

# By-Laws and Policies: What is the Difference?

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It is generally agreed that the governance of non-profit organizations should involve, to some degree, the development and use of by-laws and policies. Both represent the documented rules or requirements that dictate what is prudent, wise or good practice in terms of:

1. Important organizational objectives, principles or values
2. The kinds of action that will or will not be taken in different situations
3. The processes, roles, responsibilities and levels of authority associated with making decisions

## By-Laws

Rules are known as *by-laws* when government regulates their content and scope. Non-profit organizations, as a requirement of incorporation, are usually required to establish by-laws in respect to specific matters. These typically relate to the organization's purpose, how the board is chosen, the functioning of the board, its relationship and accountability to members and its powers. Bylaws also dictate the requirements for meetings of the membership and directors. Typically, they say little about the management of the organization.

Many jurisdictions regulate non-profits under legislation set up for corporations. Some have specific legislation for companies, co-operatives, and non-profits. In Canada non-profits can incorporate under Federal or provincial legislation, although registering under provincial statutes is the most common route. Several provinces in Canada also have legislation pertaining to the incorporation of "public benefit" corporations.

Under the Societies Act of Nova Scotia<sup>1</sup>, 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 (or annual general meeting) and any changes must be reported to, and approved as well, by the appropriate government department.

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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 two documents: The Memorandum of Association and By-Laws. The Registry of Joint Stock Companies provides sample documents which, in terms of by-laws, include more detail than is required by the Act.

## Governing Policies

Rules in the form of *policies* are also required, especially as organizations become more complex, to address matters not covered by by-laws, particularly the details of how the organization is to be managed. The board of directors can develop and change policies themselves. Unlike by-laws, permission is not required. Indeed, it is in the interest of most non-profit organizations to limit the number of “by-laws” and focus attention on creating governing policies. This gives the board of director’s flexibility in identifying the kind and level of rules that are needed. This is often referred to as “governing by policy”. Volunteer boards of directors should consider identifying policies that apply to the organization overall and that describe what they agree should characterize the board’s own practices:

- ◆ Organizational mission, objectives and values
- ◆ Role and responsibilities of the board
- ◆ Job descriptions each officer position
- ◆ Board decision-making and meeting practices (usually covered partially by by-laws)
- ◆ Conflicts of interest
- ◆ Board member behavior or conduct
- ◆ Accountability to members, stakeholders and community

Board should also consider identifying policies that provide explicit direction on how the organization will be managed by those they employ. Such policies should be developed in partnership with those whose responsibility it is to implement them.

- ◆ Responsibilities, authority and evaluation of the executive director or CEO
- ◆ Financial management practices
- ◆ Personnel, hiring and other human resource practices
- ◆ Treatment and protection of members consumers, customers, clients or users
- ◆ Fundraising (including ethical considerations) practices
- ◆ Advocacy and public education

Many organizational documents, such as mission statements, can be considered policies. There is no agreed upon policy format and examples are often easily found to anyone searching for them.

## Operational Policies

Some organizations distinguish between board and governing policies and management or operational policies. Governing policies tend to be less detailed and focused more on principles rather than on specific practices. This encourages board members to focus their attention on the organization’s core practices and mandates staff, usually the executive director or CEO, to create the more detailed policies and procedures.

For example, a governing level policy on human resource management might, as one of its principles, state that all employees are entitled to a regular evaluation. The management level policy on employee evaluation might outline the frequency, process and criteria used.

**Schedule B: By-Laws**  
**Societies Act of Nova Scotia**  
(Schedule A is the Memorandum of Association)

- 1) Terms of Admission of members and their rights and obligations
- 2) 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 remuneration
- 5) Exercise of borrowing powers
- 6) Audit of accounts
- 7) Custody and use of the seal of the society
- 8) Manner of making, altering and rescinding by-laws
- 9) Preparation and custody of minutes and proceedings of meetings of the society and of the director and other books and records of the society
- 10) Time and place at which the books and records of the society may be inspected by members
- 11) Execution of contracts, deeds, bills of exchange and other instruments and documents on behalf of the society