



By-Laws and Policies: Is There a Difference?

The governing practices of volunteer boards of nonprofit organizations are guided, in part, by establishing rules and principles. These generally take the form of documents called by-laws and policies, even if they may not be designated as such. These seek to:

1. Articulate and define important objectives, principles or values
2. Limit or prescribe what kind of action will be taken in different situations
3. Defines roles, responsibilities and authority

By-Laws

Policies are known as *by-laws* when their scope is regulated by government. Organizations, as a requirement of legal incorporation in most jurisdictions, are required to establish by-laws in respect to specific matters. These are usually matters that relate to the functioning of the board and its relationship to the members or shareholders and voting rights. Legislation typically identifies what issues are to be addressed in by-laws.

Under the Societies Act of Nova Scotia¹, for example, the by-laws must address eleven (11) matters. These are listed in Schedule B of the Act (below). The by-laws of the society are policies that cannot be adopted or changed without approval of the membership at a general meeting and any changes normally must be reported to the appropriate government department, often in the form of an annual filing. If the by-laws are not consistent with the Act or the organization's own amending rules, the changes may not be recognized.

Board Policies

Policies, outside of external regulation, are also needed in most cases. These are usually subject to change by the Board of Directors. Indeed, it is in the interest of most voluntary and non-profit organizations to limit the number of policies designated as formal "by-laws" and focus their

1. Nova Scotia, R.S.N.S, 1989, c 435 as amended, An Act to Provide for the Incorporation of Non-profit Societies, Halifax, Nova Scotia. The Act requires the registration of three documents: The Memorandum of Association, By-Laws, and Registered Office. The Memorandum states the objects of the society, and the name of the subscribers or founding directors. The Registry of Joint Stock Companies provides sample documents which, in terms of by-laws, include more detail than is required by the Act.

attention on creating other key policies. This gives the board of directors the flexibility and opportunity to identify the organizational practices that are important to them and modify them when the need arises. This is often referred to as “governing by policy”. Boards, especially those governing non-profits with regular staff, should consider setting policy in the following areas:

- Organizational mission, objectives and statements of values (not usually considered “policies” but qualify as such)
- Role and responsibilities of the board
- Board chair job description
- Decision-making and meeting practices (usually covered partially by the by-laws)
- Conflict of interest
- Executive director or CEO job description
- Financial management practices
- Personnel or human resource management practices
- Fundraising (including ethical considerations)

Operational Policies

Some organizations also try to distinguish between board or governing policies and management or operational policies. This encourages board members to focus their attention on the organization’s overall mission and core practices and mandates staff, usually the executive director or CEO, to create the more detailed polices and procedures that are necessary to implement the direction given to them by the Board.

<p style="text-align: center;">Schedule B Societies Act of Nova Scotia (Schedule A is the Memorandum of Association)</p> <ol style="list-style-type: none">1) Terms of Admission of members and their rights and obligations2) Conditions under which membership ceases and manner (if any) in which a member may be expelled.3) Mode and time of calling general and special meetings of the society, number constituting a quorum at such meeting and rights of voting.4) Approval and removal of directors and other officers and their duties, powers and remuneration5) Exercise of borrowing powers6) Audit of accounts7) Custody and use of the seal of the society8) Manner of making, altering and rescinding by-laws9) Preparation and custody of minutes and proceedings of meetings of the society and of the director and other books and records of the society10) Time and place at which the books and records of the society may be inspected by members11) Execution of contracts, deeds, bills of exchange and other instruments and documents on behalf of the society
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