

# By-laws Guide for Swim BC Clubs

Produced by Swim BC



and the Sport Law & Strategy Group Inc.

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## INTRODUCTION

This Guide is intended to be used by Swim BC clubs to assist them in understanding why an organization's By-laws are important and what material should be contained in the By-laws. Although sample By-laws sections are included within this Guide, it is recommended that clubs consult with experts before adopting any section. Clubs should also review the *Societies Act* or seek legal advice to ensure compliance with the legislation.

## CONSTITUTION, BY-LAWS, POLICIES AND RULES

Separating content that is contained in the Constitution and By-laws from material that should be policies and rules is one of the most difficult challenges for a sport organization. Many clubs will publish a large document that combines legal requirements, Board policies, and rule variations. These must all be separate.

### *What is a Constitution?*

The terms 'Constitution' and 'By-laws' are often used interchangeably. Technically, they are not the same thing. When an organization in BC incorporates, it must create two different documents: the first is an application for incorporation which includes a short document setting out the name of the organization and its purposes (the Constitution) and the second is a more detailed document describing how the organization will govern itself (the By-laws). Importantly, the Constitution must only have the organization's formal name and its purposes.

### *What are By-laws?*

The By-laws regulate the nature and legal incorporation of the organization. They describe how to become a Member or Director of the organization, how Members and Directors meet and their voting rights at meetings, the powers of the Members and Directors, and the election of Directors. A list of [By-laws Sections](#) is provided later in this Guide. The By-laws should be lean and only contain sections relevant to the legal operation of the internal affairs of the organization. To amend the By-laws, the Directors may vote for a change at a meeting of the Board, or a Member can propose the amendment at the meeting of the Members. Whether amendments to the By-laws are approved by the Board or proposed at the meeting of the Members, they must always be ratified by the Members at a meeting of the Members.

The By-laws are important to the organization because they describe the basic structure of the organization, how it operates, and who has authority and power. The Directors are empowered to act on behalf of the organization and its Members - but it is the Members who elect the Directors. If an individual wants to become a Director, the By-laws explain how they can be elected or appointed, what positions are available on the Board, and how long they can serve as a Director.

The By-laws also list the categories of Members, explain how the organization has jurisdiction over the Members, how Members are admitted and removed from membership, and how Members can be disciplined.

### *What is a policy?*

An organization's policies are determined and approved by the Board of Directors. The Members have little input on the creation or application of a policy. The Board may delegate the responsibility of creating policies to staff or to committees of the Board. Serving on a committee is one way that Members can contribute to the content of policies.

An organization's policies should connect to its mission, vision, and values. For example, if an organization values 'integrity', the content of the policies should reflect this value in action. The Board should develop policies and procedures to operate the organization and manage Members. Policies may be consolidated into a policy manual or may exist as standalone documents.

### *What is a rule?*

The Board may create rules for the operation of meets, facilities, events, equipment, or activities. Modifications of the rules of the sport may also be described. For example, a recreational club may have different rules for local competitions than Swim BC has for its provincial competitions. Though this material also does not need to be approved by the Members, it should exist separately from the policies and procedures. Committees can also have input on the creation and implementation of rules.

## **BC SOCIETIES ACT**

Not-for-profit sport organizations in British Columbia should be incorporated under the *Societies Act*. Although not every sport organization is required to incorporate, it is strongly recommended. Also, to be a member of Swim BC, a swim club needs to be registered with the provincial government and incorporation under the *Societies Act* is strongly recommended.

Incorporating provides the organization with its own legal status separate from the Directors, founder, and Members. This arrangement has benefits both legally and practically for the operation of the organization. A sport organization should not necessarily be *owned* by an individual or group of individuals because this arrangement hinders leadership transition and growth and may be problematic if the founders decide to resign or take the organization in a different direction. There are also liability issues for those individuals that are attached to a non-incorporated organization. The individuals and their personal assets may be at risk if the organization is sued, and insurance is more difficult and sometimes impossible to obtain.

An incorporated organization must fulfill certain annual responsibilities including keeping corporate records and filing an annual return.<sup>1</sup> Swim Clubs may not be accustomed to keeping long-term records but they must do so to comply with the *Societies Act*.

### **Transition**

The new *Societies Act* came into force on November 28<sup>th</sup>, 2016 and replaced the old *BC Society Act*. All societies that were incorporated under the old Act had two years to transition and amend their by-laws

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<sup>1</sup> Via Societies Online (<https://www.bcregistry.ca/societies/>)

to comply with the new Act. Transition involved updating the organization's By-laws and Constitution, determining whether the organization was 'member-funded' or 'public-funded'<sup>2</sup>, and filing a transition application through Societies Online.

Some Swim Clubs that transitioned may not have done so properly. The government does not review the submitted By-laws or the transition application. One common error that occurred during the transition process for many local associations was the adoption of the template 'Model By-laws' that were provided by the government. Although these Model By-laws were compliant with the legislation, they were not specific to the adopting organization and were therefore ineffective for practical use.

Another common mistake was mis-identifying the organization's category while transitioning. For example, an organization may have described itself as a 'member-funded' society when in fact it is 'public funded'.<sup>3</sup> An organization that did not transition properly may not be in compliance with the *Societies Act* and should review its By-laws with the assistance of an expert.

### **Compliance and Record Keeping**

The legislation is intended to empower Members and make sure not-for-profit organizations run smoothly. Not complying with the legislation can be dangerous for the Directors of the Society (who may be sued) and for the operation of the organization (which may face extra challenges because it is not compliant). Members should always hold the organization to be compliant with the legislation and a non-compliant organization should take immediate steps to comply.

Part of compliance with the legislation is keeping proper records. Listed below are the books and records that an incorporated organization must keep:

#### Books and Records

- a) *The Society's certificate of incorporation;*
- b) *The Society's Constitution and By-laws;*
- c) *A register of Directors (including contact information);*
- d) *Written consent of each Director to act as a Director;*
- e) *Written resignation(s) of any Director(s);*
- f) *Disclosure of any conflict of interest by any Director or the Senior Manager (when employed or contracted);*
- g) *A register of Members;*
- h) *The minutes of meetings of the Members;*
- i) *The resolutions of the Members from any meeting of the Members;*
- j) *Annual Financial Statements, with the applicable auditor's report (if any);*
- k) *The minutes of meetings of the Directors (including attendance);*
- l) *The resolutions of the Directors;*
- m) *The in-camera minutes of meetings of the Directors; and*
- n) *Adequate accounting records for each of the Society's financial years, including a record of each transaction that materially affected the financial position of the Society*

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<sup>2</sup> 'Member-funded' societies are not eligible for gaming grants.

<sup>3</sup> This webpage describes the differences between 'member-funded' and 'public-funded' societies - <https://www2.gov.bc.ca/gov/content/employment-business/business/not-for-profit-organizations/societies-act-transition/about-memberfunded-societies>

Directors of the organization have access to all of the records listed above. Members (typically individuals) can request access to the records listed in subsection a) through subsection j). However, the organization can limit access to the register of members (subsection g) if the Directors are of the opinion that the access would be harmful to the Society or to the interests of one or more Members.

## **AMENDING BY-LAWS**

If your organization wants to comply with the *Societies Act* or change some fundamental aspects of your organization's operation (such as the composition of the Board or the membership structure) the By-laws will need to be amended.

Here are some reasons why organizations amend their By-laws:

- a) Comply with the legislation (or with updates to the legislation)
- b) Improve or change Board composition or membership structure
- c) Reduce confusion or overlap
- d) Add the role of a Senior Manger (e.g., a senior staff person)
- e) Remove material that belongs in policies or rules

Amending the By-laws requires approval by the voting members. By-laws can be amended in two ways:

- a) By Ordinary Resolution (majority vote) of the Board. Any By-laws amendments must then be submitted to the Members at the next meeting of Members. The voting Members must confirm the amendment by Special Resolution (two-thirds majority vote); or
- b) By a Member in the form of a Member Proposal. Member Proposals that amend the By-laws are submitted to the Members at the next meeting of Members. The voting Members must confirm the amendment by Special Resolution.

A 'Member Proposal', which must be submitted to the Society at least seven (7) days before the notice of a meeting of the Members is sent to the Members, must include the proposal itself, the names and signatures of at least 5% of the voting Members, and, optionally, a statement of support for the proposal (consisting of fewer than 200 words). A Member Proposal may not be substantially similar to a Member Proposal that was proposed at a meeting of the Members in the past two calendar years. See [Amendment of By-laws](#) later in this Guide for sample text.

A By-laws amendment that changes the composition of the Board, such as by adding or removing a Director position, increasing or decreasing term length, or changing the manner in which Directors are elected will usually be accompanied by a 'Board Transition Plan'. This plan is a temporary By-law that explains how the changes are achieved without shortening the term of a sitting Director. See [Transitioning to a New Board Structure](#) later in this Guide.

## **GOVERNANCE OF YOUR SWIMMING ORGANIZATION**

The governance of your club is important to Swim BC for several reasons. As the provincial sport organization, Swim BC is naturally concerned about the success of each club and the effectiveness of their operations. Clubs that are governed capably and efficiently create superior programming which leads to better opportunities for participants. Clubs that are governed poorly lead to conflict and a

decline in participation. Having By-laws that are drafted carefully and that are in compliance with the *Societies Act* is the first necessary step to effective governance.

When considering the governance of your organization, consider three main factors:

- Directors
- Members
- Member Engagement

## **Directors**

Most Swim BC clubs will have an 'Operations Board'. This means that the Directors will be directly involved in the operations of the organization. For this type of Board structure, there are usually no (or few) paid administrative staff and the Directors will be required to take on key roles.<sup>4</sup>

An 'Operations Board' will usually have many Directors that can fill volunteer positions. It is not uncommon to see Board sizes of 11 or 13 people. More than 13 people would be too many. Each club needs to decide the optimal number of Director positions that can be filled (without vacancies) along with their roles.

Even if a club has an 'Operations Board' populated by volunteers it should still have the necessary foundation for a stable and effective organization. This means that every club should have compliant By-laws, objectives, a strategic plan to meet the objectives, a budget, administrative policies, and reporting and record keeping procedures.

An organization that has a senior staff position – such as a head coach – can move closer to a 'Management Board' model. This means that the Board would work together with the senior staff person to draft and implement policies, hire employees or contractors (such as assistant coaches), and arrange competitions. The Board would still be involved in some task-based activities but the heavy lifting would be done by the senior staff person. This model would also allow the organization to have a smaller, more manageable Board size of 7 to 9 Directors.

It is common in national or provincial organizations to elect Directors as 'Director-at-Large' and then assign them a portfolio after they have been elected. For local associations, it is more common for there to be specific portfolios (such as 'Competition Director' or 'Facility Director') and to elect individuals directly into the role of their choosing. Both types of Board composition are acceptable for Swim BC clubs.

The role of 'Past President' on the Board is becoming less common. Now, instead of the former President serving in a formal role, the Board can simply invite a Past President to attend Board meetings when their legacy wisdom or guidance is needed. Having the current President and the previous President serving at the same time and attending all the meetings of the Board can lead to leadership conflicts.

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<sup>4</sup> The other two common Board structures are 'Policy Board' (where paid staff do all the work and Directors focus on strategy) and 'Management Board' (where the Board coordinates with staff to handle operations).



Organizations must also choose how long an individual can serve as a Director – their term – before they need to be re-elected. The common term lengths are two or three years. Some organizations may also have a maximum number of years that an individual can serve on the Board (such as twelve years total)– although this is less common for local organizations.

Finally, it is considered good governance when there are staggered elections for the organization's Directors so that not every term expires at the same time. For example, half the Board would be elected in odd-numbered years and the other half would be elected in even-numbered years.

## **Members**

Who are your organization's Members? This is a simple question but the answer can be complex. The organization's Members are the individuals who vote at meetings of the members, who have influence on the direction of the organization by electing the Board, who appoint the auditor, and who approve amendments to the By-laws. The organization's 'members' are not necessarily its participants and this is an important distinction.

Swim clubs can take several different approaches to membership structures. A few approaches are described below in the order that they are recommended:

**Participant Members.** These are the individuals who participate in the organization's programming. Athletes, coaches, volunteers, and officials can all be Participant Members. Importantly, each of those sub-categories can have different ways they register with the organization (and different fees they pay) but each person who is a 'Participant Member' receives the same rights as the other individuals in the membership class.

**Director Members.** The individuals who are elected to serve on the Board can also be the organization's members. This creates a 'closed loop' membership whereby the Directors admit themselves as the members of the organization. Participants would be defined as 'Participants' (not members) and would not have voting rights. Director Members are most common in small organizations or clubs that are owned by a group of individuals.

**Parent Members.** The parent/guardians of the participants. This arrangement is the most common in many local organizations although it is the least desirable. When parents/guardians are members they are more difficult to register, track, and discipline (if required) because they are not directly involved with the organization. Some organizations may also have 'family memberships' which makes counting participants more difficult.

**Organization Members.** It is not recommended for local associations to have leagues or other special interest groups as Members of the organization. These groups do not need to be formally affiliated with the organization in the By-laws as a 'Member'.

**Honorary / Life Members.** It is not recommended for local associations to have small membership classes consisting of individual honorary or life members. These individuals can be honoured or acknowledged in other ways other than being formally affiliated with the organization in the By-laws as a 'Member'.

Organizations often think that since a parent/guardian of a young participant is attending a meeting of the members, and potentially voting, they should therefore be Members of the organization. In fact, the young participant can still be the actual Member of the organization and the parent/guardian can exercise the vote on their behalf.

Swim BC would prefer that clubs have 'Participant Members' who carry the votes at the meetings of the Members. Optionally, there can be several categories of participants with only certain categories having voting rights (e.g., coaches can vote but athletes do not). Alternatively, clubs can consider having 'Director Members' who are both Directors and Members of the organization. Parent membership should be discouraged.

## **Engagement**

The final main factor to consider is how Members are engaged. Primarily, Members will have voting rights at the meeting of the Members and elect the Directors. But the Directors are subsequently empowered to make and implement policies and rules that affect Members. Members should have *input* on many of those policies and rules through involvement on committees or by acting as administrative volunteers – but the Members should not hold approval over the policies. Organizations should intentionally plan their engagement with Members, and listen to and consider their feedback, so that the Board can exercise its powers more legitimately.

## **BY-LAWS SECTIONS**

This section of the Guide describes each of the sections that should be included in a BC Swim Club's By-laws. Template text is also included – but it is strongly recommended that the club consult a By-laws expert or legal counsel before adapting any of the template text. An organization's By-laws should always be specifically tailored to the organization and adopting template or 'model' By-laws will often cause problems.

### **1. General**

This section should list definitions of terms (such as 'Member Proposal' and 'Special Resolution'), identify the location of the registered office, and include any other administrative pieces.

*Definitions – The following terms have these meanings in these By-laws:*

- a) Director – an individual elected or appointed to serve on the Board pursuant to these By-laws*
- b) Ordinary Resolution – a resolution passed by a simple majority of the votes cast on that resolution and as described in the Act*
- c) Special Resolution – a resolution passed by a majority of not less than 2/3rds of the votes cast on that resolution and as described in the Act<sup>5</sup>*

*Registered Office – The registered office of the Society will be located within the Province of British Columbia*

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<sup>5</sup> Under the old *Society Act*, a Special Resolution was defined as 3/4ths majority vote. This definition changed when the new *Societies Act* came into force. A Special Resolution is now 2/3rds majority vote.

Conduct of Meetings – Unless otherwise specified by the Board, meetings of the Members and meetings of the Board will be conducted according to Roberts Rules of Order (current edition).

## **2. Membership**

This is a large and important section that should describe the categories of members, how individuals become members, and how they can be removed from membership. Is it not necessary to include specific registration provisions or the amount of membership fees – that information should be included in a membership policy so that it can be modified by the Board (or staff) as required.

Categories – The Society has the following category of Members:

- a) Participant Member – Individuals who have agreed to abide by and adhere to the Society’s By-laws, policies, procedures, and rules (or, if the individual is under the age of 19, who have had a parent or guardian agree to abide by the Society’s By-laws, policies, procedures, and rules on behalf of the individual). Participant Members may be athletes, coaches, officials, and other volunteers.

Admission of Members – No individual will be admitted as a Member of the Society unless:

- a) The candidate member has made an application for membership in a manner prescribed by the Society;
- b) The candidate member has paid dues as prescribed by the Board;
- c) The candidate member agrees to uphold and comply with the Society’s governing documents;
- d) The candidate member meets any other condition of membership determined by the Board; and
- e) The candidate member has been approved by majority vote as a Member by the Board or by any committee or individual delegated this authority by the Board.

Fees – Membership fees will be determined annually by the Board.

Discipline – A Member may be disciplined in accordance with the Society’s policies and procedures relating to the discipline of Members.<sup>6</sup>

Termination – Membership in the Society will terminate immediately upon:

- a) The expiration of the Member’s annual membership, unless renewed in accordance with these By-laws;
- b) Resignation by the Member;
- c) Dissolution of the Society;
- d) The Member’s death; or
- e) By Special Resolution of the Board or of the Members at a duly called meeting, provided fifteen (15) days notice is given and the Member is provided with reasons and the opportunity to be heard. Notice will set out the reasons for termination of membership and the Member receiving the notice will be entitled to submit a written submission and make representations opposing the termination.

## **3. Meetings of Members**

This section describes how Members meet and how they vote. Organizations will always have an Annual General Meeting that must be called within a certain timeframe. Directors (and Members) can also call regular General Meetings under certain circumstances. Many clubs will also want to include an

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<sup>6</sup> The By-laws should indicate that Members may be disciplined. But the procedures for discipline, and the standards for member conduct, should be included in policies – not in the By-laws.

agenda for the meeting.

Voting rights should also be specified in this section. If there is one more than membership category it must be clear which categories will vote. Also, the *Societies Act* does not permit a voting member to have more than one vote (unless they carry a proxy vote). This is one reason Parent Members are discouraged. A Parent Member with three minor children participating with the organization is only permitted one vote. But if each child is a Participant Member, the parent can exercise three votes at the meeting of the Members.

*Annual General Meeting – The Society will hold meetings of the Members at such date, time, and place as determined by the Board within the Province of British Columbia. An Annual General Meeting must be held once every calendar year. Members will be provided, at the Annual General Meeting, with a copy of the approved financial statements and auditor’s report (if any).*

*General Meeting – A General Meeting of the Members may be called at any time by Ordinary Resolution of the Board or upon the written requisition of ten percent (10%) or more of the voting Members<sup>7</sup>, in the form described in the Act, for any purpose connected with the affairs of the Society that does not fall within the exceptions listed in the Act or is otherwise inconsistent with the Act.*

*Quorum – A minimum of fifteen (15) voting Members present or by proxy will constitute a quorum.*

*Attendance – The only persons entitled to attend a meeting of the Members are the Members, the parents or guardians of a Member if the Member is younger than 19 years old, the Directors, the auditor (if any), and others who are entitled or required under any provision of the Act to be present at the meeting. Any other person may be admitted only if invited by the Chair or with the majority consent of the Members present.*

*Eligibility of Votes – The date determined by the Board will determine the list of Members that are eligible to vote at a meeting of the Members. The date will be no more than thirty (30) days prior to the meeting.*

*Voting Rights – Members will have the following voting rights at all meetings of the Members:*

- a) Participant Members have one vote each.*

*Voting Powers – Each voting Member votes on every issue. Voting Members who are 19 years old or older at the time of the meeting of the Members may exercise their own vote. Voting Members who are younger than 19 years old at the time of the meeting may have their vote exercised at meetings of Members by a parent or guardian. For clarity, a parent or guardian with multiple children registered with the Society who are younger than 19 years old may exercise one vote per child. Also, two parents/guardians of the same child who is registered with the Society and who is younger than 19 years old may both attend a meeting of the Members but may only exercise one vote.*

#### **4. Governance (Directors, Elections)**

This should be the largest section of the By-laws. It describes the composition of the Board, how Directors are elected and removed, how to fill vacancies, how and when Directors meet, and the powers of the Board (which may be delegated).

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<sup>7</sup> 10% of the voting members can call a General Meeting. This is a new requirement of the *Societies Act* that empowers a small group of members to call a meeting.

Composition of the Board – The positions on the Board include the following:

- a) President
- b) Vice President
- c) Seven (7) Directors-at-Large

Eligibility – To be eligible for election as a Director, an individual must:

- a) Be eighteen (18) years of age or older;
- b) Have the power under law to contract;
- c) Have not been convicted of an offense involving fraud in the past five years;
- d) Have not been declared incapable by a court in Canada or in another country; and
- e) Not have the status of an undischarged bankrupt.

Election – Directors will be elected at each Annual General Meeting as follows:

- a) The President and three (3) Directors-at-Large will be elected to the Board at alternate Annual General Meetings to those listed in subsection b; and
- b) The Vice President and four (4) Directors-at-Large will be elected to the Board at alternate Annual General Meetings to those listed in subsection a.

Terms – Elected Directors will serve terms of two (2) years and will hold office until they or their successors have been duly elected in accordance with these By-laws, unless they resign, or are removed from or vacate their office.

Number of Meetings – The Board will hold at least six (6) meetings per year. A meeting of the Board may be held by telephone conference call or by means of other telecommunications technology. Directors who participate in a meeting by telecommunications technology are considered to have attended the meeting.

Closed Meetings – Meetings of the Board will be closed to Members and the public except by invitation of the Board.

Empowered – The Board is empowered, including but not limited to:

- a) Make policies and procedures or manage the affairs of the Society in accordance with the Act and these By-laws;
- b) Make policies and procedures relating to the discipline of Members and parents/guardians of Members (if the Member is younger than 19 years old), and have the authority to discipline these individuals in accordance with such policies and procedures;
- c) Make policies and procedures relating to the management of disputes within the Society and deal with disputes in accordance with such policies and procedures;
- d) Employ or engage under contract such persons, including a Senior Manager, as it deems necessary to carry out the work of the Society;
- e) Determine registration procedures, recommend membership dues, and determine other registration requirements;
- f) Enable the Society to receive donations and benefits for the purpose of furthering the objects and purposes of the Society;
- g) Make expenditures for the purpose of furthering the purposes of the Society;
- h) Borrow money upon the credit of the Society as it deems necessary in accordance with these By-laws; and
- i) Perform any other duties from time to time as may be in the best interests of the Society.

## 5. Officers

The Officers of an organization are those individuals who have additional administrative responsibilities – such as the President and Vice President. Sometimes the organization’s senior staff person can also be an Officer because Officers do not need to be Directors. Officers are sometimes given added legal protection for insurance purposes because they often have signing authority on behalf of the organization.

Some organizations may elect their Officers differently than Directors. For example, the members could elect all the Directors as ‘Director-at-Large’ and the elected Board could then elect people into their desired Officer positions.

*Composition – The Officers will be comprised of the President, Treasurer, and Senior Manager (when employed or contracted).*

*Duties – The duties of Officers are as follows:*

- a) The President will be responsible for the general supervision of the affairs and operations of the Society, will Chair meetings of the Members and meetings of the Board, will be the official spokesperson of the Society and may delegate this function as required, will oversee and supervise the Senior Manager, and will perform such other duties as may from time to time be established by the Board.*
- b) The Treasurer will, subject to the powers and duties of the Board, keep proper accounting records as required by the Act, will cause to be deposited all monies received by the Society in the Society’s bank account, will supervise the management and the disbursement of funds of the Society, when required will provide the Board with an account of financial transactions and the financial position of the Society, will prepare annual budgets, and will perform such other duties as may from time to time be established by the Board.*
- c) The Senior Manager (when employed or contracted) is the chief employee or contractor of the Society and is responsible to the Board for the management and operations of the Society. The Senior Manager will have a title as determined by the Board, and is responsible for implementing the Strategic Plan and other policies developed by the Board, for ensuring that all official documents and records of the Society are properly kept, for overseeing and supervising office staff, for developing and implementing operational policies and procedures, and for managing the day-to-day operations of the Society through the staff and operational committees.*

*Other Officers – The Board may determine other Officer positions and appoint individuals to fill those positions. Other Officers need not be Directors.*

## 6. Participants

As discussed earlier in this Guide, some organizations may choose to have their Directors as Members or have different categories for membership other than ‘Participant Members’. If the organization’s Members are Directors or some other group, the organization’s participants should still be captured somewhere in the By-laws. In this case, it should be clear that participants are not Members, but it should also be clear that the organization has jurisdiction and authority to admit and remove participants, charge them fees, and discipline them.

*Participants – The Society has the following categories of Participants, who are not Members, but who must*

register with the Society and pay fees as determined by the Board:

- a) *Participant - Individuals who have agreed to abide by and adhere to the Society's By-laws, policies, procedures, and rules (or, if the individual is under the age of 19, who have had a parent or guardian agree to abide by the Society's By-laws, policies, procedures, and rules on behalf of the individual). Participants may be athletes, coaches, officials, or other volunteers.*

Fees – *Participant fees will be determined annually by the Board.*

Discipline – *A Participant may be suspended or expelled from the Society in accordance with the Society's By-laws, policies, and procedures relating to discipline of Participants.*

## **7. Committees**

This section should be short. It is not necessary to list the organization's committees or their powers and responsibilities. A committee's terms of reference should be easily modifiable by the Board whenever required. Enshrining the duties of committees into the By-laws (which can only be amended by the Members) is not recommended.

Appointment of Standing and Ad-Hoc Committees – *The Board may appoint such standing and ad-hoc committees as it deems necessary for managing the affairs of the Society. The Board may appoint members of these committees or provide for the election of members of these committees, may prescribe the duties and terms of reference of these committees, and may delegate to any of these committees any of its powers, duties, and functions.*

Composition – *The Board may appoint and remove any member of a standing or ad-hoc committee at any time and for any reason.*

## **8. Finance and Management**

This section should identify the organization's fiscal year, describe how an auditor is appointed and how the financial statements are distributed, and list the books and records<sup>8</sup> that must be kept by the organization. This section should also reference Director conflict of interest (which should be expanded upon in a policy) as well as signing authority for the organization.

Fiscal Year – *Unless otherwise determined by the Board, the fiscal year of the Society will be October 1<sup>st</sup> to September 30<sup>th</sup>.*

Annual Financial Statements – *The Board will approve financial statements (evidenced by signature of two or more Directors) of the Society of the last fiscal year of the Society. The statements must be for the period ending not more than six (6) months before the Annual General Meeting. A copy of the Annual Financial Statements will be provided to any Member requesting a copy of the Financial Statements at the Annual General Meeting.*

Signing Authority – *The signing authority of the Society shall be vested in the Officers of the Society and such other persons as the Board, by Ordinary Resolution, may authorize in specific instances. The signatures or electronic authorization of the Treasurer or any two of these Officers or persons shall be required on any*

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<sup>8</sup> Books and records are listed in the [Compliance and Record Keeping](#) section of this Guide.

*financial instrument of the Society.*

*Conflict of Interest – A Director, Officer, or member of a Committee who has an interest, or who may be perceived as having an interest, in a proposed contract or transaction with the Society will disclose fully and promptly the nature and extent of such interest to the Board or Committee, as the case may be, will refrain from voting or speaking in debate on such contract or transaction, will leave the meeting at which the issue is being discussed, will refrain from influencing the decision on such contract or transaction, and will otherwise comply with the requirements of the Act regarding conflict of interest.*

## **9. Amendment of By-laws**

This short section should simply describe how the By-laws can be amended. The By-laws can be amended by the Board (and subsequently approved by the Members) or by the Members via approval of a Member Proposal. By-laws amendments are discussed further in the [Amending By-laws](#) section of this Guide. By-laws amendments take effect when they are filed with BC Registry Services.

### *Member Proposal*

- a) *In this section:*

  - i. *"proposal" means a notice sent under subsection (b) to the Society.;*
  - ii. *"proposal threshold" means 5% of the voting members of the Society.*

- b) *A Voting Member of the Society may send to the Society a notice of a matter that they propose to have considered at an Annual General Meeting.*
- c) *A proposal must contain the names of, and be signed by, enough members to meet the proposal threshold.*
- d) *A proposal must be received by the Society at least thirty-seven (37) days before the time fixed for the holding of the Annual General Meeting and any such proposal must be included with all subsequent notices of the Annual General Meeting, and those notices will include:*
  - i. *the proposal,*
  - ii. *the names of the members submitting the proposal, and*
  - iii. *one statement in support of the proposal, if the members submitting the proposal request that the statement be included with the notice.*
- e) *A proposal, or, if a statement is provided under subsection (d) (iii), the proposal and statement together, must not exceed 200 words in length.*
- f) *The Society, or a person acting on behalf of the Society, will not incur any liability merely because the Society or person complies with subsection (d).*
- g) *The Society is not required to comply with subsection (d) if substantially the same proposal was considered at a general meeting held in either of the 2 previous calendar years before the calendar year in which the Annual General Meeting referred to in that subsection is to be held.*

## **10. Dissolution**

The By-laws should include a short section on what happens if the organization is dissolved. If the organization is ever dissolved, assistance will most likely be needed from a lawyer or other expert and the *Societies Act* will need to be reviewed.

*Dissolution – The Society may be dissolved in accordance with the Act.*



## 11. Indemnification

Directors and Officers should be indemnified when they are acting as representatives of the organization. This means that they should be protected legally when they are acting in good faith.

*Will Indemnify – The Society will indemnify and hold harmless out of the funds of the Society each Director, the Senior Manager (when employed or contracted), and any individual who acts at the Society’s request in a similar capacity, their heirs, executors and administrators from and against any and all claims, charges, expenses, demands, actions or costs, including an amount paid to settle an action or satisfy a judgment, which may arise or be incurred as a result of occupying the position or performing the duties of a Director or and any individual who acts at the Society’s request in a similar capacity.*

*Will Not Indemnify – The Society will not indemnify a Director or any individual who acts at the Society’s request in a similar capacity for acts of fraud, dishonesty, bad faith, breach of any statutory duty or responsibility imposed upon him or her under the Act. For further clarity, the Society will not indemnify an individual unless:*

- a) The individual acted honestly and in good faith with a view to the best interests of the Society; and*
- b) If the matter is a criminal or administrative proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that his or her conduct was lawful.*

*Insurance – The Society will, at all times, maintain in force such Directors and Officers liability insurance.*

## 12. Adoption

The final section of the By-laws should indicate the date that the By-laws were last amended.

### **COMPANION PIECES – RULES AND POLICIES**

As mentioned at the beginning of this Guide, an organization’s By-laws are separate from its policies and rules. The By-laws are a legal document that must be submitted to the government. They should not contain content related to an organization’s programming.

The following content should not be included in the By-laws:

- Registration details
- Fee amounts
- Terms of reference for committees
- Participant/parent conduct
- Parent volunteer requirements
- Coach/official certification
- Discipline procedures
- Travel
- Swimming-specific rules, club colours, etc.

Also, whereas the By-laws can only be amended by the members, the above material can be changed by the Board or by staff. Member approval is not required. However, the Board may decide that it wants or needs Member approval (or consultation with a committee of Members) before making

changes to its policies and rules.

The By-laws should always be a separate, stand-alone document. Policies can be single documents or combined into a policy manual. Similarly, rules and procedures can be combined or separated.

## **TRANSITIONING TO A NEW BOARD STRUCTURE**

An organization that wants to amend its Board structure must ensure that the term of a sitting Director is not shortened. It is recommended that the organization develop a 'Board Transition Plan' that can exist as a temporary By-law and be repealed when the transition plan has completed.

To create a Board Transition Plan, first list the current Directors, their positions, and the date their term expires. For example:

1. President – Lucy M. – expires Jan 2023
2. Vice President/Treasurer – Paul Q. – expires Jan 2022
3. Secretary – Tim P. – expires Jan 2023
4. Director-at-Large – Sam S. – expires Jan 2022
5. Director-at-Large – Ahmed H. - expires Jan 2022
6. Director-at-Large – Beatrice R - expires Jan 2023
7. Director-at-Large – Clive W. - expires Jan 2023
8. Director-at-Large – Jaxson T - expires Jan 2022

Then, determine the desired structure, position and term lengths and draft a temporary By-law that explains which positions may need to be created or removed and if any terms need to be extended. Finally, add an 'expiry date' when the Board Transition Plan is completed and the temporary By-law can be repealed. Here is a sample:

### **By-law #2 – Board Transition Plan**

*Board Transition – This By-law #2 will be enacted and the following sections of the Society's By-laws will be suspended until this By-law #2 is repealed:*

- a) 5.12 – Election
- b) 5.16 – Terms

*Current Board Composition – The current Board composition of the Society, prior to May 2021, allowed for ten (10) Directors which included four (4) Officer positions, between two (2) and five (5) Director-at-Large positions, and a Past President. As of May 2021, the Board consisted of the following:*

- a) Four (4) Officer positions filled by three (3) individuals – President, Vice President/Treasurer, and Secretary
- b) Five (5) Director-at-Large positions filled by five (5) individuals – Directors "A", "B", "C", "J", and "S"

*Term Extensions – Directors will have their current terms extended as follows:*

- a) The Vice President/Treasurer, Director "A", Director "J", and Director "S" will have their current terms extended until the 2023 Annual Meeting; and
- b) The President, Secretary, Director "B", and Director "C" will have their current terms extended until the 2024 Annual Meeting

*Elections and Expirations at Annual Meetings – The following elections will occur at the next three Annual Meetings of the Society:*

- a) 2022 Meeting – No elections*
- b) 2023 Meeting – The Vice President, Treasurer and three (3) Directors-at-Large will be elected*
- c) 2024 Meeting – President, Secretary, and two (2) Directors-at-Large will be elected*

*Repeal of this By-law #2 – After the elections at the 2024 Annual Meeting, the Board transition period will have completed and this By-law #2 should be repealed.*

## **CONCLUSION**

### **General References**

- Sport Law & Strategy Group ([www.sportlaw.ca](http://www.sportlaw.ca))
- Sport Law & Strategy Group – BC Societies Act (<https://sportlaw.ca/hot-topics/bc-act/>)
- viasportBC Resources (<https://www.viasport.ca/resources>)
- Societies Online (<https://www.bcregistry.ca/societies/>)
- Government of BC (<https://www2.gov.bc.ca/gov/content/employment-business/business/not-for-profit-organizations/societies-act-transition>)

### **Contact Information**

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