

By-laws Guide for Swim BC Clubs

- Common By-laws Issues

This document accompanies the 'By-laws Guide for Swim BC Clubs' and contains examples of common issues with By-laws drafting. Suggested revisions are provided when applicable. The examples in this document have been borrowed from the By-laws of local clubs in BC.

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UNNECESSARY CONTENT

Example:

Corporate Seal - The Board may adopt a seal in such form as shall be approved by the Board. Only the First Director or appointed person must have custody of the common seal of the Society. She/he can delegate a seal to another Director, Program Director or appointed person during her/his absence.

Comment:

A corporate seal is not required. There is no reason for a club to have a corporate seal or affix it to any document. Also, this passage references the 'First Director' who would be the person who served as the initial incorporator of the Society. Referencing this person is not required and should be removed. Finally, the references to 'she/he' and 'her/his' should be updated to 'they' and 'their' to reflect more inclusive language.

Example:

A director who may be absent temporarily from British Columbia may send or deliver to the address of the Society a waiver of notice which may be by letter, telegram, telex, telephone, cable, fax, electronic mail, by other electronic communication or by personal verbal communication, of any meeting of the directors and may, at any time, withdraw the waiver, and until the waiver is withdrawn.

Comment:

This example refers to Directors who are absent from meetings of the Board. It is not necessary to describe what happens if a Director is not physically in the province. Directors can attend meetings virtually from anywhere – and providing a ‘waiver of notice’ when they will be absent is not required.

Example:

At the discretion of the Board in consultation with the Head Coach, in special cases, a Member’s fee may be waived or deferred. Under unforeseen circumstances, a refund may be offered at the discretion of the Board.

Comment:

The club’s refund policy should not be included in the By-laws.

UNCLEAR

Example:

*Chair of the Members’ Meetings (if applicable).
The Program Director, Director, President or any appointed individual shall be the Chair of any Members’ meeting.*

Comment:

There will always be a Chair who runs meetings of the Members – so the example above should not include the ‘if applicable’ qualification. The President is almost always the Chair of the meeting. This example is confusing because it says that any one of four people can serve as the Chair – so who is the Chair?

Suggested Revision:

The President (or designate), or another individual appointed by the Board if the President is absent, will serve as the Chair at any meeting of the Members.

Example:

The number of directors may be fifteen (15) but in any event the number of directors shall not be less than nine (9) directors.

Comment:

The By-laws should indicate a set number of Directors. If there is a range of Directors, it should be small (e.g., 7 to 9) and the By-laws should clarify when and how the number of Directors on the Board

can change.

Suggested Revision:

The Board will have between nine (9) and eleven (11) Directors. At least sixty (60) days prior to a meeting of the Members at which Directors will be elected, the Board will determine the number of Director positions on the Board provided that:

- a) The number of Directors-at-Large is at least nine (9) and no more than eleven (11); and*
 - b) The determination of the number of Director positions on the Board does not have the effect of shortening the term of a sitting Director.*
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Example:

There shall be only one (1) member of any one (1) family elected to the Board of Directors of the Society, unless otherwise approved by the membership.

Comment:

Clubs are free to limit the number of Directors on the Board if they are from the same family. But this example does not clarify how 'family' is defined and also allows the Members to vote to ignore the restriction.

Suggested Revision:

One Director Per Family – An individual may not be nominated to serve as a Director if a member of the individual's family is an incumbent Director whose term is not expiring at the next Annual General Meeting of the Members. For the purpose of this section, a family member is defined as a spouse, child, parent, sibling, step-child, step-parent, step-sibling, grandparent, cousin, aunt, uncle, common-law partner, or legal guardian. When two or more members of the same family are nominated to serve as a Director, the election of one individual will disqualify the other individual(s) from nomination.

NOT GOOD GOVERNANCE

Example:

A member may be expelled from the Association with cause at any time by a 75% vote of the Directors. A member so expelled may request an Extraordinary General Meeting to be held to hear the case, and at such meeting a majority vote of the membership shall be the final decision.

Comment:

It is not necessary to have a meeting of the Members to discuss a Member's removal from the club. A Member can be removed by the Board at any time and for any reason. The Member must be permitted an opportunity to attend and speak to the motion of their removal.

Example:

Voting - In the case of a tie, the Chair of the Members' Meeting shall have a casting vote and the motion shall pass.

Comment:

This is not good governance for several reasons. First, if the Chair is not a Member of the organization they would not normally have a vote at all. Second, if the Chair is a Member, they have already voted and should not be given a second vote. Finally, motions are passed by Ordinary Resolution (majority vote) or Special Resolution (2/3rds vote) which means that if there is a tie the motion did not pass.

Suggested Revision:

In the case of a tie, the motion is defeated.

Example:

*Class B Members (Special Interest Organizations)
(a) Qualifications. Class B Members (Special Interest Organizations) shall be any special interest organization approved for membership by the Board.*

Comment:

Although a club can have multiple classes of Members, a 'Special Interest Organization' should have no role in the operation of the club. Only individuals should be Members. Special Interest Organizations should not be formally affiliated with a club as a membership class.

NON-COMPLIANT WITH THE SOCIETIES ACT

Examples:

Term of Office - Directors shall be elected for an unexpired term or a term determined at the Members' Meeting.

Directors may appoint a Member as a Director to fill a vacancy in the Board of Directors. A Director so appointed holds office only until the conclusion of the next Annual General Meeting of the Society.

Comment:

The first example says that Directors are elected for a term determined at the meeting of the Members. The term of office for Directors should be clarified in the By-laws.

Directors who are elected or appointed to fill a vacancy do so for the remainder of the unexpired term. Often this is incorrectly written as “until the next meeting of the Members”, such as in the second example, which is not compliant with the Act.

Suggested Revision:

Elected Directors will serve a term of office of two (2) years unless they resign, or are removed from or vacate their office. When the position of a Director becomes vacant for whatever reason, the Board may appoint a qualified individual to fill the position for the remainder of the term.

Example:

“Society Act” means the Society Act of the Province of British Columbia from time to time in force and all amendments to it

Comment:

The *Society Act* was the old legislation. Clubs have transitioned to comply with the new *Societies Act* and the By-laws should have been updated accordingly.

Example:

“Special Resolution” means (i) a resolution passed by a majority of not less than 75% of the Voting Members present at any Members’ Meeting; or (ii) a resolution agreed to in writing by all the Voting Members eligible to vote at a Members’ Meeting

Comment:

Under the new *Societies Act*, a Special Resolution is defined as 2/3rds majority vote.

OTHER

Example:

Quorum - Voting Members who have declared a conflict of interest shall be counted in determining a quorum.

Comment:

Conflicts of interest should be declared at meetings of the Board when a Director has a conflict of interest about a matter being discussed and decided. The Director should leave the meeting after declaring a conflict and cannot have input on the matter. This is not the same at meetings of the Members. Members can discuss and vote for things that would benefit them – including voting for

themselves in elections. Members do not need to declare a conflict of interest at a meeting of the Members.

Example:

Quorums for Society meeting shall be determined as follows:

c. five (5) for a meeting of the Board of Directors

d. ten (10) for a meeting of the General Membership

e. twenty (20) for an Annual General Meeting

Comment:

Quorum at meetings of the Board should be a majority of Directors currently serving on the Board. Quorum at meetings of the Members should be the same number or percentage of Members regardless of the type of meeting.