
Nominations, Elections and Governance - Conference #6

This Conference will describe basic governance, but won't go into detail regarding various governance models and how internal reporting relationships between directors and officers could be designed. This is a subject of separate specialty, and is independent of substantive by-law requirements for governance. This conference will also deal with how nominations for Association directors (and perhaps officers) can be made, and the options as to how officers can be either elected or selected.

Board or Directors:

Currently: The organizational structure of the Association is defined in by-law 107. This briefing paper will focus initially on the Board of Directors as contained in by-laws 107.1 to 107.3 inclusive:

107.1 A Board shall be established to manage the affairs of the Association including its property and business, shall report periodically to the other members of the National Council and shall be accountable to the membership.

107.2 Members of the Board shall be elected from Active Members in good standing and Life Members at the Annual General Meeting. They shall be National Officers, serve a term of two (2) years and may be re-elected.

107.3 The Board shall consist of nine (9) members as follows:

- (a) National President*
- (b) Vice President*
- (c) Immediate Past President*
- (d) National Secretary*
- (e) National Treasurer, and*
- (f) Directors (4)*

As can be seen from 107.3, the structure of the current Board is 4 elected officers (i.e., President, Vice-President, Secretary, and Treasurer) as officers, and 4 elected directors specifically as directors. All 8 sit on the Board of Directors. The 9th member of the Board is the Past President who is not elected, but is *ex-officio*, based upon the previously held office as President.

Part 9 of the *The Canada Not-for-profit Act* deals with directors and officers, and the Part is comprised of 28 sections of some very detailed provisions. It will be impractical to cover all of the detail in this paper, so only highlights will be discussed.

The Canada Not-for-profit Act says at sections 124, 125 and subsection 128(3):

124. *Subject to this Act, the articles and any unanimous member agreement, the directors shall manage or supervise the management of the activities and affairs of a corporation.*

125. *A corporation shall have one or more directors, but a soliciting corporation shall not have fewer than three directors, at least two of whom are not officers or employees of the corporation or its affiliates.*

...

Nominations, Elections and Governance - Conference #6

128. (3) *Members shall, by ordinary resolution at each annual meeting at which an election of directors is required, elect directors to hold office for a term expiring within the prescribed period. [Prescribed in the Regulations as 4 years.]*

(4) *It is not necessary that all directors elected at a meeting of members hold office for the same term.*

Note that in section 124, the directors' duty to manage, or supervise the management of, the Association cannot be varied by way of by-law: only the Articles or a unanimous member agreement can alter those duties.

Section 125 specifies that the minimum number of directors, and their derivation, can change depending on the corporate classification. As a soliciting corporation [see Conference #2], we will require a minimum of 3 directors, at least 2 of whom are not officers or employees. What we propose for directors will meet any of the required criteria regardless of what corporate classification we are [see in by-law VIII.4 below].

Subsection 126(1) deals with disqualifications from being a director but will not be further discussed. Subsections 126(2) and (3) are noteworthy, and say:

126. (2) *Unless the by-laws otherwise provide, a director of a corporation is not required to be a member of the corporation.*

We propose to vary 126(2) by requiring directors to be members of the Association, as per by-law VIII.3 below.

Subsection 128(3) requires that all directors be elected. This means that directors appointed *ex officio* are not permitted under the new legislation. Thus, in order for the Past President to continue to sit as a member of the Board s/he must be elected to the Board as a director. Subsection 128(4) allows for staggered terms for directors.

Before proceeding further, a look at the proposed by-laws corresponding to the detail above will show that some of the same language is used in proposed Part VIII.1 and in VIII.3 and 4 for the establishment and composition of the Board:

Part VIII - BOARD OF DIRECTORS

- 1 A Board shall be established to manage the activities and affairs of the Association including its property and business, shall report periodically to the other members of the National Council, and shall be accountable to the membership.*

Composition

- 3. Members of the Board shall be elected, or appointed in accordance with the Act, from Active Members in good standing and Life Members, at the Annual General Meeting. They shall be directors, serve a term of two (2) years, and may be re-elected.*
- 4. In the event the Association is deemed to be, or becomes, a soliciting corporation, at least two of the directors shall not be officers or employees of the Association.*

Nominations, Elections and Governance - Conference #6

By-law VIII.1 is almost identical to current by-law 107.1 but it refers to managing the “activities and affairs” of the Association. “Activities” and “affairs” are defined in section 2 of Act: “activities” is any conduct in furtherance of its purpose and business; while “affairs” is the relationships among the Association, including the directors, officer and members. Thus, the Board manages all aspects of the Association.

By-law VIII.3 is similar to current by-law 107.2 but adds: “or appointed in accordance with the Act”; and “National Officers” is replaced with “directors”. The legislative provisions dealing with the appointment of directors is intricate, and while it will be briefly summarized later in this paper, the full provisions are in Appendix A.

By-law VIII.2 is not summarized in this paper, but describes the duties and responsibilities of the Board, and is reproduced in Appendix B (which see).

The next important statutory provision is section 142, which states:

142. *Subject to the articles, the by-laws and any unanimous member agreement,*

(a) the directors may designate the offices of the corporation, appoint as officers persons of full capacity, specify their duties and delegate to them powers to manage the activities and affairs of the corporation, except powers to do anything referred to in subsection 138(2);

(b) a director may be appointed to any office of the corporation; and

(c) two or more offices of the corporation may be held by the same person.

What s. 142 says is that while directors must be elected [s. 128(3)], officers (President, Vice President, Secretary and Treasurer) can be appointed by the directors. But, s.142 also says that such appointing can be subject to variance by the by-laws. Therefore there are options for dealing with officers, which include:

- a) officers are appointed;
- b) directors are appointed as officers
- c) officers are elected additional to directors’ elections; or
- d) officers are elected as directors; *i.e.* as a director/officer; or
- e) a combination of a), b), and d).

In considering the options, it is important to note that only directors can, as of right, attend Board of Directors meetings [s. 135] and only they can vote at such meetings.

Thus:

if a) officers are appointed: as they are not elected, they cannot be considered directors and cannot as of right attend Board meetings, and if attending by invitation, cannot vote. Furthermore, the Board selects who fills each officer’s position, not the members. This option does allow for the potential for the Board to select officers most suitable for the respective officers’ role, and not leave that to the foibles of an unpredictable election;

if b), directors are appointed as officers: as they are elected directors, they can attend and vote at all Board meetings, but as in a) the selection of each officer’s position is determined by the Board, not the members;

Nominations, Elections and Governance - Conference #6

if c), officers are elected additional to directors' elections: this resolves the membership selection of officers issue, but if they are additional to directors' elections, they are not considered directors, so cannot as of right attend Board meetings, and if attending by invitation, cannot vote;

if d), officers are elected as directors; *i.e.* as a director and an officer, it resolves both the membership selection of officers' issue and the status of director issue.

While d) seems to be intuitively appealing as it resolves two major issues, it may be the most difficult to implement and may lead to anomalous election results.

First, how it is likely to be done? For example, if there are 3 directors' vacancies on the Board, 2 of which are also officer vacancies (*e.g.*, President and Secretary) and if a candidate wishes to run for director/President; or director/Secretary; or director only, it will be indicated as such on the ballot. That's easy enough as long as there is no more than one candidate for each vacancy. But if there is more than one candidate for any of the vacancies, depending on how the election is done, there is a potential for anomalous election results (see Appendix C for examples).

Appointment/Removal of Directors:

Before discussing nomination processes, on page 3, I mentioned intricate legislative provisions dealing with the appointment of directors, notwithstanding that section 128 requires directors to be elected. I will summarize those provisions, with reference to the corresponding statute provision in [brackets].

The Articles of Continuance specify the minimum (4) and maximum (11) number of directors. A vacancy on the Board created by a director being elected but failing to fulfill their term may be filled by appointment of the Board [s 132(1)] for the unexpired term of the predecessor [s. 132(6)]. The appointment by the Board could have been varied by a by-law requiring such a vacancy to be filled only by election by members [s. 132(5)]. However because of the complexities and costs of calling a meeting of members on an urgent basis, the option of not varying the default was chosen. Should such a vacancy be required to be filled by election?

A Board vacancy created by a failure to elect sufficient directors cannot be filled by the Board, and must either remain vacant (as long as there is a quorum (majority or the minimum number required by the Articles), or be filled by election at a Special Meeting of members [s. 128(7)].

The Articles also permit the Board to appoint "additional" directors, not exceeding 1/3 of the number of directors elected at the previous AGM, and such appointment is valid only until the next AGM [s. 128(8)].

Directors may be removed from office by ordinary resolution at a Special Meeting of members [s. 130(1)].

Nominations:

The by-laws propose to maintain the Nominating Committee process for nominating candidates for director [see By-laws Part IX.1 to 5 inclusive]. However current by-law 109.7, which says: "*Nominations by any other method than through the Nominating Committee shall be invalid*", has been struck, because to repeat that by-law would itself

Nominations, Elections and Governance - Conference #6

be invalid. There are in fact two additional methods provided in the Act to nominate directors, and these methods cannot be varied or prohibited by Association by-laws.

The two additional valid methods for nominations are: by written member proposal [s. 163(1) & (5)] (described below); and by nomination at a meeting of members; *i.e.*, a nomination from the floor [s. 163(5)]. As these methods are provided for in the Act, and cannot be varied, there are no by-laws re-stating them.

A member entitled to vote at a meeting of members may submit, within a period of 90 to 150 days prior to the meeting, a written "proposal", not exceeding 500 words, and may describe any other business to be transacted at the meeting. The proposal must be signed by not less than 5% of the members entitled to vote at the meeting, and the proposal may be for the purpose of submitting a nomination for the election of directors.

APPENDIX A

Various provisions dealing with directors' appointments:

128. (8) *The directors may, if the articles of the corporation so provide, appoint one or more additional directors, who shall hold office for a term expiring not later than the close of the next annual meeting of members, but the total number of directors so appointed may not exceed one third of the number of directors elected at the previous annual meeting of members.*

132. (1) *Subject to subsections (4) and (5), a quorum of directors may fill a vacancy among the directors, except a vacancy resulting from an increase in the number or the minimum or maximum number of directors provided for in the articles or a failure to elect the number or minimum number of directors provided for in the articles.*

(2) *If there is not a quorum of directors or if there has been a failure to elect the number or minimum number of directors provided for in the articles, the directors then in office shall without delay call a special meeting of members to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any member.*

(3) *If a corporation has neither directors nor members, the court may, on the application of an interested party, make an order appointing the required number or minimum number of directors provided for in the articles.*

(4) *If any class or group of members has an exclusive right to elect one or more directors and a vacancy occurs among those directors,*

(a) subject to subsection (5), the remaining directors elected by the class or group may fill the vacancy, except a vacancy resulting from an increase in the number or the minimum or maximum number of directors provided for in the articles for that class or group or from a failure to elect the number or minimum number of directors provided for in the articles for the class or group; or

(b) if there are no remaining directors, any member of the class or group may call a meeting of the class or group to fill the vacancy.

(5) *The by-laws may provide that a vacancy among the directors shall be filled only by a vote of the members, or by a vote of the members of any class or group having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class or group.*

(6) *A director appointed or elected to fill a vacancy holds office for the unexpired term of their predecessor.*

APPENDIX B

Duties and Responsibilities

2. *The Board has authority to:*
 - 2.1. *manage the affairs and activities of the Association in a manner it sees fit except as limited by the Act, the Articles, or elsewhere in these By-laws;*
 - 2.2. *overspend a budget in case of an emergency situation, and such overspending shall be reported to the membership at the next Annual General Meeting;*
 - 2.3. *incur debt, or change an existing debt, and such incurred debt or change to existing debt shall be reported to the membership at the next Annual General Meeting;*
 - 2.4. *formulate and maintain an Association Manual;*
 - 2.5. *authorize Divisions to formulate and maintain respective Division Manuals;*
 - 2.6. *invest funds as it thinks fit, subject to the limitations accompanying any gift, and subject to the further limitation that such investments shall be made in a cash account, through a qualified licensed investment broker, or a banker or equivalent, and that funds be invested with medium to low risk to principal;*
 - 2.7. *appoint committees or advisory bodies as required;*
 - 2.8. *engage employees as required, and fix their reasonable remuneration;*
 - 2.9. *establish and maintain an RCMP Veterans' Association Benefit Trust Fund and a Reserve Fund, and have exclusive management and control of all funds.*

When reviewing the duties and responsibilities of the Board, you will note that the by-laws deliberately reflect that it is the directors who really do manage or supervise the management of the activities and affairs of the corporation, not the National President; and it is the directors who appoint committees, etc.

This is quite different than what is expressed in current by-law 108.1(e), which states:

The Directors shall head such committees as are required and shall perform such other duties as may be delegated to them by the National President or the Board.

APPENDIX C

This Appendix depicts scenarios where potential anomalous election results can occur when election as an officer is concurrent with the election as a director.

Assume 3 director vacancies on the Board, 2 of which are also officer vacancies (*e.g.*, President and Secretary). For purposes of demonstration only, assume 100 eligible voters. As each eligible voter can cast one vote for each vacancy, a total of 300 votes will be cast.

Scenario #1: assume 1 candidate for director/President; 2 candidates for director/Secretary, and 3 candidates for director. If elections are done to specifically fill the director/officer positions, the breakdown of votes could be:

Candidate A – director/President	100 votes
Candidate B – director/Secretary	55 votes
Candidate C – director/Secretary	45 votes
Candidate D – director	37 votes
Candidate E – director	34 votes
Candidate F – director	29 votes

The election results could be the election of Candidate A, B and D, however, as Candidate C received more votes than Candidate D, an argument could be made that Candidate C should be the 3rd director (director only), not Candidate D. But, as voters were required to vote in segments, there is no assurance that Candidate C would have otherwise received more votes than Candidates D, E, or F: perhaps the votes were split so closely on the latter three because the membership thought all three were exceptional candidates, and they couldn't clearly be distinguished.

Scenario #2: assume that elections are for the purpose of filling 3 director positions, 2 of which are incidentally officer vacancies. Thus, elections are conducted not specifically to fill director/officer vacancies, but rather to select the 3 most qualified directors on the ballot. The breakdown of votes could be:

Candidate A – director/President	70 votes
Candidate B – director/Secretary	40 votes
Candidate C – director/Secretary	35 votes
Candidate D – director	60 votes
Candidate E – director	45 votes
Candidate F – director	50 votes

The election results, by plurality of votes, would be the election of Candidate A, D, and F. However, there would be no director/Secretary elected. This can be resolved by having the directors appoint a member as Secretary (as an officer, not as director/Secretary) unless the appointee was already a director. This would be an example of option e) on page 3; *i.e.*, a mixture of elections and appointment.