

A new By-law for the MHS

**Adopted by the Board of Directors and submitted to the
June 2024 Annual General Meeting for ratification**

Introduction

Non-profit corporations are governed by their Articles of Incorporation or Incorporating Act, By-laws or Constitution and By-laws. The By-laws ensure legal compliance which, in the case of the MHS, must satisfy both *The Manitoba Historical Society Incorporation Act (1994)* and *The Corporations Act (Manitoba)*. An important function is to ensure agreement among Members about how the organization will conduct its business.

A By-law is not a static document. Regular reviews are essential to reflect changing statutory requirements as well as changes in both the internal and external environment. The Society has reviewed the Constitution and By-law regularly, most recently in 2015 and 2022. The Corporations Act (Manitoba) provides that By-laws may be amended by the Board of Directors with immediate effect, but must be ratified by the Members at the next occurring meeting of Members.

The Board of Directors, previously known as the Council, approved the new By-law and hereby submits it for ratification to the 2024 Annual General Meeting of Members.

Overview of significant changes

An ad hoc Governance Committee appointed by the Board was tasked with ensuring legal requirements are met, consistency with best governance practices, and clarity. In doing so the committee considered past practices, relationship to policy and the needs and capabilities of a small volunteer organization. Significant changes are listed below, along with the rationale for each and the clauses affected.

1. Rename “Constitution and By-laws” to “By-law No. 1” (new)

The MHS is created by an Act of the Manitoba Legislature, *The Manitoba Historical Society Incorporation Act (1994)* which is technically the Society’s Constitution. By-law is the more accurate and contemporary term used for the organizational document approved by Members.

Relevant clauses: preamble

2. Amend the objects of the Society to delete “and Western Canada” from the first object [2.01 (a)] and completely delete the fourth object [2.01 (d)] “To assist in the formation and activities of local historical societies in furthering the objectives of the Society throughout Manitoba”.

Previous amendments were deemed to be problematic as a non-profit organization incorporated by a special Act cannot change its objects or purposes except through an amendment to the Act. The intent

of the proposed deletions is to conform to the objects listed in the Act, are felt to be adequately captured by object 2.01 (c), and would not result in dropping any current activities.

Relevant clauses: 2.01

3. Rename the Governing Council to Board of Directors (new)

Board of Directors is the term now commonly used in best governance practices and exclusively in *The Corporations Act (Manitoba)*.

Relevant clauses: throughout the document

4. Rename the Society's President to Chair (new)

This change is consistent with the decision to change "Governing Council" to "Board of Directors." A Board of Directors is normally headed by a Chair. The term President today has many imprecise meanings and is generally no longer applied to the person who is Chair of the Board.

Relevant clauses: throughout the document

5. Clearly define the roles of the Board of Directors and Executive Committee

A Board of Directors has legal responsibility for the organization. An Executive Committee, whose authority is derived from the Board of Directors, requires flexibility to manage day to day operations. An increase in the expected number of Board meetings and a requirement for the Chair to report to the Board on all business transacted between Board meetings are new additions to ensure Board oversight of Society activities.

Relevant clauses: 6.01, 10.03

6. Clearly identify Directors' responsibilities

Individual Directors of corporations have several legal responsibilities listed in *The Corporations Act (Manitoba)*, and currently contained in MHS policy. They have been given greater prominence by inclusion in the By-law.

Relevant clauses: 5.04, 5.05, 5.06.

7. Require a Special Meeting of Members to remove a non-performing Director (new)

Directors have many duties but, on occasion, may be unable to perform them. Missing three consecutive Board meetings without cause has been grounds for the Board to remove a Director since at least 2016. However *The Corporations Act (Manitoba)* requires a Special Meeting of Members, not Directors, to remove a non-performing Director.

Relevant clauses: 5.08

8. Set "at least nine" as the anticipated number of regular Board meetings per year (new)

A By-law can establish a minimum number of Board meetings to guard against failing to meet. Recruitment of new Directors requires knowledge of time demands, i.e. total number of meetings expected. The new By-law increases the number of Board meetings beyond the stated minimum of five. That minimum is retained but the anticipated number of regular meetings is at least nine.

Relevant clauses: 6.01

9. Increase the maximum number of Directors (new)

The new By-law increases the maximum number of Directors to 25, including the five Officers. The intent is to increase the diversity of expertise, skills, experience, backgrounds and community connections.

Relevant clauses: 5.02(b)

10. Clarify that Non-officer members of the Executive Committee must be Directors

The previous Constitution and By-law permitted Non-directors to be appointed to the Executive Committee. Non-directors appointed to the Executive Committee were not covered by Directors' and Officers' liability insurance. Wording is clarified in the new By-law specifying additions to the Executive Committee during the year must be drawn from the elected Directors.

Relevant clauses: 7.01, 7.04, 10.01, 10.02, 10.03

11. Clarify maximum terms for Officers

A healthy organization embraces succession planning and regular turnover in officers' positions. The current By-law allows three consecutive one-year terms for Past Chair, Chair, and Vice-Chair and six consecutive one-year terms for Secretary and Treasurer. Clause 7.02 was rewritten to make this clearer.

Relevant clauses: 7.02

12. Ensure indemnification of Officers and Directors is sufficient and up to date

Directors of a corporation can be held liable for the result of their decisions. Nonprofit organizations normally require indemnification of Directors in the By-law, through approved policies and Directors' and Officers' insurance. The Governance Committee expressed concern that the indemnification section of the former Constitution and By-law was no longer sufficient. A legal opinion was obtained and the relevant section was amended accordingly.

Relevant clauses: 13.01

14. Appoint a permanent Governance Committee (new)

The MHS, recognizing a need to codify its policies, created an ad hoc Policy Committee in 2021. Its role was expanded in 2023 to include all governance areas, consistent with best contemporary corporate practice. The governance function is ongoing rather than time limited, requiring a Standing Committee.

Relevant clauses: 9.02

15. Clarify that the Executive Director reports to the Board

Greater clarity is sought by confirming that, although the Executive Director takes day to day direction and guidance from the Executive Committee through the Chair, the position is accountable to the Board. The Board is responsible for hiring and monitoring performance.

Relevant clauses: 12.01

16. Update and clarify membership categories

Consultation with the Membership Committee resulted in several changes.

The Corporate Membership classification was deleted as there is only one Corporate Member and the Society is now promoting Regular Memberships.

“Institution” was removed from the list of definitions in Article 1 since it was unused in the remainder of the document. “Organization” was substituted and defined.

The role and rights of Members who are not persons, e.g. an Organization, were clarified to allow an Organization to designate a person as its Member representative with voting privileges.

Relevant clauses: 1.01(d), 4.01(b)

17. Apply Robert’s Rules of Order to Members’ meetings

There is no change in the wording of clause 13.05 which is simply relocated from its earlier position where it applied to Executive Committee and Board of Directors meetings only, since it is applicable to Members’ meetings as well.

Relevant clauses: 13.05