

Serving As Secretary

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Introduction

This article has been prepared as an *aide memoire* for those accepting the position of Secretary to an organization incorporated as a “not-for-profit” or registered charity. The emphasis is on the practical, hands-on nature of the job and, in consequence, the data underlying the principles and actions recommended here have not been tabulated: to do so would unduly lengthen the piece.¹

The Secretary’s Environment

When a number of people identify a purpose common to all and create a unit uniquely to contain that purpose, a corporation is born. Being inanimate, it needs a means of relating to the animate world. That “means” is best described as its Secretary. Just as a corporation is inanimate without its Secretary so the Secretary is a non-person without a corporation. The theoretical knowledge required to fit a person for secretaryship may readily be acquired. Nevertheless, just as each enterprise is unique, so the function of its Secretary is unique. While this article will deal primarily with the relationship between provincially or federally incorporated bodies and their Secretaries, most comments will apply equally to the unincorporated.

Knowing the Enterprise

The first duty of the Secretary is to acquire a thorough understanding of the reason for which the enterprise was founded. In formal corporations this is described as the “Objects”. Informal groups are more likely to devise a Statement of Purpose to which the members are committed. In the former case the corporation is constituted by, say, Letters Patent, under an *Act* of the federal government or that of a province. The incorporators become members in the corporation which is then a “body corporate”, i.e., the corporation becomes a legal person. It is important for the Secretary to note that incorporation is granted only for the Object(s) which are contained in the letters patent creating the corporation or the by-laws which accompany them.² In the case of unincorporated bodies, some form of registration may be necessary under legislation of the province of operation or domicile and this legislation may require that the object(s) or purpose be set out in the registration documents. Registration as a charity under the *Income Tax Act* requires a statement of activities.

The Secretary now moves from the law under which incorporation was granted to the means of carrying out the objects: the by-laws. The persons responsible for

the operations of the corporation—the directors—are elected by the members. In turn the directors generally determine, by election from their number (or by appointment from outside), who shall be the officers responsible for the day-to-day running of the corporation. The board of directors may also make rules for the performance of certain key tasks.

The Secretary's Office

While the Secretary need not have a detailed knowledge of all the laws affecting the operation, an understanding of them is important.³ The Secretary must also know and understand the by-laws and any rules made by the board in accordance with the by-laws, for the proper administration of the corporation. Such rules, being an extension of the by-laws, should be retained with them. It is convenient to record any other principles established in a “permanent” record, citing the authority, date, substance and application. Any legal opinion on matters affecting the operations of the corporation should be conducted through the Secretary. This builds the “corporate bible” and ensures that the key documents embodying the corporation are properly controlled.

Part of the responsibility for these documents is to ensure that what they require to be done *is* done. This would include information returns required by law, procedures to be followed in certain circumstances, notice of meetings, recording of minutes of meetings, the responses to any legal demands made upon the corporation, the application of procedural rules made by the board and officers, and so on. For this purpose a list should be made of the applicable returns and of the yearly life cycle of the organization: annual meeting, board meetings, and the like. It will be helpful to mark the deadline, estimated lead time, and the event date itself.

At this point, the Secretary, having absorbed the aura of the corporation, reviewed the *Act* under which it is incorporated, studied the by-laws and any rules of procedure, precedents and principles already established, gone over the minute book(s), dealt with the matter of the seal (is there or isn't there one and who should keep it?), checked on the status of applicable returns, studied the internal organization and outside relationships (which might include membership in associations relevant to the Objects) can feel competent to review such matters as the banking arrangements, contracts and insurance policies, the latest financial reports in light of the budget and forecasts, the corporate or business plan and how it is unfolding and the possibility of changes imminent or proposed, and be ready to react or respond as appropriate.

Corporate Seal

In theory the application of the *seal* is the “signature” of the corporation. It is applied generally to contracts, agreements and documents creating binding relationships with third parties which could come under legal scrutiny. The signatures of the Secretary and/or another appointed officer, stand as witness to the corpo-

rate signature (the seal) and therefore no other witnessing is normally necessary where it is used. Although some regard the seal as a relic of archaic practice, where it *is* part of the corporate practice, the by-laws should be consulted to verify who may use it and who has custody—both are very important considerations, especially for the security of the corporation.

Minute Books

The Secretary should maintain the minute books so as to ensure that, not only are the legal requirements met, but that the books provide a sense of the history of the corporation. Thus the minute book should contain a section for the incorporating documents and any supplements to them (e.g., Supplementary Letters Patent or copies); the by-laws and any amending by-laws; the registers of members and of directors; and, in cases where the by-laws provide for honorary positions, a register of them and of present and past officers. Since some legislatures require annual reporting of directors and officers as well as changes to the slate, the office copy of the registers will be useful in meeting this requirement.

As the corporation ages and the minute book fills, the Secretary may find it convenient to divide the contents into separate volumes: the incorporating documents and supplements together with the by-laws and amendments to them; the registers of members and directors, honorary officials and, if necessary, the officer “history”; meetings of members—annual, general and special; meetings of the board; and, as applicable, minutes of meetings of the executive committee. An alternative to complete segregation is to maintain a “current” volume, extending over a convenient period, of minutes of all meetings in that period. A companion volume should contain the incorporating documents, by-laws and registers. An index, especially of resolutions, will prove valuable.

Companion pieces to the “historical” material are the annual reports, including the audited financial statements. Where detailed business plans are created, including budgets, they often contain material of value for future operations. It may be helpful to retain reports of committees and of individuals which have been presented to board meetings, particularly where such reports have been “adopted”. Above all, the Secretary must retain current copies of all documents that have been executed under seal, whether the physical corporate seal or sealed under authorized signatures, e.g., banking resolutions and other financial authorizations, title deeds and agreements such as leases. Location and records of all material kept in storage must be kept up to date.

Meetings

a) *Calling a Meeting*

The Secretary, as an officer, has no authority to call a meeting and any notice given by the Secretary must therefore be given on behalf of the proper authority. In liaison with the president the need to meet to conduct corporate or statutory

business is determined. Corporate business might be in satisfaction of legislative or by-law requirements, or in response to the need to deal with the activities of the corporation. Statutory business would be described in the incorporating legislation, for example an annual and/or special meeting of the members, called for the purpose of conducting the business required by that legislation and at which opportunity may well be taken to conduct other business proper to the meeting.

In ordinary circumstances the by-laws determine who has the authority to call meetings of the members, the directors or any committee established by the board. In extraordinary circumstances the authority will generally be found in the *Act* under which the body is incorporated. Since there are rules as to who has the appropriate authority, the notice should be issued over the signature line “By order of (the Chair, President, Board, etc. as appropriate).

b) *Notice of Meeting*

The dating of a Notice of Meeting is extremely important. Invariably a period of time between the giving of the notice and the meeting is provided for in the *Act* and/or the by-laws. In computing this period it is usual for the day of the giving to be excluded and the day of the meeting to be included. Where written notice is required the period is seldom, if ever, less than 10 days (to allow for mailing) and is sometimes statutorily limited to not more than a given number, such as 60 days. By-laws may provide for shorter notice to be given and such a reduced time requirement is often accompanied by acceptance of fax or other electronic means of communication. The authority for giving of the notice would also set out the method to be followed or permitted. It is good practice to state the day of the week and essential to include the time, date and place of meeting.

A meeting is not properly constituted and cannot validly transact business unless all the persons entitled to receive notice of the meeting are duly served with such notice and are thus given an opportunity to be present. For greater certainty the Secretary would refer to the registers of members of the particular constituency—members, directors, committees—and is entitled to rely upon the latest address of those persons of which the Secretary has notice. The *Act* and by-laws would also be consulted to determine whether, for example, the auditors are entitled to be present, as at an annual or other meeting of members. Admission or expulsion of particular persons as members would in all probability require that notice of the meeting be given to such persons.

As to the contents of the notice—the purpose for which the meeting has been called—the minimum requirement is that the business of the meeting should be set out with such clarity that all recipients would be in no doubt as to the purpose of the meeting or of any limitations on the business to be transacted.

c) *Annual and Special Meetings*

Both annual and special meetings are called in circumstances dictated by the incorporating statute. For example, under Part II of the *Canada Corporations Act*

(CCA), the act under which federally incorporated not-for-profits, including charities, are regulated, requires that an annual meeting of members be held once in every calendar year and not more than 15 months after the last one. Similar requirements will be found in the legislation of other regulatory bodies. In effect it is the meeting at which the stewardship of the board of directors during the preceding year is reviewed by the members. This is best achieved by a narrative report on activities and by audited financial statements for that year. The meeting “receives” such reports which will previously have been approved by the board for submission to the members. It is the meeting, too, at which the board of directors is elected and the auditors appointed. The notice, then, would state the purpose of the annual meeting as: “to receive the report of the directors and the financial statements for the year ending on [date], to elect a board of directors, to appoint auditors and (to deal with) such other business as may properly come before the meeting”.

The calling of a meeting of members is not lightly done, for it is time consuming and generally somewhat disruptive of the ordinary routine of the board and officers of the corporation. It is often convenient then for business calling for a special meeting of the members to be combined with the annual meeting and the notice would be headed to highlight that fact as in “Notice of Annual and Special Meeting” and the opening words might be “Take notice that the annual meeting of the ABC corporation will be held as a special meeting at—time, day, date and place”. Special meetings are called when it is proposed to change the relationship of the corporation to its incorporating body, as in, say a change of name, or a change in Objects. Special meetings are also required to deal with any proposed change to the by-laws or other rules of internal procedure which have been previously approved by the members. In all such cases the nature of the special business would be embodied by a by-law and as such written into the notice, taking precedence, in the notice, over any other business to be considered at the meeting. Words such as “considering and if thought fit sanctioning by-law No... a by-law changing the number of directors from ... to ..., a copy of which is attached hereto”, would generally suffice.

The Secretary should check whether the annual report, financial statements and any other communication will also be included with the notice: in which case references to such enclosures to the notice, being subsidiary to the notice proper, are best contained in a second paragraph. Where the by-laws permit, the notice would provide for proxies and it is then usual for a form of proxy to be included in the notice package.

Needless to say a special meeting need not wait for the annual meeting to be held! Among charities and not-for-profits it is often convenient to hold such a meeting following a meeting of the board. As the board is required to enact by-laws before submitting them to members the convenience is obvious.

d) *Regular Meetings*

Regular Meetings, in the context of this article, are of the board of directors. The board is elected as the instrument of the members in carrying out the Objects for which the members incorporated. Since the directors must be members of the corporation, one might say that they are a caucus of the members whose actions are governed by the incorporating *Act* and the by-laws of the corporation. To carry out their mission the directors meet. While the timing of meeting is generally a matter for the board to determine, clearly it must meet to consider business which it proposes to submit to the members, e.g., enactment of by-laws, annual reports, financial statements, etc. Should the board determine that it will meet on certain days, say quarterly, then the notice calling the meeting while necessarily specific, need not recite the purpose other than to describe it as a regular meeting. For greater clarity it would be desirable to include a copy of an agenda for the meeting. The notice would be headed “Board of Directors” and the opening statement might read “The next regular meeting of the Board of Directors of ... will be held at ... for the purpose of dealing with the attached Agenda and such other business as may properly come before the meeting”. However, where it is the intention of the board to conduct business likely to precipitate a meeting of members, as in a by-law enactment, the notice would give warning of that and, if practical, include a copy, or draft, of what is proposed.

An essential part of the notice of any meeting is the signatory to it and the authority of that person. Members’ meetings are usually called by the Board, the presiding member of it—Chair or President (if a member)—and the notice would read “By order of the Board (Chair or other authorized person or persons) and then signed by an officer of the corporation which should be the Secretary. Similarly meetings of the board would also show the authority for their calling and be signed.

Experience may show that it is a good idea to request recipients of the notice to confirm their attendance by fax or telephone so that the Secretary will know if quorum will be met and can take appropriate steps if this seems unlikely. When all these things are properly done “*due notice has been given*”.

The Agenda

The notice of the meeting sets out the purpose of it. The agenda lists in detail the separate items of business to be accomplished at the meeting and *the order in which each is to be tackled*. The preparation of, or the final editing of, the agenda should be the responsibility of the Secretary. While all attending the meeting should have a copy, it is particularly important for the Chair and the Secretary. It is recommended that their agenda papers be drawn up so that there is plenty of space for notes between each item. In planning the agenda the list of items should be tailored to the time available for their consideration.

Ideally the agenda should have as its heading the name of the corporation, with a sub-heading of the collective name of those meeting (Board of Directors, or simply “directors”, Members, Executive Committee, etc.). The final sub-heading is “Agenda” and it is useful to follow with a preamble of, say, “for a meeting of the ... to be held at (10:00 a.m.) on [day and date] in (the Board Room) of the corporation at (address). There should follow, in list form, the items establishing the meeting: notice, quorum and chair—the three essentials of a duly held meeting. Normally changes in the composition of the group, e.g., additions to or deletions from membership, would be dealt with immediately after in order that those changes be recognized as part of the constitution of the meeting proper.

The order of business following should flow in as logical a sequence as possible, depending, naturally, on what the meeting is expected to accomplish. Here the Chair, with a short opening statement or report, should set the tone of the meeting. Ordinarily the Minutes of the last meeting, or others not by then confirmed and matters arising from those minutes would follow. Reports, either routine as from committees, or called for by earlier meetings might follow so that the meeting, as a whole, is brought completely up to date before proceeding to new business. New business would then be disposed of and opportunity provided for business, other than that called for by the agenda, to be considered. Finally it is usual to provide for the establishment of the date of the next meeting, before terminating or adjourning if there is unfinished business. The following is a typical agenda:

1. Attendance
2. Notice of Meeting
3. Chair’s declaration as to constitution of the meeting
4. Changes to complement (if necessary)
5. Chair’s opening remarks
6. Minutes of the meeting(s) held on ...
7. Matters arising
8. Reports of Officers, each being a sub-number
9. Reports of Committee Chairs, each being a sub-number
10. New business – each item being a sub-number
11. Other business
12. Next meeting
13. Termination or adjournment if necessary.

Items 1 to 7 and 11 to 13 may be regarded as standard items in any agenda. Items 8 to 10, as above, distinguish the constituency then meeting and would generally collect from the notice of that meeting the particular items identified in it. For example an annual meeting agenda would include the annual report, the financial

statements, election of directors, appointment of auditors, etc. In very rare circumstances only should the agenda, once set, be varied.

The Meeting

The first person to arrive for the meeting should be the Secretary armed with the Secretary's and Chair's copies of the agenda, a copy of the *Act*, if any, under which the corporation is governed, a fully updated copy of the by-laws, the minute book, a list of those people expected to attend the meeting, if appropriate any proxies received in good time and, where available, the gavel. Other essentials will be copies of all reports to be made and/or a note of any being made; often motion blanks are used to enable persons moving and seconding motions to draft them at the meeting. As people arrive the Secretary would check off their names against the prepared list which, incidentally, would be divided between those constituting the quorum and those attending in any other capacity. The Secretary will also gather those present so the meeting can begin on time. The best possible seating position for the Secretary is beside the Chair as this facilitates the essential interaction between them.

The Chair then calls the meeting to order and may observe that a quorum is present or request the Secretary to report the situation. Assuming a quorum the Chair would then make reference to the notice, either formally or informally, in order to provide opportunity for its validity to be challenged. Having done so the chair would, again formally or informally, declare the meeting to be duly constituted for the purpose of the notice. Note that the three essentials of a valid meeting — quorum, notice and chair are, in these three items, offered for challenge and, in the absence of such, the meeting may proceed.

The Chair would then offer such opening remarks as would focus the meeting on its purpose including words of welcome to out-of-town attenders, officers and staff in attendance, or guests who have been invited to make some contribution to the discussions. In doing so, once again, opportunity is given for those constituting the quorum to be aware of "strangers" and to offer objection, if desired, either then or at any point in the meeting where "strangers" might be an embarrassment. The Chair would also refer to the agenda, which if distributed with the notice, might be considered as a proposed agenda and, if presented at the meeting, a draft. At this point changes may readily be made and agreed. Thereafter it is firm and subject only to variation by the Chair with the consent of the meeting. If the Chair or Secretary is aware that change in the order might embarrass the late arrival or early departure of a member, that obviously would be taken into consideration.

The meeting would then proceed to work through the agenda. While the Chair would be harnessing and directing the energy of the meeting to the agenda item under consideration, the Secretary would be keeping a wary eye on the procedure to ensure that the proceedings stay within the bounds of the *Act* and the by-laws.

For example, it might be necessary for the Secretary to advise the Chair when quorum is in jeopardy. It would be quite improper for the meeting to vote on a motion without quorum, although it might, perhaps, engage in useful discussion of items which would not become material in the discharge of the objects of the corporation.

After the Meeting

Before leaving the meeting room the Secretary, who in all probability will be the last person to do so, should make sure that none of the papers used for the meeting are left behind. Either then or very shortly thereafter the Secretary should review the notes taken at the meeting and isolate items needing immediate action and follow through with them first, not neglecting other action items, whether for the Secretary's attention or that of another.

The Minutes

The Minutes are of the meeting and in that sense belong to it no matter who writes them. Once the meeting is declared duly constituted the quorum becomes the meeting and, in effect, ceases to be individual persons while the meeting is in progress: they become a body corporate. The minutes become the evidence of the meeting which, when signed by the Chair of the meeting at the next succeeding meeting, are strengthened to the point of being accepted as *prima facie* evidence. It is therefore of paramount importance that the Secretary in writing or drafting the minutes be conscious of the fact that evidence is being created. It follows that the best language is simple, clear and unequivocal. The Chair of the meeting should review them, and, when satisfied, sign them, as the Secretary should and then the minutes should be distributed to all members of the constituency which met, board members, committee, etc. It is good practice to have the minutes signed by the Chair of the meeting and, given that they are considered and accepted at the next meeting (as the record of those proceedings), by the Chair of that meeting too, confirming their acceptance.

As to the minutes, it is good practice to begin with a heading naming the corporation, followed by a sub-heading naming the constituency, e.g., "Board of Directors" and then preamble such as "MINUTES of the meeting of the Board of Directors of ... held at ... on [day and date] in [place and address]". Note that the address is important because the *Act* or the by-laws may limit or prescribe where such meetings may be held. It is usual to number the minutes sequentially and this is often done by giving each minute the last two digits of the year, followed by a period and then the minute number. Thus the first minute for 1994 would be 94.1 and the last of the year say, 94.120. Where the Secretary is responsible for the minutes of members, directors and executive committee it may be found to be convenient to prefix the year with M for members, etc. Page numbering within each set is helpful.

As to contents, the first minute is that of attendance and the priority is to establish quorum. It is therefore appropriate to record the names of those who constituted the quorum under a heading “Quorum Present”. Ordinary titles of Mr. Mrs. Ms are generally omitted, all initials should be included. Sub-titles may be used with discretion; honours are generally included. (When referring to those persons elsewhere in the minutes the titles are used and the initials omitted.) In the same minute, should there be attendance by proxy, there would appear a sub-heading of “By Their Proxy” and then, in the same way, the names of those so represented. The next heading in this minute would be for those persons who are not members but who are there in a supporting role (generally officers of the corporation or senior staff): the heading would be “In Attendance”. Finally those persons who are, in effect, guests, the heading would be “By Invitation”. Thus the first minute of the meeting establishes who was there and the capacity in which their presence was justified and accepted.

The other two requirements for a valid meeting — the Chair and notice — may be dispatched in one minute heading “Constitution”. Words such as: “Mr./Ms Brown, the Chair of the Corporation, occupied the Chair and Mr./Ms Smith, its Secretary, acted as the Secretary to the meeting.” A second paragraph of the minute would then deal with notice as, say, “Due notice having been given, the Chair declared the meeting to be duly constituted”. Recalling that the minutes are a record it may also be appropriate to add to that sentence: “for the transaction of the business of the agenda which was agreed”. Note that the authority of the Chair and Secretary are placed in evidence. Should the chair be occupied by other than the official person it would be usual to state that person’s capacity, e.g., ... the Vice-Chair, etc. In the case of the Secretary, a person other than the appointed secretary would ordinarily need the consent of the meeting to act, and the part of the minute would read: “Mr./Ms Canuk, with the consent of the Meeting, acted as secretary to the Meeting”.

It is preferable to record facts, motions, resolutions, events, etc. rather than views expressed by individuals in the process of reaching consensus on the issues before the meeting. Where matters are required to be done by *Act* or by-laws the minutes should be precise and wherever possible the language of the authority should be used. An example is by-laws themselves: under the CCA they are “enacted” by the directors but acceptance by the members is expressed as “sanctioning” and the proviso that they may not be enforced until “the approval of the Minister has been obtained” would be contained in the resolution. The use of specific language strengthens the evidence.

In minuting the consideration of reports, including financial statements, it is useful to state the name of the person and capacity, if appropriate, who presents the report and enough details about it to ensure that it is readily recognizable from the minute: “M. Jones, the Chair of the Membership Committee, referred to the Report of the Committee, copies of which dated [date], had been distributed to the

Meeting, which was then discussed”. Its fate, if the Report is simply an information report, would be recorded as “The Report was received” (whether given in written or oral form). Where the Report contains recommendations of a substantive nature and those recommendations are endorsed by the Meeting, then the recommendations or a summary of them should appear in the minutes and the Report would be “adopted” in respect of them. Generally where they require financial support the adoption should be evidenced with a resolution, particularly where the outlay of funds is prescribed or monitored by by-law of the corporation.

Financial statements are generally presented by the Treasurer and it is usual to minute precisely what was presented. This might be accomplished with the words: “Mrs. Smith, the Treasurer then presented the financial statements of the corporation for the [period] ending on [date], comprising a balance sheet, as at that date, a statement of revenue, expenses and surplus for the [name of months] ending on [date], together with ...” and so on. Where the presentation is part of the annual financials the minute might read, after the first [date] above “which was then discussed”, and the resolution approving them “for submission to the members” would recite the full documentation including “the report of the auditors, A. B. C. & Co. thereon” (the auditors would, of course, be those appointed by the members). Often the resolution includes the words: “and AB and CD were authorized to sign the balance sheet on behalf of the board”. In the minute of the members’ meeting dealing with the financials, the same detail of the composition of them would be used in the resolution, except that the members ordinarily “receive” them.

It is generally accepted that there be a mover and seconder to all motions (to give support to their validity) but their names do not need to appear in the minutes. The Meeting having resolved the issue, the issue becomes a Meeting issue only. Where a member objects to the situation and requires that objection to be recorded it is generally sufficient to include a statement following the resolution that “[name of member] directed that his/her negative vote be recorded”. Sometimes conflict of interest arises, especially where a member has a personal interest in the financial outcome of a matter and, having declared that interest, refrains from voting on it. The minute would read, following the resolution: “[name of member], having declared an interest in the matter, abstained from voting on the motion”.

Conclusion

In the space of an article such as this it is not possible to cover all contingencies which may confront the Secretary. It is hoped however that some of the mysteries surrounding the function may have been dispelled or, at the very least, a better appreciation of the importance of the task conveyed.

FOOTNOTES

1. Most legal firms have material in their libraries. For example, Blake, Cassels & Graydon has recently produced a digest of the latest corporate maintenance and filing requirements for non-share capital corporations. Much of this material is based on experience but it has also been checked against reference works in the library of the Institute of Chartered Secretaries and Administrators in Toronto.
2. The *Canada Corporations Act – Part II* for federally incorporated charities and not-for-profits; the *Canada Business Corporations Act* for business corporations; the *Corporations Act* for Ontario charities and not-for-profits.
3. In Ontario legislation affecting the “corporate” person is found in the *Corporations Information Act* and the *Business Names Act*; at the federal level in the *Lobbyists Registration Act* and the *Canada Income Tax Act*.