

ISAO INFORMATION BULLETIN (ISAO IB)

Governance - Legal Framework and Documents

20 March 2018

References: [Canada Not-for-profit Corporations Act](#) Statutes of Canada (S.C.) 2009
Chapter (c.) 23

Articles of Continuance (of ISA Ontario)

ISAO BY-LAW NO. 1 30 April 2014

ISAO Policies and Procedures

Introduction

The ISAO operates under a formal, legal framework. Being incorporated under the Canada Not-for-profit Corporations Act (NFP Act), it is obligated by federal law to comply with that Act. Incorporation under the NFP Act requires the establishment of Articles of Incorporation that outline the broad purposes of the organization and some key operating principles such as the number of directors and categories of membership. The Act also requires the presence of a By-law which outlines specific organizational and governance rules. The By-law allows for the establishment of policies and procedures, a layer of more detailed operating procedures.

Canada Not-for-profit Corporations Act

The Canada Not-for-Profit Corporations Act was re-written in 2009 in order to modernize its provisions which were very much out of date. Existing federal Not-for-profit corporations were required to “continue” their incorporation through a process that was, essentially, incorporating newly. At the February, 2014 annual meeting of members, the ISAO membership approved a new By-law along with the fundamentally unchanged Articles of Incorporation that resulted from the continuance process. (Annual meetings of members have been termed “Annual General Meetings” but the correct legal term, as noted in the Act is “annual meeting of members.”)

Not-for-profit

A key point in the Act and reflected in the Articles and By-law is that a not-for-profit corporation cannot make a profit. The expectation is that revenues are expended in pursuit of the organization’s purposes and that members will not be issued profits, usually termed “dividend.”

Articles of Continuance (of Incorporation)

The ISAO's Articles of Continuance (of Incorporation) constitutes the specific ISAO mandate under the Act. A key portion of the Articles is the "Statement of the purpose of the corporation." This statement documents the 11 purposes of the ISAO. The Board of Directors is obligated by law to ensure that the ISAO's expenditures and activities do not diverge from these purposes. To clarify, the ISAO is not obligated to pursue all listed purposes; rather, the list is simply those purposes that the ISAO is authorized to pursue.

The Statement of purpose in the Articles of Incorporation documents the senior, enduring principles under which the ISAO exists and operates. These can be changed, but the process is somewhat cumbersome, involving as it does the involvement of the federal agency that administers the Not-for-profit Act. Therefore, the statements are limited to fundamentals that are unlikely to change frequently, if at all.

Note: Any change would first require member approval at a Meeting of Members.

By-law

Formally termed: "International Society of Arboriculture Ontario By-law No. 1," the By-law contains specific, corporate legal requirements. Adherence to the ISAO By-law satisfies some, but not all of the requirements of the Act. In other words, while the ISAO By-law remains as the formal legal guideline for governance, the ISAO has a senior obligation to adhere to the Act and its Articles of Incorporation.

The By-law was designed to, as simply as possible, state the rules by which the organization is governed. By-laws, like articles, are cumbersome to revise. The ISAO By-law was designed so as not to be so detailed as to require frequent revision in order to meet the changing needs of the organization.

This is why the ISAO has retained a formal Policies and Procedures document which provides more detailed provisions that can cover the more routine operation of the organization.

Policies and Procedures

The Policies and Procedures content must align with the Act, with the Articles and statement of purpose, and the with By-law, while providing a more detailed level of governance guidance.

The Policies and Procedures were established in 2014 at the February Meeting of Members where continuance and the new By-law received member approval. Items in the former ISAO By-law and Constitution that were not included in the By-law became the ISAO Policies and Procedures.

The Policies and Procedures is made up of member-approved rules that serve to clarify the ISAO By-law with specifics. This is a useful tool in that it serves to keep the By-law simple while providing a process to address members' wishes about procedures such as the selection of the President-elect that is not present in the By-law.

Alignment

The key principle to a policy hierarchy is that each level must be in compliance with the levels above with all levels aligning. In other words, there should be no ambiguity or contradictions present within the set of governance documents. It is important to remain familiar with the governance documents so as to avoid inadvertently establishing, for example, a policy and procedure that misaligns with, contradicts or causes confusion with other documents in the governance set. To state this in positive language, as we descend the set of governance documents, increased clarity and specificity should result.

For example: First, the NFP Act (the most senior document) requires that directors, subject to members agreement and the Act, manage and supervise the management of the activities and affairs of the corporation. The Act requires that we have a By-law (third in the hierarchy of documents). The By-law includes, among other matters, the broad rules of how the Board of Directors is elected and Officers are appointed. Finally, the Policies and Procedures (fourth in the hierarchy) lays out specifically how the President-elect, an Officer, is elected by members at the annual meeting of members and how the President-elect moves through the officer positions of President and then Past-President in the following two years following their term as President-elect.

Note: The Statement of purpose in the Articles (second in the hierarchy) lays out the purposes which the Board of Directors pursue on behalf of the membership.)

Operational Policy

A final layer of operational policies is required. This deals with meeting legal governance and management requirements, such as the Occupational Health and Safety Act stipulation that organizations have a Health and Safety policy. In addition, there is a need for policies to standardize matters such as the payment of volunteer expenses like kilometrage and to establish a detailed conflict of interest policy to guide volunteers, including the Board of Directors. Provision to both require and authorize the ISAO Board of Directors to set Operational Policies lies in the Canada Not-for-profit Act and the ISAO By-law.

Summary of ISAO Governance Layers

Canada Not-for-profit Act – the senior governing document. This can only be changed by the Parliament of Canada.

ISAO Articles of Continuance (of Incorporation) – documents the ISAO as a federal Not-for-profit corporation. This can only be changed by a *special resolution* passed at a Meeting of Members by at least 2/3rds of those voting.

Statement of purpose of the corporation – part of the Articles, this lists the fundamental purposes of the ISAO. This can only be changed by a *special resolution* passed at a Meeting of Members by at least 2/3rds of those voting.

ISAO BY-LAW NO. 1 – the binding rules by which the ISAO governs itself in compliance with the Act and that, along with the Act, establishes members as having ultimate control of the ISAO through meetings of members. This can only be changed by either an ordinary resolution passed by at least 50% plus 1 of votes cast at a Meeting of Members or (where applicable) a *special resolution* passed at a Meeting of Members by at least 2/3rds of those voting.

ISAO Policies and Procedures – a level of more detailed governance rules that are junior to the Act and the By-law, but that align with those and provides the members with the opportunity to establish more detailed governance rules. At the 2014 Meeting of Members, the Board committed to bringing any proposed changes to the Policies and Procedures to Annual Meetings of members for approval. As all provisions in the Policies and Procedures came from the previous ISAP By-law and Constitution which were approved by members, the commitment was to continue that approval requirement.

Note: All the above levels can only be amended through duly passed motions at meetings of members, except the Act which can only be changed by the federal Parliament.

ISAO Operational Policy – policy established by the ISAO Board in order to fulfill their legal governance responsibilities such as compliance with workplace legislation like the Occupational Health & Safety Act and to document standard administrative practices such as kilometrage. The Board has both the responsibility and the authority to establish operational policy.