

MLT AIKINS WESTERN CANADA'S LAW FIRM

BYLAWS: WHY THEY MATTER

SARC 2018 Fall Conference

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Presented by Justin Wood

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BYLAWS

The most important rules which an organization must compose for itself.

Roberts Rules of Order 10th Edition

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AGENDA

1. Introduction
2. Why Bylaws Matter
3. Common Provisions
4. Indemnity Provisions
5. Meeting Rules
6. Director and Member Eligibility
7. Membership Fees
8. Amending Bylaws

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DISCLAIMER: THIS IS NOT LEGAL ADVICE

The information provided in this presentation is intended solely for general informational purposes and should not be construed as, or used as a substitute for, legal advice with respect to specific issues or transactions, since such advice requires an evaluation of precise factual circumstances.

Counsel should be consulted as to all questions that arise with respect to the laws, rules, regulations and other legal requirements discussed herein.

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INTRODUCTION

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INTRODUCTION

Break at 2:30 – 2:45

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FOUNDATIONAL DOCUMENTS

Articles of Incorporation = birth certificate
 Bylaws = instruction manual

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ARTICLES

- A document that sets out the essential characteristics of the corporation

<ul style="list-style-type: none"> • Name • Membership Classes • Right to Transfer Membership 	<ul style="list-style-type: none"> • Member vs Charitable Corporation • Restrictions (Charitable Purpose) • Distribution upon dissolution
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WHAT ARE BYLAWS

Dictionary Definition:
 Rules adopted by an organization chiefly for the government of its members and the regulation of its affairs.

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WHAT ARE BYLAWS

Bylaws are procedural rules and guidelines to assist the corporation and provides some dispute resolution mechanisms.

Generally considered a constating document, along with the articles.

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OVERVIEW

- Rules for the organization created by the organization
- Private, internal document
- Bylaws provide principles, frameworks, and policies

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OVERVIEW

- Direct the board of directors in their work to oversee the corporation
- Established upon incorporation, should be reviewed periodically to ensure that they are fulfilling their purpose

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OVERVIEW

Bylaws guide the corporation with:

- Governance
- When and how board meetings will be held and conducted
- How board directors and officers will be appointed or elected
- Voting procedures

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OVERVIEW

- How committees are created and discontinued
- Number of directors, their required qualifications, and their terms of service
- Rules that govern conflicts of interested
- How the bylaws can be changed or amended

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WHY BYLAWS MATTER

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WHY BYLAWS MATTER

- Bylaws are the structure that can help your organization focus on your purpose and prevent issues from occurring

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SETTING RULES

- Bylaws are a legal document that set out the rules of the corporation
- Provide details about the rights and obligations of various stakeholders
 - *Members, Directors and Officers*
- Set the rules for Directors and Members meetings
- Sets out committee structure

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GUIDING DECISION MAKING

Bylaws provide guidance for several common issues, such as:

- How does someone become a director?
- When and how often does the board meet?
- How and when do we elect directors?

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GUIDING DECISION MAKING CONT'D

- How is a meeting of the board to be run?
- How are the bylaws updated?
- Notice requirements for Special Meetings: if there is a certain amount of notice needed to call a special meeting

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GUIDING DECISION MAKING CONT'D

- Remote Meetings: if meetings are allowed to be held through telecommunications or other electronic means
- Quorum: how many members/directors are required for quorum?
- Voting: Does the chairperson have a casting vote? Can members vote by proxy?

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AVOIDING FUTURE PROBLEMS

There are a number of future problems that bylaws help to deal with, include:

- Disputes
- Removing directors
- Voting Requirements

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DISPUTE RESOLUTION

- When there is a dispute, look to the bylaws
- Properly drafted bylaws should provide the guiding principles needed to reach a solution
- Objective way to handle dispute

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COMMON PROVISIONS

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KEY PROVISIONS

- Definitions
- Objects and powers of corporation
- Members and membership
- Directors and officers
- Meetings
- Indemnity

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DEFINITIONS

- Provide guidance to the reader
- Ensure terms are consistent throughout the document

"Act" means *The Non-Profit Corporations Act, 1995* (Saskatchewan), together with the regulations made pursuant thereto and any statute or regulations enacted in substitution thereof, all as amended from time to time.

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OBJECTS

- This provisions outlines the purpose, or objective, or the corporation
- Examples:
 - "To raise and provide funds on behalf of a Canadian Registered Charity"*
 - "To operate one or more daycare, childcare, or community children's programs"*

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POWERS OF THE CORPORATION

- Sets out all of the powers vested in the corporation
- Common examples include:
 - Receive, maintain, invest, or transfer funds
 - Solicit and receive donations
 - Acquire personal or real property

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POWERS OF THE CORPORATION CONT'D

- Employ and pay contractors and employees
- Co-operate with other organization
- Demand and compel all payments
- Appoint committees

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MEMBERS AND MEMBERSHIP

- Classes of members
- Eligibility to become a member
- Rights and privileges of members
 - *Receiving notice, attending meetings, voting at meetings, reviewing the financial statements, appointing the auditor, etc.*
- Whether Membership certificates are required

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STRUCTURE OF NON-PROFITS

Members
 ↓ Give authority to
 Board of Directors
 ↓ Gives authority to
 Management

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BOARD OF DIRECTORS

Body of elected or appointed members who jointly oversee the activities of a company

- Act on behalf of the corporation
- ***Duty of Care to the corporation***
- Participating in regular meetings
- Approve corporate activities and transactions

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BOARD OF DIRECTORS

Bylaws outline:

- Role of the board
- Composition of the board
- The nomination process
- How vacancies are dealt with
- Meetings of the board
- Notice of board meetings

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BOARD OF DIRECTORS

- Elected by the members/shareholders
- Oversee the management of the business and affairs of the corporation
- Owe duties to the corporation
- Can be personally liable for actions or inactions of the corporation

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OFFICERS

Officers are employees appointed by the Board who oversee the business' daily operations

- Given legal authority to act on the corporation's behalf
- Bylaws address:
 - Required Officers
 - Duties of Officers
 - Responsibilities of Officers

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INDEMNITY PROVISIONS

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WHAT IS AN INDEMNITY?

- Security or protection against a loss or other financial burden
- A duty to make good any loss, damage, or liability incurred by another

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INDEMNIFICATION

- Indemnification is a promise by the corporation to cover the cost of or compensate directors for losses or damages caused by lawsuits based on a Director's actions or inactions in their capacity as a director
- Common to have indemnity provisions in bylaws
- Best practice: Have an indemnity agreement with each director

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INDEMNIFICATION

The Corporation shall indemnify and save harmless every director and former director... and their respective heirs, executors, administrators... from and against:

- *all claims and associated costs, charges and expenses which such person sustains or incurs or which is brought, commenced or prosecuted against him or her in respect of any act, deed, matter or thing whatsoever made, done or permitted by him or her to be done in or about the execution of his or her office.*

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INDEMNIFICATION

Applicable if:

- The director acted honestly and in good faith with the view to the best interests of the corporation; and
- In the case of criminal or administrative action or proceeding that is enforced by a monetary penalty, the director had reasonable grounds for believing that his or her conduct was lawful.

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INDEMNITIES & INSURANCE

How will the corporation pay for your indemnity?

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INSURANCE

- Directors & Officers Insurance (a.k.a. D&O Insurance)
- Provides the money so that the corporation can fulfill its indemnity

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MEETING RULES

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MEETING RULES

- Bylaws outline certain rules for member and director meetings

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MEMBERSHIP MEETINGS

- Time and place of meetings
- When a meeting can be called
 - When requested by the board
 - Requested in writing by the member
 - When required by the bylaws
- Notice that must be provided prior to a meeting
- Quorum requirements

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MEMBERSHIP MEETINGS

- Chair of meeting
- Voting procedures
 - Does the chairperson have a casting vote?
- Resolution in lieu of meeting
- Attending via electronic means
 - If all the directors consent, one or more director may participate in a Board meeting by means of a telephone or other communications facility that permits all persons participating in the meeting to hear each other.

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MEETING MINUTES

- Decisions made and key matters discussed
- Does not need to capture all nuances of conversation
 - A record of what was decided in a meeting, not of what was said in a meeting
 - Do not need to capture "who said what"
 - Consider who will have access to the minutes

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MEETING MINUTES

- Should be approved by directors at next meeting
 - Corrections can be made, if necessary
- Should be signed by the secretary and/or chair
- More "art" than "science"

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MEETING MINUTES - DISSENTS

- Dissents (if any) should be noted
- Any dissenting directors should be mentioned by name.
- E.g. The motion passed 12 votes to 1. Director X dissented on this motion.

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MINUTE BOOKS

A minute book is used to store all important corporate documents such as:

- The corporation's bylaws and amendments
- Minutes of member meetings (annual and special)
- List of members
- Membership certificates
- Important contracts

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DIRECTOR AND MEMBER ELIGIBILITY

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DIRECTOR ELIGIBILITY

Bylaws address:

- Statutory requirements of directors
 - Must 18 years old
 - Cannot lack capacity
 - Not have the status of bankrupt
- Bylaws may require a criminal record check

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MEMBERS

- Akin to shareholders in a "for-profit" corporation
- Elect directors
- Appoint auditor
- No liability for the corporation or its actions
 - Exception: Unanimous Member Agreement

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MEMBERS

- There can be different classes of members
- Classes are set out in the articles, and for convenience often set out again in the bylaws
- Regular members
- Corporation Members
- Honorary members
- Non-voting members

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MEMBERS ELIGIBILITY

- Often a membership application is required
- Application done by standard form
- Approved or rejected by the board of directors or a committee

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MEMBERS ELIGIBILITY

Wide variety of possible eligibility requirements, for example:

- Must be approved by the board of directors of the Corporation
- Agree with the goals and objectives of the Corporation
- Have a background in specific area
- Education and training
- Paid a membership fee

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MEMBERSHIP FEES

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MEMBERSHIP FEES

- Fees can vary by type of membership
- Can be one-time payment, annual, etc.
- Membership fees can be set amount, or deferred to board to determine
- Can be method to ensure members are committed to the corporation's purpose

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MEMBERSHIP FEES

- Bylaws may include a membership termination provision
- Membership can be terminated if a member fails to pay the membership fee

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AMENDING BYLAWS

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AMENDING BYLAWS

The Act provides for default provisions regarding amending bylaws.

- From time to time the corporation will need to amend the bylaws
- These provisions can be changed by adding provisions within the bylaws themselves
- The bylaws should include rules for amendment
- Amendment rules give members the right to confirm, reject, or amend the amendments

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AMENDING BYLAWS

- Bylaws provide specifics on when, where, and how bylaws can be amended, for example:
 - Can be amended at any Meeting of Members
 - By a vote of at least two-thirds (2/3) of the Members

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WHO CAN AMEND?

- Default provision:
 - Directors by simple majority (temporary)
 - Members by simple majority (permanent)

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WHY YOU AMEND?

- Error in bylaws
- Original bylaws need improvement
- Changing business environment
- Shift in focus

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Q&A

Justin Wood
T: (306) 975-7139
jwood@mltaikins.com

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