

# Sport Law & Strategy Group

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## Re: Opinion of proposed membership structure

The Sport Law & Strategy Group is providing Cycling BC with an independent expert opinion on its proposed membership structure as outlined in the document titled "*Cycling BC proposes bylaw updates in response to membership feedback for greater transparency and accountability*". The Sport Law & Strategy Group has over twenty years of experience advising PSOs and NSOs across Canada on governance issues. However, if Cycling BC requires a legal opinion, a lawyer licensed in BC should be consulted.

### Society Act Requirements

Federal not-for-profit organizations, and some organizations in other provinces, are being required to update their bylaws to comply with new federal and provincial legislation. These updates have highlighted membership structure issues in not-for-profit organizations across the country. Cycling BC was involved in the compliance process undergone by Cycling Canada Cyclisme and learned lessons from this transition. Cycling BC is therefore taking a progressive interest in good governance within its own organization.

Not-for-profit organizations in BC are incorporated under the *Society Act*. Presently the *Society Act* has the following requirements that affect membership in a PSO:

- Voting members must outnumber non-voting members
- Each member may only have one vote
- Weighted voting is not permitted
- "Permanent proxies" are not permitted

Notably, there are PSOs in BC that do not comply with some of the above legislative requirements and general non-compliance may be one reason the *Society Act* is expected to receive a legislative overhaul in the future.

### Good Governance

Organizations can be governed in different ways. The federal legislation and the provincial legislation in Ontario have guided not-for-profit organizations incorporated under those Acts to be governed in a specific manner – primarily as organizations with a policy board. That is, the Directors of the organization are responsible for the overall strategic direction of the organization while delegating the day-to-day

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management tasks to staff, committees, or volunteers. Policy boards are usually small (between 5 and 9 Directors) and Directors are typically elected without portfolio (i.e., as 'Directors-at-Large').

The new pieces of legislation are requiring the following:

- With limited exception, Directors must be directly elected by the Members
- Ex-officio Directors are not permitted (Federal Act)
- Non-voting members may vote on fundamental changes to the organization
- Membership classes may vote as a class on fundamental changes

These requirements have mobilized nearly every National Sport Organization (NSO) to reduce their number of membership classes to one class – the Provincial/Territorial Organizations. Previously, some NSOs considered athletes, participants, coaches, and officials as members. This practice no longer exists and those groups have typically been consolidated into a 'Registrant' or 'Participant' category – an individual that the NSO has jurisdiction over but is not considered a member of the organization.

For PSOs, the trend we are currently seeing has been to consider the clubs as the members of the organization. Generally, individuals provide input at the club level, clubs provide input at the provincial/territorial level, and P/TSOs provide input at the national level. There are often mechanisms in place at each level for individuals to have a greater role, such as by serving as Directors or as members of committees. Though this structure is the most common in sport – it is not the only system. For example, Figure Skating does not have P/TSOs and clubs are direct members of the national organization. Also as an example, in some clubs the Directors are considered to be the only members with voting rights.

## Cycling BC's Proposed Membership Structure

Cycling BC has proposed a membership structure in which clubs and a few individual committee members serve as two classes of 'voting members'. Registrants are listed in a third class and are not members of the organization.

The structure proposed by Cycling BC appears to be an elegant solution to previous membership structure issues, and one that also respects the requirements of the *Society Act* while meeting good governance standards. Clubs as voting members is a typical and successful structure used throughout sport.

Unfortunately the *Society Act* prohibits the possibility of a weighted vote – which leaves larger clubs with a potentially reduced role. Cycling BC has attempted to mitigate this occurrence by creating Committee Member as a membership category with voting rights – typically more input than is usually provided to members of committees. Any Registrant can be a Committee Member and have direct influence on Cycling BC. Permitting members of standing committees to have a vote can also be a powerful incentive to join a committee and contribute to guiding the organization.

## Committee Members with Voting Rights

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It does not appear that Cycling BC has described how members of committees are chosen or the composition of each committee. Committee terms of reference (TORs) will need to be carefully crafted and clearly defined to reduce any potential for conflict of interest. Further, oversight for the appointments to the committees will be necessary to mitigate any risk of perceived bias.

## Conclusion

The proposed membership structure, if adopted, would align Cycling BC with generally-accepted practices of good governance that are being adopted across the country. However we strongly recommend an oversight process for committee appointments, and it will be necessary to have robust Terms of Reference for each committee so that voting members are clearly defined and instances for conflict of interest are reduced. Cycling BC may receive pushback from larger clubs that feel marginalized by the potential of a reduced role. These hesitations should not stall momentum for positive governance change.

Sincerely,

Kevin Lawrie  
Sport Law & Strategy Group