address resignation and removal from office.

A director may resign by giving notice in writing, with a fairly short period of time required for the notice.

Removal is a difficult issue that requires special care. The membership elects a director, usually at the AGM. If anyone else removes the director, it means that person is overturning the will of the general meeting. If the power is granted in the bylaws, a general meeting can remove a director, but there should be some safeguards and stringent requirements for removing a director.

For example, here are appropriate safeguards you may want to consider:

- If other board members can remove a director, then there must be a special meeting of the board. There must be notice to all board members, including the director being removed. There must be a special majority, such as three-fourths, to remove the director.
- If the way to remove a director is by a general meeting, then use the rules for giving notice for a motion. A simple majority is sufficient to remove a director at a general meeting.
- Take special care if the director represents a segment of the society, such as the junior members. It may be appropriate to allow only that segment to remove that director.

How do we fill a vacancy on the board?

The bylaws must state how to fill a vacancy if a director resigns, dies or is removed from office.

There are several possibilities to consider. The bylaws could be worded similarly to one or more of the following:

- The rest of the board may appoint someone to serve the remainder of the term of the departing member.
- The rest of the board may appoint someone to serve the term until the next general meeting.
- In the event a board is authorized to appoint someone to fill a vacant position it is considered 'best practice' to stipulate that the person must stand for election at the next AGM.
- The general meeting that removes a director from office may appoint someone to serve the remainder of the term.
- The sector or local who appointed or elected the director may appoint or elect someone to serve the remainder of the term.

- The society may leave the vacancy unfilled, providing that there is still a quorum for the board.

How often does the board of directors meet?

The frequency of board meetings depends on the size of your board, the needs of your organization and the overall structure for governing your society.

If a society is small, the board is also small. There is probably not an executive committee or paid administrator, so the board acts as the day-to-day administrator. The board meets frequently throughout the active season of the society.

If a society is large, there may be a large board of directors, an executive committee and possibly a paid administrator. The board may meet only a few times during each year. The board makes policy and decides long term matters. The board does not run the organization on a day-to-day basis. The executive committee or a paid administrator does this task.

Be flexible in this matter. What you decide depends on your basic structure, what makes sense for your society and what works for you.

What rules govern the meetings of the board of directors?

The bylaws state precise rules for meetings of the board of directors. This includes how to call meetings, who calls them, how to vote and what the quorum requirements are.

Use the information on meetings in Chapter 6 as a guide. Review each item and modify it for the board of directors. If the board of directors is large, use the same formality and strict requirements as for meetings of the society.

WHAT IS THE EXECUTIVE COMMITTEE?

Many societies have an executive committee that coordinates the work of the board and/or the affairs of the society. If there is not a paid administrator, the board of directors is the policy-making body, and the executive committee is the administrative body that runs the society on a daily basis. In societies with paid administrators, the society uses the executive committee to coordinate the work of the board's committees and to respond to emergency situations between board meetings.

You must address these questions:

Do we want an executive committee?

You may not need an executive committee. In a small society, the board of directors is both the policy-making body and administrative body.

In a large society, the affairs are more complex. If there is no paid administrator, the board of directors is a policy-making body and the executive committee is the management body. If there is a paid administrator, he or she manages the organization.

What is the relationship of the executive committee to the board of directors?

Societies with executive committees and/or paid administrators may have problems clarifying the responsibilities and roles of the board, executive committee and paid administrator. In a board without a paid administrator, conflict may be between the board

and the executive committee. The executive committee may complain that the board of directors is interfering in the day-to-day matters of running the society. The board may complain that the executive committee is running wild, making decisions beyond its authority, and not listening to the board. In societies with paid administrators, a conflict can occur between the board and the paid administrator or between the executive committee and the paid administrator.

The bylaws cannot entirely solve these problems. No matter how well or clearly written they are, difficulties can still occur. You must use other strategies to avoid or resolve these difficulties. Such strategies are beyond the scope of this Guidebook. However, you may use policy manuals, clear lines of communication, open discussion and meetings to discuss and define expectations and roles.

What can the bylaws do to prevent the conflict from being too great? None of the following suggestions are absolutes. They may not be right for your society. However, you may consider some of these ideas:

Create a link between the executive committee and the board of directors.

In most societies, the members of the executive committee are also members of the board of directors. They are usually the officers and chairs of standing committees. This structure encourages communication between the two bodies and reduces conflicts.

Define the relationship between the board of directors, the executive committee and the paid administrator.

The bylaws must address the relationship between them.

The board of directors must have final authority. If it does not, the society can come to a standstill. Each body may claim that the decisions of the other are wrong or unauthorized. The board having final authority does not mean that it should interfere in daily activities. However, it does mean that the board makes the final decisions.

Define the general responsibilities and duties of the executive committee and/or paid administrator.

Bylaws state the duties and responsibilities of the executive committee. This defines how the executive committee functions. Bylaws also state the role of the paid administrator and broad areas of duty and responsibility. However, it is dangerous to include too much detail. Board policies, committees' terms of reference and job descriptions can explain detailed responsibilities and expectations. It is easier to modify these policies from time to time than to amend the bylaws.

Bylaws can address the role of the paid administrator and whether he or she will be a member of the board. Will he or she be a voting member?

Be careful about making the paid administrator a voting member of the board.

This can create a conflict of interest position for the paid administrator who is hired by and accountable to the board.

Allow the board to delegate powers to the executive committee.

The bylaws can allow the board of directors to delegate some of its powers to the executive committee. There is a rule in law: *delegatus non potest delegare*. This means that a delegate cannot sub delegate without express authority to do so. The board of directors cannot delegate any of its powers unless the bylaws allow it.

How large is the executive committee?

The size of the executive committee depends on the overall structure of your society. The executive committee is usually small so it can meet easily and quickly. The members of this committee are usually the officers of the society. It can include a few directors-at-large or the chairpersons of key committees of the society.

Who is on the executive committee?

The bylaws should explain how to name members to the executive committee.

Consider these possibilities:

- The officers of the society are the usual members of the executive committee. The committee can also include other directors-at-large or chairpersons of certain committees. The AGM can elect members-at-large to sit on the executive committee.
- The board of directors can name the executive committee from its members or from outside its members.
- There is often a combination of these methods. The board may name a few directors at large to join the officers on the executive committee.

What rules govern the meetings of the executive committee?

Rules for meetings of the executive committee include how to call meetings, what the quorum is, the process for voting and adjournment, and the type of minutes which must be kept (for example, perhaps the minutes would record only decisions and not the discussions). Use the same checklist as for the board of directors and general meetings of the society.

The rules must be precise, but the requirements for meetings can be flexible.

For example, unless the executive committee is very large, notice should require no more than a few days, by e-mail or telephone.

WHAT ARE THE OFFICERS?

Every society must have some officers. The *Societies Act* does not state how many there are or who they are.

The minimum officers are usually a president and a secretary. There can be one or more vice-presidents. There may or may not be a treasurer. Many societies combine secretary and treasurer into one position.

You need to address these questions:

What are the responsibilities and duties of each position?

Traditional responsibilities and duties for each position are:

President

The president is the chief officer of the society. The president:

- Presides at all meetings of the society, the board of directors and the executive committee
- Calls meetings of the board and the executive committee
- Is responsible for the overall direction of the board
- Is the main spokesperson for the society
- Is an *ex officio* member of the committees of the society (the President may be a voting OR a non-voting member of the committees)

Vice-President

The vice-president is the person who does the president's duties if the president is unable to do them. This can happen in the case of illness, absence or vacancy in the office of president.

The bylaws often give further responsibility to the vice-president. For example, the vice-president may chair a standing committee.

You may want more than one vice-president. If so, clearly define the functions and responsibilities for each position. Different vice-presidents can be responsible for different functions of the society. Examples include Vice-President of Personnel and Vice-President of Finance. Be sure the bylaws state which of the vice-presidents will stand in for the president if necessary. The bylaws can also allow for the board of directors to decide this matter.

Secretary

The secretary keeps the minutes and records. The secretary:

- Prepares and preserves the minutes of all meetings of the society
- Keeps the seal of the society
- Keeps the registry of members of the society (The official register of members only includes the name and address for each member. This list must be available to every member for Society business purposes. It may not be used by members for any other purpose)
- Prepares and sends notices of meetings of the society and the governing bodies of the society
- Keeps and preserves the correspondence, contracts and other important records of the society
- Files the annual return, changes in the directors of the organization, amendments in the bylaws and other incorporating documents with the Corporate Registry.

In a large society, there may be a paid employee to do most of this work. This person may be a paid administrator or an administrative assistant. In this case, the board secretary may have only a supervisory role or there may not even be a board secretary.

Treasurer

The treasurer keeps the finances of the society. The treasurer:

- Prepares financial statements for the society
- Supervises spending monies, including signing cheques
- Works with the accountants or auditors of the society on the audit of the financial statements
- Presents the financial reports of the society to the board of directors and the annual meeting.

In a large society, there may be a paid employee to do most of this work.

This person may be a paid administrator or bookkeeper. In this case, the board treasurer may have only a supervisory role or there may not even be a board treasurer.

Many societies combine the positions of secretary and treasurer.

Past President

Many societies want to have a continuing role for the immediate past president. The experience and maturity of the past president can bring continuity and stability to the society.

Be careful to define the exact role of the past president. Decide whether he or she will sit on the board of directors or executive committee and whether he or she will have a vote.

Sometimes the past president chairs or serves as a member of the nominating committee. The past president may have a valuable role on a committee that is revising the bylaws of the society. These positions call for experience, maturity and knowledge of the organization.

How do we select the officers?

The bylaws should explain how the board of directors names the officers or how the AGM elects officers.

The bylaws can state that the officers are elected at the AGM. Another method is for board members to be elected at the AGM. Then, the board itself elects the officers from among the board members. There can be a combination of both methods where only certain officers such as the president are elected at the AGM and others at the first board

meeting. There are advantages and disadvantages to each method. This requires careful thought before selecting a method.

Can an officer resign? Can we remove an officer from office?

Use the information on page 42 for the board of directors to resolve these issues.

How do we fill a vacancy in an officer position?

Again, use the information on page 43 for the board of directors to resolve this issue.

WHAT ARE THE OTHER COMMITTEES?

Many societies have standing or *ad hoc* committees to do particular tasks. The next section explains standing committees. *Ad hoc* means for the case at hand. An *ad hoc* committee is one that works on a particular task or issue outside the standing committees.

The bylaws should state that the board has the power to set up committees. The bylaws can give the board the power to assign functions, responsibilities and powers to these committees. Bylaws for large societies may describe the standing committees, their responsibilities and powers.

Consider these questions:

What are the permanent or standing committees?

Standing committees are formal, permanent or long standing structures of the society. They deal with the ongoing matters of the organization.

The bylaws can establish these committees or the committees can be established by policy motions of the board of directors.

Traditional standing committees include:

- **Executive Committee**
This Guidebook explains the executive committee on page 44.
- **Nominating Committee**
The Nominating Committee prepares a slate of persons to be nominated as possible officers and directors of the society. It has a very important responsibility to attract quality candidates.
- **Membership Committee**
The Membership Committee encourages membership in the society. It attracts new members and helps define the benefits of membership. This committee has an important role, since most societies without active members will not last for long.
- **Finance Committee or Fundraising Committee**
The Finance Committee is responsible for recommending financial policies to the board. In small organizations with no paid administrator, the Finance Committee may prepare the annual budget. The Treasurer usually chairs or is a member of this committee. Sometimes there is a separate committee for fundraising, especially if the projects take much time.
- **Personnel Committee**
The Personnel Committee sees that there are good overall policies for paid staff and volunteers. This committee may be responsible for interviewing the paid administrator and coordinating his or her evaluation. Final decisions about hiring and evaluating the paid administrator rest with the board. In some societies, this committee also acts as a mediator for personnel problems.

What is the relationship between these committees and the board of directors or the executive committee?

Interrelationships of the various committees and the board are important. Firm control must remain with either the executive committee or the board of directors of the society to avoid runaway committees. Consider the basic structure of your society to establish these controls.

Here are some techniques to provide better communication and avoid conflict:

- Chairpersons of the various committees are members of the board of directors or the executive committee
- The president or other members of the executive serve as *ex officio* members of the various committees
- Vice-presidents serve as members of particular committees or attend their meetings.

What are the responsibilities and duties of each committee?

The bylaws should outline in broad terms the responsibilities and duties of each standing committee.

How do we form the committees?

The bylaws must describe how to form the committees. Does the annual general meeting elect committee members? Does the board of directors name the committee members? Does the executive committee name them? Do committee chairs recruit committee members? Are there other ways to do this?

How do we fill vacancies on committees?

Can committee members resign? Can we remove them from office?

Use the information for the board of directors as a guide. Usually, the board of directors has the power to remove and replace committee members.

What rules govern the meetings of the committees?

The bylaws should state these rules for the executive committee. However, the bylaws usually do not state rules of procedure for other committees.

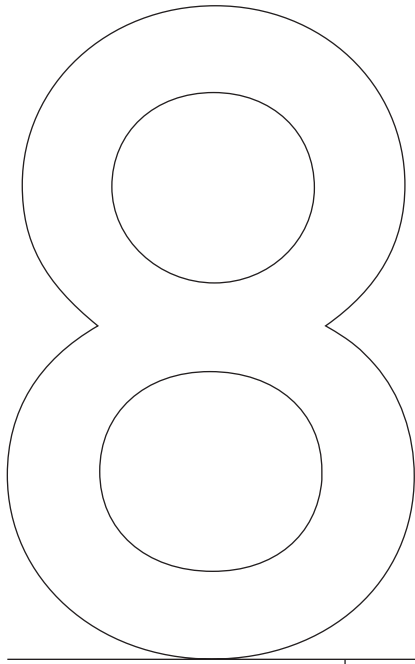
RECAP

You must choose the overall structure of the government of your society.

Consider the following:

- How large is your board of directors?
- Is it an administrative governing board that decides day-to-day issues as well as broad policy issues?
- Is it a policy governing board that decides only policy issues?
- Is there an executive committee? If so, what are its powers?
- What are the responsibilities of the officers?
- What committees will exist?
- How are committees established?

Once you decide the best basic structure for your society, you can address all the details. You may consider forming a committee to assist in recruiting future directors and developing leadership skills. Committee members are not required to be members so they may be drawn from the public.



How to Draft Your Bylaws: Management and Finances

WHAT IS THE NEED FOR THESE ARTICLES?

The bylaws must describe important administrative, financial and management matters. Too often, societies overlook this area in the bylaws.

Important Note: You must submit your organization's address when you apply for incorporation. However, the address of your organization is not required to appear in your bylaws.

WHAT IS THE REGISTERED OFFICE?

You must submit the address form for the location of the registered office of the society when you apply for incorporation and when the address of the society changes, so that the corporate records can be updated. Section 24 of the *Societies Act* states:

“24(1) Every society shall have a registered office in Alberta to which all communications and notices may be sent and at which all process may be served.”

WHAT IS THE SEAL OF THE SOCIETY?

A society usually has a seal. This is a stamping device that leaves a raised pattern on paper.

It is an important official piece of equipment. The seal of the society shows authority to enter into agreements and commitments on behalf of the society. This is why you must be careful who keeps and uses the seal.

Your society can protect itself by including in the bylaws:

- Adopting a seal
- Who controls the seal
- How and when to use the seal
- Who countersigns the seal

WHAT IS THE FISCAL YEAR OF THE SOCIETY?

The fiscal year of the society is its financial year. The bylaws must state what is your society's fiscal year.

Your fiscal year can be any consecutive period of 365 days. There is no requirement that it start on the date your society incorporated, or on its anniversary date. You can choose what is best for your society.

Consider these questions when you choose your fiscal year:

When is the Annual General meeting of your Society?

The *Societies Act* requires that there be a financial statement at the annual general meeting. Section 25 of the *Societies Act* states:

“25 A society shall hold an annual general meeting in Alberta and shall present at that meeting a financial statement setting out its income, disbursements, assets and liabilities, audited and signed by the society's auditor.”

If the fiscal year of the society ends many months before the annual general meeting, then the financial statement will be out of date. This is not good management. Members need to know what the current financial situation is.

Therefore, you need to choose a date that is reasonably close to your annual general meeting.

Remember that it takes time to audit the books and produce a financial statement. Be sure you allow enough time between the end of fiscal year and the date of the AGM. This time period is usually two to three months, but should not exceed four months. You can shorten this time period if your society is small, and the books and finances are simple.

What are the fiscal years of your Society's major sponsors?

Many societies get their funds from one or two major donors with similar fiscal years. These societies want to match their fiscal year to the donors' fiscal years. This is an administrative convenience for them.

This is especially important when the society receives its major funding from government. Government agencies require financial statements from the society. Having similar fiscal years helps the society prepare grant requests and report finances.

Does your Society have a natural season?

Most societies have a natural season that is different from the calendar year. It is not a good idea to end a fiscal year in the middle of the busiest part of the season. Many expenses and revenues may be outstanding, so it is difficult to do the financial report.

It is better to set the fiscal year end at a time that is less busy. Employees and volunteers then have the time to prepare the necessary financial statements.

WHAT ABOUT THE FINANCIAL RECORDS AND BOOKS OF THE SOCIETY?

The bylaws must state who keeps the financial records and books for the society.

You must keep the financial records and books properly. Failure to do this causes major problems for societies. Poorly kept or improper books create suspicion, even if there has been no fraud or stolen funds. Nothing destroys a society more than the idea that it does not have control of its finances.

The bylaws cannot prevent fraud or dishonesty. However, the bylaws can clearly address these questions:

Who signs the cheques?

Who controls the bank account of your society? Describe this process in the bylaws.

The bylaws usually require the board of directors to pass a motion on who countersigns cheques. Most banks and credit unions ask for this information when the society opens an account.

Stating this requirement is enough for the bylaws. It is not wise for the bylaws to name persons, since that may change on a yearly basis. Remember that it is harder to change the bylaws than for the board to pass a new motion when personnel change.

Be sure that the board's motion requires two signatures on cheques. Though not required by law, at least one of these persons should be a director. In order to avoid potential future conflicts, where possible, consider ensuring that the two signing parties are not in a close relationship. For example, you could consider the requirement that the signing parties not be related by blood, adoption, marriage, or common-law relationship.

In large societies with paid staff, consider allowing paid staff to sign cheques up to an agreed amount. This enables staff to carry out the day-to-day operations of the society more efficiently.

Who keeps the financial records and books?

The bylaws must state who keeps the financial records and books. This is usually the treasurer of the society. If there is no treasurer, you will need to name another officer. In large societies with paid staff, books are usually maintained by paid staff and kept at the organization's office.

Who can examine the financial records and books?

The bylaws must state who can examine the financial records and books of the society. This right is usually limited to the members of the society. The bylaws also need to outline a process for requesting and for viewing the financial records and books. The process explains:

- The amount of notice required
- The location, if there is one, where members can examine the financial records and books

- When members can examine the financial records and books

Who audits the books?

There must be an audit of the finances of any society. An audit is a formal examination and verification of financial accounts.

You must present the audited report at the annual general meeting.

There are two ways to do an audit:

- You can name an outside auditor of the books. If you pay a fee for an audit the person must be a professional accountant.
- You can appoint two people to audit the accounts of the society. They should have some experience with finances. (Small societies often choose this method.)

WHAT ABOUT THE MINUTE BOOKS AND OTHER RECORDS OF THE SOCIETY?

Minutes are the official records of the business conducted at the meetings of the society, and the meetings of the directors. Accurate minutes provide a legal and a historical perspective for the society. A good set of minutes includes:

- Where and when the meeting happened
- Who was present
- What was decided, and the factors that led to the final decision

You need to write your minutes so that anyone who was not at the meeting can understand what occurred.

Consider attaching supporting documents to your minutes instead of putting them directly in the minutes. This approach keeps the body of the minutes shorter, while preserving the content of the meeting.

The wording of motions is agreed when they are passed. However, since minutes are not official until they have been approved by those attending the meeting, it may be appropriate to publish a separate list of motions passed at the meeting. In the event you publish your minutes on a web page, you may want to consider publishing them in a **secure** PDF format to ensure that they cannot be altered.

In addition to the minutes, the bylaws must also clarify what other records the members of the society can examine. It is usually not advisable to make all of the society's records available to the members. For example, some records of a society contain personal information (e.g., personnel, and client records). Other records contain information that the society may not want released to the whole membership (e.g., tenders for a contract). Therefore, to protect the individuals and the society, the bylaws need to give the board the ability to designate certain records as confidential, and unavailable to the membership.

Accessible and accurate information builds trust in the board and leads to an informed membership. To make sure that your members can gain access to needed information, make sure that your bylaws clearly address these questions:

Who prepares and keeps the minute books and other records?

The bylaws must state who prepares and keeps the minutes of the meetings of the society, and the meetings of the directors. This is usually the secretary of the society. In large societies with paid staff, the paid staff can record the minutes at meetings. The minute books are usually kept at the organization's office.

In small organizations, the secretary can keep all of the records for the organization. This might include membership lists, program registrations and other records related to the services of the organization. In large societies with paid staff, the organization's records are usually maintained by paid staff and kept at the organization's office.

Who can examine the minute books and other records?

The bylaws must state who can examine the minute books and other records of the society. This right is usually limited to the members of the society. The bylaws must also outline a process for requesting and for viewing the minute books or other records.

The process explains:

- The amount of notice required
- The location, if there is one, where members can examine the minute books and other records
- When members can examine the minute books and records

WHAT ABOUT CONTRACTS OF THE SOCIETY?

Who signs contracts of the society?
Describe this process in the bylaws.

Do not name specific persons or officers. Doing that would cause your society to constantly amend its bylaws.

The bylaws should require the board of directors to pass a motion on who signs contracts for the society. The board then decides how many signatures are on contracts and which decision-making body of the society must approve the contracts.

You should consider differentiating between routine contracts necessary for the day-to-day operations of your society (e.g. utility contracts or grass cutting) and major contracts for one-time purchases and infrastructure (e.g. re-paving the parking lot).

WHAT ARE THE BORROWING POWERS OF THE SOCIETY?

A contract to borrow money is a very important type of contract. Since safeguards are necessary, there is usually a separate article in the bylaws about borrowing money.

The *Societies Act* contains some protection. A society may not borrow money unless the bylaws allow it.

Even if the bylaws permit borrowing, debentures are a special case. A debenture is a bond secured only by the general assets of the issuing organization. Lenders usually take debentures for long-term borrowing. If the society borrows by issuing debentures, it must get approval by the members at a meeting of the society. There must be a special resolution passed by a 75% majority.

What should the bylaws include for other kinds of loans? This depends on who controls the borrowing: the members or the board of directors.

Most societies give this power to the board of directors. Some societies want the members' approval before the society borrows money. One compromise allows the board of directors to borrow up to a certain amount. Another compromise allows the board of directors to borrow, but only if two-thirds or three-fourths of the board approves.

There can be problems if the board has no authority to borrow. It may be difficult to manage an ordinary checking account, since a \$25.00 overdraft is technically a loan. The society may need a temporary loan while waiting for grants to come in. Be sure to allow some authority for the board of directors to borrow small sums.

WILL BOARD MEMBERS BE PAID HONORARIUMS?

The bylaws must explain what, if anything, to pay members, directors and officers of the society. This can be a difficult issue for a society to address.

Generally, societies do not pay for the services of a member, director or officer. In rare cases, the board of directors or a general meeting can give special approval for paying honorariums to these persons.

However, this does not prevent paying persons in a different capacity, such as an acting general manager or paid office staff.

Be careful about paying board members for additional services. This can easily be perceived as conflict of interest by the members of the society and the community at large.

WHAT ABOUT INDEMNITY AND PROTECTION FOR DIRECTORS AND OFFICERS?

Though not specifically mentioned in the *Societies Act*, best practice suggests that the bylaws should include indemnity and protection for directors and officers of the society for the work they do in that capacity.

Many persons have a concern about possible liability for their acts if they become directors or officers of a

society. These persons are usually volunteers who generously give their time and efforts for the society. The bylaws can give them some protection and reassurance.

The bylaws must state that there is no protection for directors or officers for acts of fraud, dishonesty, and bad faith. The courts would not enforce the bylaws if they did not state this.

A word of caution here:

Indemnity clauses in the bylaws do not provide absolute protection to the officers and directors.

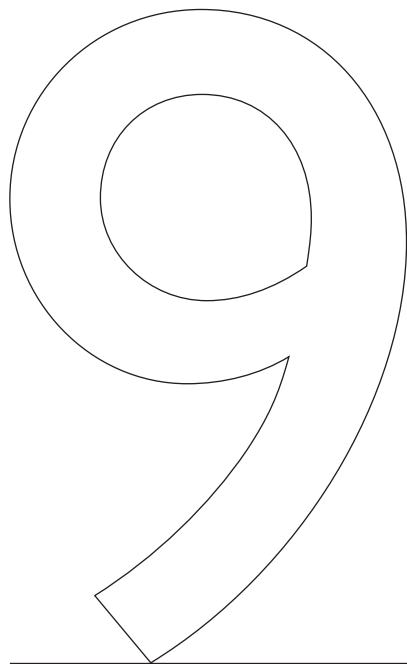
If this is a major concern, a society needs to consider getting insurance for its directors and officers.

RECAP

Your bylaws must explain various management and financial matters. You will want to decide on procedures and rules to regulate finances and contracts of the society.

These matters include:

- Who controls the seal
- Who signs cheques and contracts
- Who keeps the financial records, the minute books, and other organizational records
- Who can examine the financial records, the minute books, and other organizational records
- Who audits the books
- Who can borrow money
- What protection there is for directors and officers.



How to Draft Your Bylaws: Fundamental Changes

WHAT ARE FUNDAMENTAL CHANGES?

A society may need to make fundamental changes to its structure or bylaws occasionally. It may even have to consider closing its operations and dissolving the society. All of these actions are fundamental changes.

WHAT ARE THE PROCEDURAL REQUIREMENTS FOR THESE CHANGES?

Because fundamental changes are critical, the *Societies Act* has special requirements on changes to the bylaws. These changes are:

- Amending the bylaws
- Changing the objects
- Issuing debentures
- Surrendering the Certificate of Incorporation
- Winding up

These changes must have the approval of the members of the society. The changes must appear in a special resolution. There must be a general meeting, either the annual general meeting or a special meeting. There must be at least 21 days' notice to all members of the proposed change. At least 75% of the members who vote at the meeting must approve the change.

HOW CAN WE MAKE CHANGES TO THE OBJECTS OR THE BYLAWS?

Your bylaws must state the procedure for amending the bylaws or the objects of the society.

The *Societies Act* strictly regulates how to change the objects or the bylaws. Your bylaws must state that there must be a special resolution as described in the *Societies Act*.

Small societies may state that a resolution signed by all the members is acceptable, even if there is no formal meeting. This is an easier process when there are fewer than 20 members. The registrar has accepted such bylaws in the past.

WHAT IS DISSOLUTION?

Dissolution is the breaking up or ending of your organization.

General

Organizations incorporated under the *Societies Act* will require a special resolution in order to voluntarily dissolve. Organizations incorporated under the *Companies Act* also require a special resolution in order to voluntarily dissolve (unless it was a company of previously decided fixed duration). Both kinds of organizations may also be dissolved by certificate of the registrar or order of a court. Each kind of dissolution has various requirements in terms of documentation. Upon dissolution, you should consult the Act under which your organization was incorporated in order to ensure that the appropriate steps are taken.

Under both the *Societies Act* and the *Companies Act* there is no requirement that an organization's bylaws describe the procedure for dissolution. However, it is strongly recommended that your bylaws include a description of this procedure because knowing these issues in advance can save grief and disagreement later.

As part of this description, the bylaws should state what happens to the assets of the society upon dissolution (assuming the assets exceed the liabilities), especially if it is intended that the society will also apply for registered charitable status under the *Income Tax Act* (ITA). See requirements for a registered charitable organization, below.

Matters to consider include the following:

- The person/persons who receive the assets after dissolution. Under the *Societies Act*, for example, this can include members. However, this is not the case for registered charitable organizations under the ITA . Also, other governments (e.g.: if the organization wants to be active in other provinces) and donors may not approve of such a possibility. For these reasons, it is very important to carefully consider whether this will be the case for your organization.
- The exact organization, or types of organizations, that receive the assets upon dissolution. In general, it is recommended that the organization to receive the assets have objects similar to the organization that is dissolving. This, too, can help to prevent much confusion and disagreement later. The organization can name another specific organization, but then it runs the risk of that organization no longer being in existence at the time of dissolution. Therefore, if an organization is named, it is advisable that there also be an “alternate” clause that names other types of organizations.
- Identify who will decide which organization receives the assets upon dissolution. The bylaws can give this power to the members or to the board of directors. In addition, the bylaws can require that this be decided at a meeting called specifically for this purpose. This meeting can be, and often is, the meeting in which the dissolution itself is decided upon.

In order to receive a Gaming license from the Alberta Gaming and Liquor Commission, it is required to have a dissolution clause in your bylaws.

Organizations which plan to apply for registered charitable status under the *Income Tax Act*

If an organization wishes to apply for registered charitable status under the *Income Tax Act*, there are certain dissolution and wind-up provisions that must be included in the bylaws. These include:

- that the assets of a charity cannot be distributed to its members at any time, including upon dissolution; and
- that upon wind-up or dissolution, all remaining assets after the payment of debts will be distributed to one or more eligible donees (i.e.: other registered charities)

The issue of the distribution of assets upon dissolution or winding up of an organization has become increasingly complex. Legal advice should be sought.

RECAP

Fundamental changes include amending the objects or bylaws of the society, issuing debentures or a decision to dissolve the society. These changes require that the members pass a special resolution. Your bylaws must describe a procedure that meets the minimum requirements of the *Societies Act*.

Your bylaws must also state what happens to the assets of the society on dissolution or set out a procedure on how distribution will be decided.

APPENDICES

APPENDIX I

Incorporation Under the *Companies Act*

Introduction

Instead of incorporating under the *Societies Act*, it is possible to incorporate under the *Companies Act*.

The *Companies Act* used to regulate the incorporation of most business companies in Alberta. In the early eighties, the law relating to business companies was reformed and a new *Business Corporations Act* was passed. If a Company is being formed for purposes of profit, then incorporation in Alberta must take place under the *Business Corporations Act* and not the old *Companies Act*.

However, the *Companies Act* was kept alive for the purpose of continuing to regulate not-for-profit companies which had been incorporated under it and to incorporate new not-for-profit companies. The *Companies Act* and the *Societies Act* continue to exist side-by-side.

Why Incorporate Under the *Companies Act*?

In Chapter 1, if a not-for-profit group will be engaged in major business activities of a permanent nature, this group could consider incorporation under the *Companies Act*. However, a society has the ability to declare a trade name as a fundraising method as long as their sole purpose is not to carry on a trade or business. A not-for-profit

group incorporated under the *Companies Act* can be incorporated for a business purpose.

There is another advantage to incorporating under the *Companies Act*. The rules on how to name your organization are more flexible. Because of the regulations under the *Societies Act*, the Registrar invariably refuses to allow a society to incorporate under the *Societies Act* unless it has as part of its name the required words described in Chapter 2 on page 14. This regulation does not apply to the *Companies Act*, and names for not-for-profit companies under the *Companies Act* can rely on the provisions of Part 9 and obtain a name which does not include the use of the word 'limited'.

Disadvantages of Incorporating Under the *Companies Act*

The *Companies Act* is more complex. Most persons working in the field of not-for-profit groups are not as familiar with the Act. For that reason, incorporation under the *Companies Act* needs to be reviewed more carefully and lawyers should be consulted. Incorporating under the *Companies Act* is recommended only if the company involved is a major one, such as a substantive foundation or groups with substantial business or trade objects or substantive holdings.

For example, the incorporators need to decide if this not-for-profit company under the *Companies Act* will be a private or public company. A private company is one that follows these three rules:

1. Has fewer than 50 members
2. Prohibits a general invitation to the public to become members
3. Prohibits any transfer of the interest of a member in the company.

Unless these three rules are met, the company will be classified as a public company. Public companies have much more stringent and numerous reporting and filing requirements.

For example, before the annual meeting a public company is required to mail a copy of the financial statements of the company to every shareholder.

As a result, most not-for-profit groups incorporating under the *Companies Act* should make certain that the resulting not-for-profit company is a private company. That means the resulting company follows the rules listed above. For this reason, a not-for-profit group with more than 50 members should normally incorporate under the *Societies Act* instead of under the *Companies Act*.

How can you operate a substantial trade or business such as a second-hand store to raise funds? You can split off that part of the business and a not-for-profit Company under the *Companies Act* can then be incorporated which operates that trade or business. It can be set up so the society controls the separate not-for-profit Company. Another advantage is that if the not-for-profit Company business or trade fails, the whole society will not sink or fail.

Basic Incorporation Procedures

Incorporation under the *Companies Act* takes place using a procedure similar to that under the *Societies Act*. This is handled by the Registrar of Corporations. However, there are some differences.

You must still do a Search Report similar to what must be filed when incorporating a society. Once you have incorporated a Part 9 Company, you file the following two standard documents:

A. Memorandum of Association

This basic incorporating document sets out the name, purposes and special restrictions on the powers and the incorporators of the company

B. Articles of Association

This is similar to the bylaws of a society. It contains the basic rules and regulations on running the company.

The standard bylaws for a society given in the Guidebook can be used with only slight variations for the articles of associations of such a not-for-profit company.

The rest of the procedures are very similar to those for societies.

Recap

An alternative to incorporation under the *Societies Act* is to incorporate under the *Companies Act*. In fact, if a substantial business or trade is being carried on, you must incorporate under the *Companies Act*.

While the procedure is somewhat similar, there are some real differences. Lawyers should be consulted. A Company incorporated under the *Companies Act* should normally be incorporated as a private company, which restricts the number of members to 50. If the not-for-profit group is larger than this, the group should consider incorporating under the *Societies Act* with a separate not-for-profit company under the *Companies Act* being set up to operate a business or trade. The society then controls the company.

APPENDIX 2

The *Societies Act*: Application Example

We, the undersigned, declare that we desire to form a Society under The *Societies Act*, RSA 1980, Chapter S-18 and that:

1. The name of the Society is:
THE CLASSICAL MUSIC SOCIETY OF ALBERTA
2. The objects of the Society are:
 - a. To promote appreciation for classical music.
 - b. To promote learning about and sharing of classical music.
 - c. To establish scholarships and provide financial assistance to persons pursuing studies in classical music.
 - d. To promote concerts and other musical activities in the field of classical music.
 - e. To lease, purchase or acquire facilities to house the Society and its music library.
 - f. To raise funds in any way to achieve the objects of the Society. This includes accepting gifts, donations, grants, legacies, bequests and inheritances.
 - g. To borrow funds and lease, mortgage, sell and dispose of property of the Society and establish a line of credit to achieve the objects of the Society.
 - h. To use funds of the Society only according to and in pursuit of these objects or other charitable objects.

(Important Note: These objects are not suitable when seeking Charitable Status with the Canada Revenue Agency – See page 17 for more information)

DATED at the City of Edmonton, in the Province of Alberta, this _____ day of _____, 20____.

Incorporator (printed name AND signature)	Witness (printed name AND signature)
Address	Address
Incorporator (printed name AND signature)	Witness (printed name AND signature)
Address	Address
Incorporator (printed name AND signature)	Witness (printed name AND signature)
Address	Address
Incorporator (printed name AND signature)	Witness (printed name AND signature)
Address	Address
Incorporator (printed name AND signature)	Witness (printed name AND signature)
Address	Address

APPENDIX 3

A Set of Bylaws: A Sample

These bylaws are written for a policy governing board with a paid executive director who manages the organization. Remember that these bylaws are only a sample. You must write your bylaws to fit your society's needs and circumstances. It is recommended that the wording used in the *Societies Act* be used in your bylaws.

Classical Music Society of Alberta

BYLAWS

Article I – Preamble

1.1 The Society

The name of the society is the Classical Music Society of Alberta, which may also be known or referred to as the CMS or the Society.

1.2 The Bylaws

The following articles set forth Bylaws of the Classical Music Society of Alberta.

Article 2 – Defining and Interpreting the Bylaws

2.1 Definitions

In these Bylaws, the following words have these meanings.

2.1.1 Act means the *Societies Act* R.S.A. 2000, Chapter S-14 as amended, or any statute substituted for it.

2.1.2 Annual General Meeting means the annual general meeting described in Article 5.1.

2.1.3 Board means the Board of Directors of this Society.

2.1.4 Bylaws means the Bylaws of this Society as amended.

2.1.5 Director means any person elected or appointed to the Board. This includes the President and the immediate Past President.

2.1.6 Member means a Member of the Society.

2.1.7 Officer means any Officer listed in Article 6.2.

2.1.8 Registered Office means the registered office for the Society.

2.1.9 Register of Members means the register maintained by the Board of Directors containing the names of the Members of the Society.

2.1.10 Society means the Classical Music Society of Alberta.

2.1.11 Special Meeting means the special meeting described in Article 5.2.

2.1.12 Special Resolution means:

- a. a resolution passed at a General Meeting of the membership of this Society. There must be twenty-one (21) days' notice for this meeting. The notice must state that proposed resolution. There must be approval by a vote of 75% of the voting Members who vote in person;
- b. a resolution proposed and passed as a Special Resolution at a General Meeting with less than twenty-one (21) days' notice. All the Voting Members eligible to attend and vote at the General Meeting must agree; or
- c. a resolution agreed to in writing by all the Voting Members who are eligible to vote on the resolution in person at a General Meeting.

2.1.13 Voting Member means a Member entitled to vote at the meetings of the Society.

2.2 Interpretation

The following rules of interpretation must be applied in interpreting these Bylaws.

2.2.1 Singular and Plural: words indicating the singular number also include the plural, and vice-versa.

2.2.2 Corporation: words indicating persons also include corporations.

2.2.3 Headings are for convenience only. They do not affect the interpretation of these Bylaws.

2.2.4 Liberal Interpretation: these Bylaws must be interpreted broadly and generously.

Article 3 – Objects of the Society

3.1 The objects of the society are detailed in the Article of Incorporation.

Article 4 – Membership

4.1 Classification of Members

There are four categories of Members:

- a. Full Members
- b. Associate Members
- c. Life Members
- d. Honourary Members

4.1.1 Full Members

To become a Full Member, an individual must:

- a. have been an Associate Member for at least five (5) years; and
- b. pay the annual membership fees for Full Members.

4.1.2 Associate Members

To become an Associate Member, an individual must pay the annual membership fees for Associate Members.

4.1.3 Life members

To become a Life Member, an individual must:

- a. have been a Full Member for at least ten (10) years;
- b. be 65 years or older; and
- c. apply to become a Life Member.

4.1.4 Honourary Members

An individual may become an Honourary Member if the Voting Members at a general Meeting pass a resolution recognizing the contributions of the individual to the Society or its objects.

4.2 Admission of Members

Any individual may become a Member in the appropriate category by meeting the requirements in Article 4.1. The individual will be entered as a Member under the appropriate category in the Register of Members.

4.3 Membership Fees

4.3.1 Membership year

The membership year is November 1 to October 31.

4.3.2 Setting Membership Fees

The Board decides annual membership fees for each category of Members.

4.3.3 Payment Date for Fees

The annual membership fees must be paid on or before November 1 of every year.

4.4 Rights and Privileges of Members

4.4.1 Any Member in good standing is entitled to:

- a. receive notice of meetings of the Society;
- b. attend any meeting of the Society;
- c. speak at any meeting of the Society; and
- d. exercise other rights and privileges given to Members in these bylaws.

4.4.2 Voting Members

The only Members who can vote at meetings of the Society are:

- a. Full Members in good standing who are at least eighteen (18) years old; and
- b. Life Members in good standing.

4.4.3 Number of Votes

A voting Member is entitled to one (1) vote at a meeting of the Society.

4.4.4 Member in Good Standing

A Member is in good standing when:

- a. the Member has paid membership fees or other required fees to the Society; and
- b. the Member is not suspended as a Member as provided for under Article 4.5.

4.5 Suspension of Membership

4.5.1 Decision to Suspend

The Board, at a Special Meeting called for that purpose, may suspend a Member's membership not more than three (3) months, for one or more of the following reasons:

- a. if the Member has failed to abide by the Bylaws;
- b. if the Member has been disloyal to the Society;
- c. if the Member has disrupted meetings or functions of the Society; or
- d. if the Member has done or failed to do anything judged to be harmful to the Society.

4.5.2 Notice to the Member

4.5.2.1 The affected member will receive written notice of the Board's intention to deal with whether that Member should be suspended or not. The Member will receive at least two (2) weeks notice before the Special Meeting.

4.5.2.2 The notice will be sent by single registered mail to the last known address of the Member shown in the records of the Society. The notice may also be delivered by an Officer of the Board.

4.5.2.3 The notice will state the reasons why suspension is being considered.

4.5.3 Decision of the Board

4.5.3.1 The Member will have an opportunity to appear before the Board to address the matter. The Board may allow another person to accompany the Member.

4.5.3.2 The Board will determine how the matter will be dealt with, and may limit the time given the Member to address the Board.

4.5.3.3 The Board may exclude the Member from its discussion of the matter, including the deciding vote.

4.5.3.4 The decision of the Board is final.

4.6 Termination of Membership**4.6.1 Resignation**

4.6.1.1.1 Any Member may resign from the Society by sending or delivering a written notice to the Secretary or President of the Society.

4.6.1.1.2 Once the notice is received, the Member's name is removed from the Register of Members. The Member is considered to have ceased being a Member on the date his name is removed from the Register of Members.

4.6.2 Death

The membership of a Member is ended upon his death.

4.6.3 Deemed Withdrawal

4.6.3.1 If a member has not paid the annual membership fees within three (3) months following the date the fees are due, the Member is considered to have submitted his resignation.

4.6.3.2 In this case, the name of the Member is removed from the Register of Members. The Member is considered to have ceased being a Member on the date his name is removed from the Register of Members.

4.6.4 Expulsion

4.6.4.1 The Society may, by Special Resolution at a Special meeting called for such a purpose, expel any Member for any cause which is deemed sufficient in the interests of the Society.

4.6.4.2 This decision is final.

4.6.4.3 On passage of the Special Resolution, the name of the Member is removed from the Register of Members. The Member is considered to have ceased being a Member on the date his name is removed from the Register of Members.

4.7 Transmission of Membership

No right or privilege of any Member is transferable to another person. All rights and privileges cease when the Member resigns, dies, or is expelled from the Society.

4.8 Continued Liability for Debts Due

Although a Member ceases to be a Member, by death, resignation or otherwise, he is liable for any debts owing to the Society at the date of ceasing to be a Member.

4.9 Limitation on the Liability of Members

No Member is, in his individual capacity, liable for any debt or liability of the Society.

Article 5 – Meetings of the Society

5.1 The Annual General Meeting

5.1.1 The Society holds its Annual General Meeting no later than March 30 of each calendar year, in Edmonton, Alberta. The Board sets the place, day and time of the meeting.

5.1.2 The Secretary mails, e-mails or delivers a notice to each Member at least twenty-one (21) days before the Annual General Meeting. This notice states the place, date and time of the Annual General Meeting, and any business requiring a Special Resolution.

5.1.3 Agenda for the Meeting

The Annual General Meeting deals with the following matters:

- a. adopting the agenda;
- b. adopting the minutes of the last Annual General Meeting;
- c. considering the President's report;
- d. reviewing the financial statements setting out the Society's income, disbursements, assets and liabilities and the auditor's report;
- e. appointing the auditors;
- f. electing the President;
- g. electing the Members of the Board;
- h. considering matters specified in the meeting notice;
- i. other specific motions that any members has given notice of before the meeting is called.

5.1.4 Quorum

Attendance by 20% of the Members at the Annual General Meeting is a quorum.

5.2 Special Meeting of the Society (refer to example on p. 31)

5.2.1 Calling of Special Meeting

A Special Meeting may be called at any time:

- a. by a resolution of the Board of Directors to that effect; or
- b. on the written request of at least five (5) Directors. The request must state the reason for the Special Meeting and the motions(s) intended to be submitted at this Special Meeting; or
- c. on the written request of at least one- third (1/3) of the Voting Members. The request must state the reason for the Special Meeting and the motions(s) intended to be submitted at such Special Meeting.

5.2.2 Notice

The Secretary mails, e-mails or delivers a notice to each member at least twenty-one (21) days before the Special Meeting. This notice states the place, date, time and purpose of the Special Meeting.

5.2.3 Agenda for Special Meeting

Only the matter(s) set out in the notice for the Special Meeting are considered at the Special Meeting.

5.2.4 Procedure at the Special Meeting

Any Special Meeting has the same method of voting and the same quorum requirements as the Annual General Meeting. (refer to 5.3.5.1.)

5.3 Proceedings at the Annual or a Special Meeting

5.3.1 Attendance by the Public.

General Meetings of the Society are open to the public. A majority of the Members present may ask any persons who are not Members to leave.

5.3.2 Failure to Reach Quorum

The President cancels the General Meeting if a quorum is not present within one-half (1/2) hour after the set time. If cancelled, the meeting is rescheduled for one (1) week later at the same time and place. If a quorum is not present within one-half (1/2) hour after the set time of the second meeting, the meeting will proceed with the Members in attendance.

5.3.3 Presiding Officer

5.3.3.1 The President chairs every General Meeting of the Society. The Vice-President chairs in the absence of the President.

5.3.3.2 If neither the President nor the Vice-President is present within one-half (1/2) hour after the set time for the General meeting, the Members present choose one (1) of the Members to chair.

5.3.4 Adjournment

5.3.4.1 The President may adjourn any General Meeting with the consent of the Members at the meeting. The adjourned General Meeting conducts only the unfinished business from the initial Meeting.

5.3.4.2 No notice is necessary if the General Meeting is adjourned for less than thirty (30) days.

5.3.4.3 The Society must give notice when a General meeting is adjourned for thirty (30) days or more. Notice must be the same as for any General meeting.

5.3.5 Voting

5.3.5.1 Each Voting Member, has one (1) vote. A show of hands decides every vote at every General Meeting. A ballot is used if at least five (5) voting Members request it.

5.3.5.2 The President does not have a second or casting vote in the case of a tie vote. If there is a tie vote, the motion is defeated.

5.3.5.3 A Voting Member may not vote by proxy.

5.3.5.4 A majority of the votes of the Voting Members present decides each issue and resolution, unless the issue needs to be decided by a Special Resolution.

5.3.5.5 The President declares a resolution carried or lost. This statement is final, and does not have to include the number of votes for and against the resolution.

5.3.5.6 Five Voting Members may request a ballot vote. In such case, the President or the presiding officer may set the time, place and method for a ballot vote. The result of the ballot is the resolution of the General Meeting.

5.3.5.7 Members may withdraw their request for a ballot.

5.3.5.8 The President decides any dispute on any vote. The President decides in good faith, and this decision is final.

5.3.6 Failure to Give Notice of meeting

No action taken at a General meeting is invalid due to:

- a. accidental omission to give any notice to any Member;
- b. any Member not receiving any notice; or
- c. any error in any notice that does not affect the meaning.

5.3.7 Written Resolution of All the Voting Members

All Voting Members may agree to and sign a resolution. This resolution is as valid as one passed at a General meeting. It is not necessary to give notice or to call a General meeting. The date on the resolution is the date it is passed.

Article 6 – The Governance of the Society

6.1. The Board of Directors

6.1.1 Governance and Management of the Society

The Board governs and manages the affairs of the Society. The Board may hire a paid administrator to carry out management functions under the direction and supervision of the Board.

6.1.2 Powers and Duties of the Board

The Board has the powers of the Society, except as stated in the *Societies Act*.

The powers and duties of the Board include:

- a. Promoting the objects of the Society;
- b. Promoting membership in the Society;
- c. Maintaining and protecting the Society's assets and property;
- d. Approving an annual budget for the Society;
- e. Paying all expenses for operating and managing the Society;
- f. Paying persons for services and protecting persons from debts of the Society;
- g. Investing any extra monies;
- h. Financing the operations of the Society, and borrowing or raising monies;
- i. Making policies for managing and operating the Society;
- j. Approving all contracts for the Society;
- k. Maintaining all accounts and financial records of the Society;
- l. Appointing legal counsel as necessary;
- m. Making policies, rules and regulations for operating the Society and using its facilities and assets;
- n. Selling, disposing of, or mortgaging any or all of the property of the Society; and
- o. Without limiting the general responsibility of the Board, delegating its powers and duties to the Executive Committee or the paid administrator of the Society.

6.1.3 Composition of the Board

The Board consists of:

- a. the President;
- b. nine (9) Directors-at-large elected at the Annual General Meeting from among the Voting members; and
- c. the immediate Past President.

6.1.4 Election of the Directors and the President

6.1.4.1 At the first Annual General Meeting of the Society, the Voting Members elect the following Directors:

- a. Three (3) Directors, each serving a term that ends at the close of the third Annual General Meeting following the Annual General Meeting at which these Directors were elected;
- b. Three (3) Directors, each serving a term that ends at the close of the second Annual General Meeting following the Annual General Meeting at which these Directors were elected; and
- c. Three (3) Directors, each serving a term that ends at the close of the first Annual General Meeting following the Annual General meeting at which these Directors were elected.

6.1.4.2 At each succeeding Annual General meeting of the Board, Voting Members elect three (3) Directors, each serving a term that ends at the close of the third Annual General Meeting following the Annual General Meeting at which these Directors were elected.

6.1.4.3 Voting members may re-elect any Director of the Board for a maximum of three (3) consecutive terms.

6.1.4.4 Voting members elect the President at the Annual General Meeting. The President can only serve for a maximum of three (3) consecutive terms, which includes any consecutive terms as a Director or Officer of the Board.

6.1.5 Resignation, Death or Removal of a Director

6.1.5.1 A Director including the President and immediate Past President, may resign from office by giving one (1) month's notice in writing. The resignation takes effect either at the end of the month's notice, or on the date the Board accepts the resignation.

6.1.5.2 Voting Members may remove any director including the President and the immediate Past President, before the end of his term. There must be a majority vote at a Special Meeting called for this purpose.

6.1.5.3 If there is a vacancy on the Board, the remaining Directors may appoint a Member in good standing to fill that a vacancy for the remainder of the term. This does not apply to the position of immediate Past President. This position remains vacant until the next AGM.

6.1.6 Meetings of the Board

6.1.6.1 The Board holds at least nine (9) meetings each year.

6.1.6.2 The President calls the meetings. The President also calls a meeting if any two (2) Directors make a request in writing and state the business of the meeting.

6.1.6.3 Ten (10) days' notice for Board meetings is mailed to each Board member. There may be five (5) days' notice by telephone or fax. Board Members may waive notice.

6.1.6.4 A majority of the Directors present at any Board meeting is a quorum.

6.1.6.5 If there is no quorum, the President adjourns the meeting to the same time, place, and day of the following week. At least five (5) Directors present at this later meeting is a quorum.

6.1.6.6 Each Director, including the President and the Past President, has one (1) vote.

6.1.6.7 The President does not have second or casting vote in the case of a tie vote. A tie vote means the motion is defeated.

6.1.6.8 Meetings of the Board are open to Members of the Society, but only Directors may vote. Members are only permitted to participate in a discussion when invited to do so by the Board. A majority of the Directors present may ask any other Members, or other persons present, to leave.

6.1.6.9 All Directors may agree to and sign a resolution. This resolution is as valid as one passed at any Board meeting. It is not necessary to give notice or to call a Board meeting. The date on the resolution is the date it is passed.

6.1.6.10 A meeting of the Board may be held by a conference call. Directors who participate in this call are considered present for the meeting.

6.1.6.11 Irregularities or errors done in good faith do not invalidate acts done by any meeting of the Board.

6.1.6.12 A Director may waive formal notice of a meeting.

6.2 Officers

6.2.1 The Officers of the Society are the President, Vice-President, Secretary and Treasurer.

6.2.2 At its first meeting after the Annual General Meeting, the Board elects from among the Directors all Officers except the President, for the following year.

6.2.3 The Officers hold office until re-elected or until a successor is elected.

6.3 Duties of the Officers of the Society

6.3.1 The President:

- Supervises the affairs of the Board,
- When present, chairs all meetings of the Society, the Board and the Executive Committee;
- Is an *ex officio* member of all Committees, except the Nominating Committee;
- Acts as the spokesperson for the Society;
- Chairs the Executive Committee; and
- Carries out other duties assigned by the Board.

6.3.2 The Vice President:

- Presides at meetings in the President's absence. If the Vice-President is absent, the Directors elect a Chairperson for the meeting.
- Replaces the President at various functions when asked to do so by the President or the Board;
- Chairs the Personnel Committee;
- Is a member of the Executive Committee; and
- Carries out other duties assigned by the Board.

6.3.3 The Secretary:

- Attends all meetings of the Society, the Board and the Executive Committee,
- Keeps accurate minutes of these meetings;
- Has charge of the Board's correspondence;
- Makes sure a record of names and addresses of all Members of the society is kept;
- Makes sure all notices of various meetings are sent;
- Makes sure annual fees are collected and deposited;
- Keeps the Seal of the Society;
- Files the annual return, changes in the directors of the organization, amendments in the bylaws and other incorporating documents with the Corporate Registry; and
- Carries out other duties assigned by the Board.

6.3.4 The Treasurer:

- Makes sure all monies paid to the Society are deposited in a chartered bank, treasury branch or trust company chosen by the Board;
- Makes sure a detailed account of revenues and expenditures is presented to the Board as requested;
- Makes sure an audited statement of the financial position of the Society is prepared and presented to the Annual General Meeting;
- Chairs the Finance Committee of the Board;
- Is a member of the Executive Committee; and
- Carries out other duties assigned by the Board.

6.3.5 The Past President:

- Chairs the nominating committee; and
- Carries out other duties assigned by the Board.

6.4 Board Committees

6.4.1 Establishing Committees

The Board may appoint committees to advise the Board.

6.4.2 General Procedures for Committees

6.4.2.1 A Board Member chairs each committee created by the Board.

6.4.2.2 The Chairperson calls committee meetings. Each committee:

- records minutes of its meetings;
- distributes these minutes to the committee members and to the Chairpersons of all other committees
- provides reports to each Board meeting at the Board's request.

6.4.2.3 The meeting Notice must be mailed or e-mailed five business days before the scheduled date of the meeting. The notice states that date, place and time of the committee meeting. Committee members may waive notice.

6.4.2.4 A majority of the committee members present at a meeting is a quorum.

6.4.2.5 Each member of the committee, including the Chairperson, has one (1) vote at the committee meeting. The Chairperson does not have a casting vote in case of a tie.

6.5 Standing Committees

The Board establishes these standing committees:

- a. Executive Committee;
- b. Personnel Committee;
- c. Finance Committee; and
- d. Nominating Committee.

6.5.1 The Executive Committee:

- a. Consists of the President, Past President, Vice-President, Secretary, Treasurer.
- b. Is responsible for:
 - planning agendas for Board meetings;
 - carrying out emergency and unusual business between Board meetings;
 - reporting to the Board on actions taken between Board meetings;
 - carrying out other duties as assigned by the Board.
- c. Meets at least nine (9) times each year. The meetings are called by the President or on the request of any two (2) other Officers. They must request the President in writing to call a meeting and state the business of the meeting.
- d. All Officers may agree to and sign a resolution. This resolution is as valid as one passed at an Executive Committee meeting. It is not necessary to give notice or to call a meeting of the Executive Committee. The date on the resolution is the date it is passed.
- e. A meeting of the Executive Committee may be held by a conference call. Officers who participate in this call are considered present for the meeting.

- f. Irregularities or errors done in good faith do not invalidate acts done by any meeting of the Executive Committee.
- g. An Officer may waive formal notice of a meeting.

6.5.2 The Personnel Committee:

- a. Consist of the Vice-President, who is the Chairperson, and two (2) other Members appointed by the Board;
- b. Is responsible for:
 - recommending a job description, qualifications, and performance appraisal system for the Executive Director;
 - interviewing applicants for the position of Executive Director of the Society and recommending an appointment to the Board;
 - recommending policies on personnel to the Board, including recruiting, hiring, evaluation and dismissal, contracts of employment, salary and employee benefits
 - acting as a mediator for personnel problems;
 - recommending personnel policies for volunteers;
 - reporting on the year's activities at the Annual General Meeting; and
 - carrying out other duties assigned by the board.

6.5.3 The Finance Committee:

- a. Consists of the Treasurer, who is the Chairperson, and three (3) other Members appointed by the Board.
- b. Is responsible for:
 - recommending budget policies to the Board;
 - investigating and making recommendations to the Board for acquiring funds and property;
 - recommending policies on disbursing and investing funds to the Board;
 - establishing policies for Board and committee expenditures;
 - arranging the annual audit of the books;
 - reporting on the year's activities at the Annual General Meeting; and
 - carrying out other duties assigned by the Board.

6.5.4 The Nominating Committee:

- a. Consists of the immediate Past President, who chairs the committee, and two (2) other Members appointed by the Board.
- b. Is responsible for:
 - preparing a slate of nominees for the President's position;
 - preparing a slate of nominees for each vacant Director position;
 - orienting new board members; and
 - presenting its recommendations to the Annual General Meeting.

6.6 The Executive Director

6.6.1 The Board may hire an Executive Director to carry out assigned duties

6.6.2 The Executive Director reports to and is responsible to the Board, and acts as an advisor to the Board and to all Board Committees. The Executive Director does not vote at any meeting.

6.6.3 The Executive Director acts as the administrative officer of the board in:

- attending board, and other meetings, as required;
- hiring, supervising, evaluating and releasing all other paid staff;
- interpreting and applying the Board's policies;
- keeping the Board informed about the affairs of the Society;
- maintaining the Society's books
- preparing budgets for Board approval;
- planning programs and services based on the Board's priorities; and
- carrying out other duties assigned by the Board.

Article 7 – Finance and Other Management Matters

7.1 The Registered Office

The Registered Office of the Society is located in Edmonton, Alberta. Another place may be established at the Annual General Meeting or by resolution of the Board, as long as this change is communicated to Corporate Registry.

7.2. Finance and Auditing

7.2.1 The fiscal year of the Society ends on December 31 of each year.

7.2.2 There must be an audit of the books, accounts and records of the Society at least once each year. A qualified accountant appointed at each Annual General Meeting must do this audit. At each Annual General Meeting of the Society, the auditor submits a complete statement of the books for the previous year.

7.3 Seal of the Society

7.3.1 The Board may adopt a seal as the Seal of the Society.

7.3.2 The Secretary has control and custody of the seal, unless the Board decides otherwise.

7.3.3 The Seal of the Society can only be used by Officers authorized by the Board. The Board must pass a motion to name the authorized Officers.

7.4 Cheques and Contracts of the Society

7.4.1 The designated Officers of the Board sign all cheques drawn on the monies of the Society. Two signatures are required on all cheques. The Board may authorize the Executive Director to sign cheques for certain amounts and circumstances. The Executive Director may not sign his own pay cheque.

7.4.2 All contracts of the Society must be signed by the Officers or other persons authorized to do so by resolution of the Board.

7.5 The Keeping and Inspection of the Books and Records of the Society.

7.5.1 The Secretary keeps a copy of the Minute Books and records minutes of all meetings of the Members and of the Board.

7.5.2 The Secretary keeps the original Minute Books at the Registered Office of the Society. This record contains minutes from all meetings of the Society, the Board and the Executive Committee.

7.5.3 The Board keeps and files all necessary books and records of the Society as required by the Bylaws, the *Societies Act*, or any other statute or laws.

7.5.4 A Member wishing to inspect the books or records of the Society must give reasonable notice to the President or the Secretary of the Society of his intention to do so.

7.5.5 Unless otherwise permitted by the Board, such inspection will take place only at the Registered Office, or other regular business premises operated by the Society, during normal business hours.

7.5.6 All financial records of the Society are open for such inspection by the Members, during normal business hours and with reasonable notice.

7.5.7 Other records of the Society are also open for inspection, except for records that the Board designates as confidential. Reasonable notice must be provided.

7.6 Borrowing Powers

7.6.1 The Society may borrow or raise funds to meet its objects and operations. The Board decides the amounts and ways to raise money, including giving or granting security.

7.6.2 The Society may issue debentures to borrow only by resolution of the Board confirmed by a Special Resolution of the Society.

7.7. Payments

7.7.1 No Member, Director or Officer of the Society receives any payment for his services as a Member, Director or Officer.

7.7.2 Reasonable expenses incurred while carrying out duties of the Society may be reimbursed upon Board approval.

7.8 Protection and Indemnity of Directors and Officers

7.8.1 Each Director or Officer holds office with protection from the Society. The Society indemnifies each Director or Officer against all costs or charges that result from any act done in his role for the Society. The Society does not protect any Director or Officer for acts of fraud, dishonesty, or bad faith.

7.8.2 No Director or Officer is liable for the acts of any other Director, Officer or employee. No Director or Officer is responsible for any loss or damage due to the bankruptcy, insolvency, or wrongful act of any person, firm or corporation dealing with the Society. No Director or Officer is liable for any loss due to an oversight or error in judgment, or by an act in his role for the society, unless the act is fraud, dishonesty or bad faith.

7.8.3 Directors or Officers can rely on the accuracy of any statement or report prepared by the Society's auditor. Directors or Officers are not held liable for any loss or damage as a result of acting on that statement or report.

Article 8 – Amending the Bylaws

8.1 These Bylaws may be cancelled, altered or added to by a Special Resolution at any Annual General or Special Meeting of the Society.

8.2 The twenty-one (21) days' notice of the Annual General or Special Meeting of the Society must include details of the proposed resolution to change the Bylaws.

8.3 The amended bylaws take effect after approval of the Special Resolution at the Annual General Meeting or Special Meeting and accepted by the Corporate Registry of Alberta.

Article 9 – Distributing Assets and Dissolving the Society

9.1. The Society does not pay any dividends or distribute its property among its Members.

9.2. If the Society is dissolved, any funds or assets remaining after paying all the debts are to be paid to a non-profit organization with objects that has objects similar to those of the Classical Music Society of Alberta.

9.3. Members are to select the organization to receive the assets by special resolution. In no event do any Members receive any assets of the Society.

DATED at the City of Edmonton, in the Province of Alberta, this ____ day of _____, 20__.

(Signatures of five (5) incorporators plus witnesses are needed)

Incorporator (printed name AND signature)	Witness (printed name AND signature)
Address	Address
Incorporator (printed name AND signature)	Witness (printed name AND signature)
Address	Address
Incorporator (printed name AND signature)	Witness (printed name AND signature)
Address	Address
Incorporator (printed name AND signature)	Witness (printed name AND signature)
Address	Address
Incorporator (printed name AND signature)	Witness (printed name AND signature)
Address	Address

APPENDIX 4

Glossary

Annual General Meeting: Also known as ‘AGM’, is the Society’s annual meeting which all members may attend. This is the meeting at which all Resolutions are approved and the election of the Board of Directors occurs.

Director: Any person elected or appointed to the Association’s Board of Directors. This includes the immediate Past President.

Dissolution: The breaking down or ending of the organization.

OR

The act of ending, terminating or winding up a company or state of affairs. *For example, when the life of a company is ended by normal legal means, it is said to be “dissolved”.*

Executive Director: Also known as the General Manager or the Administrator, is the employee who presides over the day-to-day operations of the Association. This person is the only employee of the Board of Directors, and is a non-voting member of this Board.

Fiscal Year: Period of 12 consecutive months chosen by an organization as its accounting period, which may or may not be a calendar year

OR

the 12 months (or, for incorporated charities, a period of up to 53 weeks) covered by an organization’s financial statements.

In Good Standing: A corporation that has complied with all statutory and regulatory requirements for filing of documents

Majority: The number of people who must favour a motion before it can be carried. A “simple majority” is more than half the members voting, that is, 50 percent plus one additional person.

Member: An individual who applies for membership, is accepted for membership, and pays the required dues to the Association. The terms of membership and application process are determined by the Board of Directors

Member in Good Standing: A member who dues are paid up and whose membership has not been suspended.

NUANS: (Newly Upgraded Automated Name Search)

NUANS is a computerized search system that, for the purposes of Corporate Registry, compares a proposed corporate name to a database of existing corporate names.

Policy: A policy is a deliberate decision made by the Board that provides guidance for addressing identified objectives and concerns.

Proxy: The authority or power given by one voting member to another voting member.

Register of Members: The ‘register’ retained by the Secretary on behalf of the Board of Directors containing the names and addresses of the members of the Association. This register is available on request to all members, and it may only be used by members for Association business.

Resolution: A motion passed by the members at an Annual General Meeting, General Meeting or a Special Meeting. The process and time lines by which resolutions are formulated and submitted the members are detailed in the Association’s resolution policy.

Quorum: The minimum number of people, as specified in the bylaws, required at each board meeting, general meeting, or special meeting for business to be legally carried out. In the absence of a quorum, debate can continue but no votes can be taken, except the vote to adjourn.

Special Meeting: The Special Meeting of the Association called to deal with specific business requiring a Special Resolution. The Special Resolution will be specified in the Notice.

Voting Member: A Member entitled to vote at the meetings of the Association

Winding Up: The process of settling the accounts and liquidating the assets of a corporation for the purpose of distributing any assets and dissolving the organization.

Year End: Final date of a fiscal year

OR

taking place at the close of a fiscal year; e.g. “year-end audit”

APPENDIX 5

Sources of Help

Important Note: If you have any questions please contact the Muttart Society or the Board Development Program (see page 2 for contact details).

Lawyer Referral

The Law Society of Alberta maintains a telephone service to help people find a lawyer who lives in the person's community and who practices the type of law the person needs. They may be able to help you locate a suitable lawyer.
Phone (403) 228-1722 in Calgary or 1-800-661-1095 toll free from other points in Alberta.

Search Term: "Law Society of Alberta"

Pro Bono Students Canada

Emily Murphy House
11011-88 Ave.
Edmonton, AB T6G 0Z3
Tel (780) 492.8287
Fax (780) 492.7574
Email: pbsc@ualberta.ca

University of Calgary.
Faculty of Law
Room 2390, Murray Fraser Hall
2500 University Drive NW
Calgary, AB T2N 1N4
Email: probonos@ucalgary.ca

The **Pro Bono Students Canada Project** matches law students with eligible non-profit organizations

to provide free legal services under the supervision of a lawyer. Alternatively, students may be matched with individual lawyers requiring assistance with pro bono files. PBSC does not provide direct assistance to individuals.

Search term: "Pro Bono Students Canada"

Service Alberta

Alberta Government Services maintains a website that contains useful information on Alberta Registry Agents, Corporate Registry, incorporated not-for-profit organizations, forms, information for charities and donors, fundraising, registering a charity and the like.

Consumer Information Centre
<http://www.servicealberta.ca>

Consumer information on registry services (business, land, motor vehicles, charities and societies).
Phone Toll free 1-877-427-4088, in Edmonton 780-427-4088

Canada Revenue Agency

www.cra.gc.ca

The Canada Revenue Agency (CRA) administers tax laws for the Government of Canada and for most provinces and territories; and various social and economic benefit and incentive programs delivered

through the tax system.

Contact information for Alberta Tax Services Offices and Tax Centres - addresses, counter service hours, and fax numbers is available online at www.cra-arc.gc.ca/contact/prov/ab-e.html

Canada Revenue Agency. Charities Directorate, Ottawa ON K1A 0L5

www.cra-arc.gc.ca/tax/charities/menu-e.html

The Canada Revenue Agency (CRA) registers qualifying organizations as charities, gives technical advice on operating a charity, and handles audit and compliance activities. Registered charities are required to file an annual return with the CRA, a portion of which is available to the public, and must meet certain requirements of the *Income Tax Act* concerning their expenditures and activities.

You can get copies of all forms, pamphlets, information circulars, and interpretation bulletins from the Charities Directorate or from any of the tax services offices. You can find forms and publications at:

<http://www.cra-arc.gc.ca/tax/charities/formspubs/menu-e.html>

You can reach the Charities
Directorate by calling:

1-800-267-2384 for toll-free,
long-distance calls (English)

1-888-892-5667 for toll-free,
long-distance calls (bilingual)

1-800-665-0354 for toll-free service
for hearing impaired persons

To contact a tax services office, call
1-800-959-8281

Queen's Printer

www.qp.gov.ab.ca/index.cfm

The Alberta Queen's Printer
publishes, distributes and sells
Alberta's Acts, Regulations and
various legislation-related materials.

The Bookstore offers a wide range
of products and formats, including
paper, CD ROM and online.

The Bookstore's e-commerce
site currently offers more than
2,200 items. In addition to online
purchasing, government and the
public can access Alberta's laws free
online through the Internet.

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