Lead Dog CONSULTING

Governance Guidance

Companion Document

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This document does not describe every section of the various documents as it is intended to provide additional detail that describes the purpose and/or other considerations for the contents of the various template documents available on the Lead Dog website. These templates have been developed based on LDC's extensive experience across many not-for-profit organizations, however, they must be tailored to ensure they are relevant to each organization. This document will help you determine how best to tailor the templates for your organization.

In general, in important to know that the Bylaws document can only be updated through an AGM or special meeting of the members, whereas an organization's policy documents can be updated by organization's staff and its Board of Directors. For this reason, it is always good practice to house details in a policy document, and general guidelines and overarching principles in the Bylaws.

Bylaws

General Instructions: sections 1-4

The Registrar for Societies typically prefers to receive any amendments or revisions to the Constitution and Bylaws as separate documents. This is why they are placed on different pages of this document so they can be separated easily for that purpose but maintained in a single document for the benefit of the organization. The term Society and Association are interchangeable and are a matter of preference. Sections 1-4 are straightforward and should be populated with the correct information (e.g., dates of the fiscal year). It is recommended that an organization's seal be kept with its legal counsel, if you have one, or with the organization's executive director or as a last resort with the Board of Directors, as the most likely reasons for the seal to be used are by lawyers when notarizing and approving documents (e.g., mortgage, banking, property, and asset-related documentation). It is worth noting that section 3 aligns with the grounds identified in the NWT Human Rights legislation as of 2022.

Membership: sections 5-11

Membership can have a different meaning to each organization and often there are multiple categories of Membership, each potentially with their own set of rights. It is important that the definition of Membership be as broad as possible while remaining relevant, in order to avoid discrimination and to allow a larger pool of potential Members and Directors to participate. If multiple types of Membership exist, it's important that the subsequent sections of the Bylaws explicitly include or exclude specific categories of Membership where there are differences in Rights, Obligations, Procedures for Application, Suspension, or Expulsion.

Depending on the nature of the organization the Procedure for Application as outlined in section 6 may require additional details. If the amount of detail is substantial and/or is potentially subject to change, it is recommended that these details are housed within the appropriate policy document that is more easily adjusted.

The concept of Good Standing that is referenced in clause 7.2 was the result of a court decision stemming from two individuals who used facilities owned and operated by a club that had not paid their fees to the parent organization for that year. After one individual was seriously injured, the question arose as to who was liable. The decision determined that the individuals were both still Members since they hadn't explicitly resigned or been expelled from Membership.[1] Subsequently the concept and status of good standing came about to protect organizations and clarify that someone can still be a Member but not be in good standing and therefore are not entitled to rights provided by that organization. This is very important to be aware of as an organization and Director: Membership may confer rights and protections and you must be clear about who is entitled to these rights under your organization.

Section 9 is to be used when there are several types of fees that are not likely subject to change. If fees are likely to change, we recommend that the details and amounts of the various fees be included in the appropriate policy document that is more easily adjusted.

Sections 10 and 11 outline the processes related to Suspension and Expulsion of Members and Directors. For organizations with staff, Employment Agreements specific to each position should include the details of any Corrective Action and Termination, and for organizations with many staff, a separate Employee Policies and Procedures Manual is recommended.

Meetings and Decisions: sections 12-16

Organizations that are required to undertake a year-end audit typically need at least two months to reconcile outstanding payables and receivables after year end and then complete the audit and have it considered by the Board. This is why most Annual General Meetings (AGM) take place within the last two-three weeks of the third month following the organization's fiscal year end.

Determining the timing for notice for the Annual General and a Special General meeting and the subsequent delivery of meeting materials should balance the benefit to, and the right of, the Membership for advanced notice with the ability of the organization to prepare these materials. Shorter timelines are appropriate for organizations with no or minimal staff, and longer timelines are more appropriate for organizations with more complexity and more capacity.

The items on the agenda for an AGM are fairly consistent, however the order can be adjusted. Some organizations prefer to have the Chair and the Executive Director deliver a combined or joint report or presentation. Some organizations have year-end financial statements while larger organizations have audited financial statements.

The quorum for an AGM should be set at a percentage or number that ensures an adequate number of Members are required to make decisions regarding the future of the organization while balancing the ability to achieve quorum and ensure that decisions are made to advance the organization. This percentage typically ranges between 10-30% depending on the Membership structure and the number of registered Members with the organization. The quorum for a Special

[1] https://www.thestar.com/opinion/columnists/2007/10/11/decision_alters_rules_of_the_game.html

General Meeting should be higher than an AGM, as it is a meeting specifically called to deal with important business that cannot wait until the next AGM.

Clause 14.3 should be determined to reflect the nature of the discussions that typically place at the AGM. More sensitive discussions warrant a lower percentage, sometimes even only one individual, of Members who can request a secret ballot. Clause 15.1 includes a provision for the minutes to be signed. This is only recommended for organizations who plan to make their meeting minutes available to the Membership.

Who Does What: sections 17-23

Identification of the Bodies of an organization is important so that everyone is on the same page with respect to the hierarchy. The Membership elects the Board and approves the Bylaws, the Board provides oversight and also hires the Executive Director (who is their sole staff), and the Executive Director carries out the day-to-day operations and is responsible for all other staff. It is important to remember that even in organizations with many employees, the Executive Director is the sole employee of the Board. All other organizational staff are employees of the organization and overseen by the Executive Director.

The trend in Board size nationally is towards a smaller Board, with the ideal number being identified between 7-11. This is based on the typical challenges associated with dysfunctional organizations, volunteer recruitment and burnout, and the ability to have committees should there be an excess of motivated volunteers who want to contribute.

The term 'Officers' refers to those Directors with signing authority. The Officers' positions are typically spelled out in the Bylaws so individuals are aware of this added level of responsibility when putting their names forward at a General Meeting. Alternatively, and more typical in territorial or national organizations where individuals may be geographically spread out, one or more of the Officer positions may not be specified and the Bylaws can simply identify how many Officers there will be.

In section 21 it's important that if there is an odd number of Directors on the Board that the greater number are elected in the year opposite the Chair. This will help to ensure continuity of corporate knowledge. For organizations that are changing their Board composition, the use of a transitional clause in 21.4 is often used to ensure fairness to the existing Directors (instead of trying to talk through who will continue and who is willing to step off the Board) and so that the Membership is ultimately determining who is continuing as a Director through the transition.

The rationale for the number of Board meetings being included in the Bylaws is for accountability to the Membership. The actual number is typically greater than what is in the Bylaws, and it's important to not underestimate the actual number of meetings by too much because then it is unfair to individuals considering putting their name forward to volunteer and finding out that the workload is in fact far greater. The template is based on a Board that meets monthly.

The rationale for not allowing voting by proxy at a Board meeting as per 22.7 is that good governance involves being open-minded and considering new facts and others' perspectives in order to make informed decisions in the best interest of the organization (i.e., a Director's Fiduciary Duty). An individual who isn't available to attend a meeting and hear the fulsome discussion isn't in a position to be consider all of the information and fulfill their Fiduciary Duty.

An important but often unknown detail of Robert's Rules of Order is that the Chair has the option to choose to vote in the event of a tie – they are not required to. This is helpful in the case where a Chair wishes to seek more information to allow more Directors to feel comfortable before rendering a decision. However, often decisions are needed in a timely manner for one reason or another and the Chair retains the ability to cast a vote and break the tie in these cases.

Clause 22.10 is important in that it ensures that all decisions of a Board are recorded in the minutes. The level of detail for each decision should be commensurate to the length of time the Board took to reach that decision and the importance and/or implications of the decision. It is ok for simple decisions to not have any notes in the meeting minutes.

General: sections 24-32

Section 26 can be tailored to smaller organizations who either aren't required to or have decided not to, undertake an annual audit. All organizations should prepare year-end financial statements to provide accountability and transparency to their Membership, and some smaller organizations may decide to undertake a financial review, which is more comprehensive than the preparation of financial statements but substantially cheaper than a full audit.

Some organizations who are part of a national organization may have a specific organization that they would prefer their funds go to in the event of dissolution as per Section 32.

Governance Policies

These policies belong to the Board of Directors and can be adjusted as often as the Board determines is necessary. It is recommended to schedule a formal review at least once a year and track updates in the Revision History Table, similar to the example provided.

Introduction

While registered not-for-profit organizations in the Northwest Territories are considered a Society, the choice of using the term Society or Association is simply a preference and should be used consistently throughout the Bylaws and Governance Policies. This is also true for the terms President/Vice President and Chair/Vice Chair. This section of the document may appear short and simple, but it if often a novel concept to individuals who have not served on a Board for an organization that has staff. The distinction between governing and providing oversight for an organization is entirely different than being involved in the operations for an organization – how well an organization can separate these two functions is typically the main determinant of success.

The Board of Directors as a Team: section 2.1 and 2.2

This section provides an overview of the core role and outlines more detailed responsibilities of the Board in the areas of accountability, planning, selection, support and evaluation of Senior Management, financial oversight, Board governance and development, and external relations. In order for a Board to operate as an effective team, it's critical that everyone has the same foundational understanding of why the organization exists and what their role is as a Director.

Meetings of the Board of Directors: section 2.4

Meetings are the primary means of having discussions, deliberating, and making decisions as a Board. It's critical that meetings run effectively so as not to waste the time people have chosen to volunteer. This section outlines the expectations for all Directors to be familiar with regarding the preparation and participation in meetings so they can run in an orderly and effective manner.

The Board meeting Code of Conduct is an important tool to have and use when discussions get heated or individuals get impassioned to ensure debate is carried out respectively.

Roles of Directors: section 3.1-3.3

This section details the role and specific responsibilities of an individual Director, as well as the specific roles and responsibilities of the President and Vice President positions who have additional leadership responsibilities. The President and the Executive Director should always coordinate on responses to media inquiries to determine who is the most appropriate to speak to each and in order to keep both individuals in the loop. It's also important that two Directors are involved with the delivery of the performance evaluation of the Executive Director to ensure the constructive criticism is delivered appropriately, as the President.

Committees: section 4.1-4.7

The first three sections are general information, and then each of the following sections is intended to outline the specific Terms of Reference (ToR) for each Committee (the Role, Responsibilities, Composition and Eligibility, and Procedures).

Committees are established to support the Board in carrying out its work and are advisory in nature; the make recommendations not decisions. Where the work can be carried out more effectively by a small number of individuals a Committee may be warranted. Because Boards themselves are becoming smaller in size and the Board is ultimately responsible for making decisions, striking a Committee may not always make sense.

Terms of Reference have been provided for: a Human Resource Committee (required if the organization employs staff), a Finance Committee (if the organization has an external bookkeeper/accountant then this Committee may just be comprised of the Director of Finance/Treasurer for an additional level of oversight), a Governance Committee (recommended to ensure the ongoing development and implementation of the various policies and systems that support an effective organization), and an Emergency Committee (highly recommended to ensure the organization can make decisions in emergency situations).

Executive Limitations

The Executive Limitations sets out the expectations for the Executive Director by explicitly identifying the boundaries of what the individual cannot do. The rationale for stating these in the negative is that this is more definitive and legally defensible, as the list for what someone can do could be infinite.

The 11 sections may not all be relevant to your organization so that is the first thing to determine. This policy goes hand-in-hand with a tool that the Executive Director would complete on a frequency determined by the Board (quarterly or semi-annually is typical to balance the Board's due diligence with the burden on staff. This tool serves as a means for the Executive Director to communicate with the Board on items that are being brought to your attention or require action. It also allows the Board to have explicit conversations regarding items that are not in compliance and manage the risks to the organization accordingly.

Legislation and codes of practice that are relevant to the services/programs of the organizations should be listed in section 6.11.

Subsequent Policies

The Governance Policies document is the single location where future decisions of the Board that warrant being embedded in policy can be added.

Conflict of Interest and Confidentiality Policy

The form is intended to outline the detailed expectations of Directors with respect to Conflict of Interest and Confidentiality. It only requires the organization's name to be inserted in the top section and should be signed directly following an Annual General Meeting, or a Special General Meeting where elections have taken place, or at the first meeting of the Board of Directors.

Risk Registry

A risk registry is a tool that an organization can use to identify and prioritize the risks that it might encounter in providing its services. The process of a team-based risk assessment to collectively create the registry is almost as important as the tool itself, as the discussion provides an opportunity for the leadership team to contribute their experience and expertise related to potential risks and how they can be addressed. For organizations with a senior staff position, such as an Executive Director or Chief Financial Officer, these members should take part in the development of the risk registry. The development of a risk registry is often completed over multiple sessions as it takes time for folx to brainstorm and have time to reflect in between each phase.

How to Use it?

Its important that any Board of Directors recognize that risk oversight is one of the fundamental responsibilities of a Director; so an introduction to the concept of risk, why it matters to an organization, and the Board's role in oversight of risk is an important first step.

The first phase involves identifying the risks in Column C that are relevant to the organization. The twelve risks included in the template are intended to serve as a starting point and are likely relevant to most types of not-for-profit organizations; but they should be discussed to ensure relevancy. A common mistake is that people tend to identify causes of risks instead of the risk event itself. During this phase it often makes sense to populate the causes and the impacts (i.e., Column D and E) at the same time as it allows that information to be captured at the same time since they will undoubtedly come up during the conversation to identify risks.

Populating the existing controls in Column E and assigning a category can be done as part of the team-based risk assessment, as it's important for Directors to be aware of which controls are in place. However, if there is a need to save time these two columns can be completed by staff in between sessions.

The next phase involves evaluating each risk, which is done by selecting a Consequence and Likelihood, the definition for each is located on the '5x5' sheet. This is often the phase where folx have the most fun because everyone is making the case for why they think a risk event is higher or lower or more or less likely. Based on the Risk Levels identified in Column J, the team now needs to discuss what Risk Level it will accept – this is known as an organization's Risk Appetite.[2]

Once the team has determined what Risk Level they are willing to accept, the next phase involves staff completing the remaining columns, primarily focused on adding additional controls to decrease Risk Levels in accordance with the Risk Appetite and assigning specific risk owners (e.g., ED, Chair of Governance, the Board itself, a CFO, etc.). Once the Risk Registry is completed, a final version should be presented for the Board for approval. An organization's Risk Registry is typically not a public document.

How Often Should We Review It?

Organizations should have a task in its Annual Board Calendar to ensure that the Risk Registry is formally reviewed at least once a year. The Risk Registry should also be included within a meeting agenda where a significant risk is being discussed – whether considering to take on a positive risk opportunity or an upcoming negative risk to the organization.

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[2] Risk appetite is how much risk an organization is willing to accept and is often confused with Risk Tolerance which is the amount of acceptable deviation from an organization's Risk Appetite (e.g., an organization may choose to not accept any risks with a Risk Level of Critical or High without additional controls in place, however the organization may be ok with accepting a Risk Level of High for a particular risk because there is potential for a return on investment).