

## Supporting nonprofits in developing bylaws they can understand

### *Tips on creating plain language bylaw builders*

#### Introduction

Small and medium-sized nonprofits face significant barriers in recognizing and meeting their legal needs. Their challenge begins as soon as they need to draft their governing documents, such as their articles, bylaws<sup>1</sup>, and policies.

In this paper, I first discuss:

- what bylaws are
- who they are for
- why they matter
- how plain language and clear design principles can help
- why plain language practitioners should be interested in bylaws

I then talk about how to incorporate plain language and clear design principles into different kinds of tools that governments, lawyers, and community workers can create to help nonprofits draft clear bylaws.

#### Part 1: Bylaws

##### What are bylaws?

Nonprofit governing documents usually include:

- **Articles of incorporation** or **letters patent**, which contain basic information like your nonprofit's name, address, purposes, and who your directors are.

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<sup>1</sup> Bylaws are also called constitutions or rules in some jurisdictions.

- **Bylaws**, which explain how your nonprofit must be governed. For example, how a person becomes a member and how members exercise their rights.
- **Policies and procedures**, which describe how the day-to-day operations of your nonprofit should be run. For example, how to train volunteers.

Much of what we say here applies to all these governing documents. However, we focus on bylaws.

### Who are bylaws for?

Bylaws have many audiences, who have varying levels of legal, organization, and general literacy. Here are some of the main audiences you should keep in mind when writing bylaws:

- **Experienced directors:** This group understands the nonprofit and usually makes important decisions for it. They need bylaws to ensure their decisions are allowed and valid.
- **New directors:** This group does not necessarily understand how the nonprofit works or why it works the way it does. They may have never read a set of bylaws before.
- **Current members:** This group may also have no experience with bylaws, but are likely to turn to the bylaws when they want to assert their rights, usually around an annual meeting, or if they believe someone has done something wrong.
- **Potential members:** This group may want to know how to become a member and learn more about the nonprofit before joining. For example, they may want to know if the nonprofit is broadly democratic or whether control rests with a few people.
- **Funders and regulators:** This group usually wants to make sure the nonprofit has proper financial and other protections in place.
- **Judges:** If a dispute arises and is taken to court, this group will look to see if a nonprofit's bylaws follow the relevant laws, and whether it followed their own bylaws. Often, the types of disputes that get brought to court mean that judges will be interested in how membership is defined or what certain meeting procedures are.

## Why do bylaws matter?

Ultimately, every nonprofit answers to its members, and its directors are responsible for overseeing it.<sup>2</sup> A set of ambiguous bylaws can fuel conflict and distract from a nonprofit's mission. This is particularly dangerous when the nonprofit serves vulnerable communities who depend on it and have nowhere else to go for vital services. Clear bylaws, on the other hand can have many benefits. They:

- help resolve conflict in a way that saves time and deliberation
- tailor your structure to your mission and keep you focused on your purpose
- inform existing and potential members how you work
- inform the court if it has to resolve a conflict
- make your governance practices more effective.

## How can plain language and clear design help?

According to the International Plain Language Federation, “A communication is in plain language if its wording, structure, and design are so clear that the intended audience can easily: find what they need, understand what they find, and use that information.” In short, plain language documents are usable documents. Ultimately, bylaws are effective to the extent that they are used. Unfortunately, because bylaws rarely meet plain language and clear design standards, users are intimidated by them. Unable to get the guidance they need from their bylaws, they often ignore them.

## What makes bylaws interesting for plain language and clear design practitioners?

If you want to help nonprofits write clearer bylaws, you face some special challenges and opportunities. I believe these challenges and opportunities should make bylaw writing particularly interesting for those interested in plain language and the law,

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<sup>2</sup> In some jurisdictions, like the United States, it is possible to have a nonprofit without members.

regardless of whether they work directly with nonprofits. Some of the things they need to consider:

- the writing has to be a collaborative process
- the bylaws need to be regularly revised by the user once written
- the stakeholders engaged in the collaborative writing process are often lay people and the end users
- the bylaws need to be not only a legal document but an organizational guide

## Part 2: Bylaw Tools

### What are bylaw tools?

To help nonprofits create bylaws, governments, legal clinics, nonprofit sector associations, consultants, law firms, and others have created hundreds of bylaw samples and tools.<sup>3</sup> Unfortunately, these tools often lack the hallmarks of plain language and clear design and so are less likely to produce the kind of clear and effective bylaws that nonprofits need. In the remainder of the paper, I explore the plain language and clear design considerations that come with each tool.

### Bylaw samples

The simplest way you can help nonprofits is by providing an example of a set of well-written bylaws. Literacy Volunteers of Quebec (LVQ) offers a set of sample bylaws with some excellent clear design elements.<sup>4</sup> For example, LVQ:

- adds “effective as of” dates to specific provisions. This makes it easier to know which version is most current. It would also be useful to add a “last reviewed” date, since bylaws should be regularly reviewed.<sup>5</sup>

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<sup>3</sup> The rules on who is allowed to create these tools and when they cease being legal information and become legal advice vary by jurisdiction.

<sup>4</sup> Literacy Volunteers of Quebec. (2012). Sample By-Laws. CoCo, Montreal: Canada. Available at: <https://coco-net.org/sample-bylaws/>

<sup>5</sup> It is probably enough to put the date per section or page. Including too many dates make the bylaws less clear.

- makes the title of each subsection a question. This format makes the bylaws more like a FAQ page for users. This design element alone goes a long way in encouraging the user to turn to their bylaws for answers.
- orders bylaw sections based on the user’s needs, placing the most helpful information before information rarely used. So administrative details like the corporate seal<sup>6</sup> are placed towards the end and the nonprofit’s purpose and membership rules are near the beginning.

It is also important to be sensitive to the fact that directors and members may use certain words without realizing that they have a specific legal meaning that may be different from how they are using it. For example, users may refer to anyone who supports the nonprofit as a member, when, in reality, “member” needs to be defined in the governing documents.

It is important to alert the user to this early on in the bylaws, and refer them to the definitions section which should be at the beginning of the bylaws.

### **Bylaw samples with commentary**

While a set of sample bylaws is helpful, inexperienced bylaw writers are unlikely to grasp their full practical impact. As a result, bylaw tool creators often add commentary throughout. This commentary is an opportunity to write in a more conversational tone and set novice bylaw writers at ease.<sup>7</sup> Commentary also allows you to discuss not just legal requirements and options, but sector best practices as well. It is very important, however, that you clearly distinguish between the two.

### **Bylaw samples with commentary and options**

Nonprofits have diverse needs. As a result, a single example of a set of bylaws, even with commentary, will not be suitable for all nonprofits. Community Legal Education

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<sup>6</sup> A corporate seal is a left-over from a past era. It used to be required as the “signature” of the corporation. It is rarely used now.

<sup>7</sup> Vick, S. (2015). *Nonprofit Bylaws Made Easy: The Complete Guide to Writing your Nonprofit Bylaws*. Alaska: Nonprofit Ally.

Ontario (CLEO) has created a set of sample bylaws with options that allow nonprofits to customize.<sup>8</sup> CLEO's tool shows many of the strengths already mentioned and highlights others. For example:

- Different options often have largely similar text except for some key words. Rather than leaving it to the user to spot the difference, you can title the alternatives. For example, having a “fixed term” and a “rolling term” option for directors.
- Bolding legally required text in the bylaws informs future directors where certain practices come from and when to check what the law requires before making any changes.<sup>9</sup>

### **Bylaw writing process**

Sample bylaws give you a model to imitate, but they do not tell you how to transform those models into your bylaws. Many tools fill this gap by providing a step-by-step process for the actual writing.

Unfortunately, these processes too often assume a single writer gathering samples, giving it their best shot and checking with a lawyer.<sup>10</sup> As mentioned at the beginning of this paper, bylaw writing is ideally a collaborative process, not an individual act.<sup>11</sup> There are many reasons for this, including:

- The bylaws should reflect the perspectives and interests of different stakeholders.
- More than one person should understand the reasons behind the choices made.
- Deciding together how the nonprofit should run is an opportunity to grow as a team.

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<sup>8</sup> Community Legal Education Ontario. (2015). Sample Bylaws With Options. Get Ready for the ONCA. Available at: [http://nonprofitlaw.cleo.on.ca/wp-content/uploads/2014/05/ONCA\\_SampleBylaw\\_FINALrev.pdf](http://nonprofitlaw.cleo.on.ca/wp-content/uploads/2014/05/ONCA_SampleBylaw_FINALrev.pdf)

<sup>9</sup> Clear design recommends using a bold font sparingly. However, I would like to suggest this need not apply to bylaws, given their unique purpose. Further user testing is needed.

<sup>10</sup> Sharieff, M. (2018). *How to Write Bylaws for a Nonprofit Organization*. Chron Available at: <http://smallbusiness.chron.com/write-bylaws-nonprofit-organization-422.html>

<sup>11</sup> Sandvick, C. (2018). *How to Write Bylaws*. WikiHow, Available at: <https://www.wikihow.com/Write-Bylaws>

From a plain language perspective, including your users in the writing process is a simple way to make sure they understand the final product. It also gets at the underlying democratic and participatory values behind plain language and clear design.

In short, a clear process is one of the best guarantees of a clear outcome. Kerch McConlogue, a non-lawyer, created a list of about 120 practical plain language questions. The answers to these collaborative questions provide a single writer with most of the material they need to create a final document.<sup>12</sup>

### **Interactive bylaw builders**

Developments in legal technology have opened up a new world in many legal services, and nonprofit bylaw writing is no exception. American companies like RocketLawyer and FormSwift and government ministries like Industry Canada provide free fillable forms for nonprofits to create a set of bylaws online in minutes.

While these tools offer much, they also leave much to be desired. They often lack many of the best practices we discussed earlier, such as conversational commentary, outlining the differences between bylaw options, and clear design elements in the final product.

Nevertheless, these software tools offer their development team the opportunity to:

- build clear design elements into the final product as they control design elements such as typeface, font size, and spacing.
- incorporate audio and video into the commentary, which allows the development team to personalize the experience to a much greater extent. However, they may risk turning legal information into legal advice in some jurisdictions.

To date, all these tools are modeled on a one-on-one interview, as opposed to a more collaborative group process. That is one of their biggest limitations.

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<sup>12</sup> McConlogue, K. (2009). Fix My Bylaws: A simple plain English guide to write or revise the bylaws of your nonprofit organization. Baltimore: Map the Future. Available at: <http://www.fixmybylaws.com/sample-pages/>

## Conclusion

By creating bylaw tools that produce clear and effective bylaws, plain language and clear design practitioners have a crucial role to play in helping small and medium-sized nonprofits start off on the right foot. Clear and effective bylaws help nonprofits better serve their communities and avoid costly, distracting, and bitter legal disputes down the road. This paper has offered you a range of options to consider before setting out to create bylaw tools.

On a final note, a set of clear bylaws should not only communicate the rules of the nonprofit, but also convey the intrinsic value those bylaws add to the nonprofit. Clear bylaws can play a vital role in helping a nonprofit's leadership to set in motion broader cultural and attitudinal changes within the nonprofit.

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