

Incorporation Template Notes

The Bylaw Template is provided as an aid to an EMCC congregation. It is not itself a legal document but it has been found helpful and sufficient in allowing congregations to apply for incorporation.

Instructions on using the Bylaw template: The template includes some sections that **REQUIRE decisions and choices on your part**. These are in *italics and/or in brackets*. *Please make sure that you insert the right words and remove the italics*. The template is identical in many sections in that the statutory requirements of an incorporated entity are much the same in the various provincial jurisdictions. However, there are some minor, but **IMPORTANT**, differences for each province.

There are also variations that address some preferences in organization and in nomenclature. Incorporation puts a congregation into a category that the government and other legally recognized entities know how to deal with. Incorporation creates a ‘person before the law,’ that is, the ‘incorporated entity’ is now legally a person. A person before the law has the right to buy and sell property, to sue and be sued. We understand that as a citizen of the country and province in which we live there are certain rights and responsibilities, and we accept that biblically it is important to respect the authorities in our lives, including the civil authorities. It is a small step for us to embrace the idea that as congregations we also have an accountability to the civil authorities. While this can be fulfilled as an unincorporated entity, there are good reasons for a congregation to establish itself as a ‘person before the law.’

Historically churches in the EMCC have had property either ‘held in trust’ by the incorporated District Conference or by local ‘trustees’ who hold the property for the congregation. In both cases this has sometimes resulted in some ambiguity when something happens that requires legal action. For example, some congregations have not been able to secure a line of credit without individuals co-signing for it. Some congregations have been unable to purchase a church bus or borrow money from a bank without individuals co-signing. The reason is simple. Businesses and banks want to know that there is a way that they can legally seek redress in the event that there is a problem with repayment. They know what to do with a ‘person’ but they don’t know what to do with an unincorporated entity.

We have also had the unhappy experience of a lawsuit filed against a local congregation. Because the congregation was not incorporated, the lawyers chose to file the suit against the District conference and the national church, because the districts and the national church are incorporated, that is, ‘persons before the law.’ Because our denominational organization is not clear cut, the lawyers were having some difficulty establishing whether or not the church as a national entity or a district entity was responsible for what had transpired in that local congregation. The result was thousands of dollars expended in defending the district and national church, needlessly. Further, the lawyers for the plaintiff were considering naming the board members of the local congregation.

In other words, when a congregation is not a ‘person before the law,’ that is, when it is not incorporated there is a risk for the larger incorporated entity – the district corporation and the national church -- and for the individual board members and the individual members of the congregations. It is not clear what would have happened if the case in question had gone to trial. There was an out of court settlement. From a denominational perspective, because of the high degree of autonomy of a local congregation, it was our view that it was improper for the district and national church to be named. But we cannot be certain what the outcome might have been, if

it had gone to court and if the court had ruled that the plaintiff had a case. If the courts had ruled that district and national church were both liable, that would have had a flow through impact on the other congregations. All this to say that there is value in clarifying things, in having each congregation become a 'person before the law,' that is, by each congregation incorporating under the appropriate provincial legislation. Let's move on to consider some variations in the template.

Congregations have a couple of goals in the creation of bylaws. The bylaws tell you how you relate legally to the larger society, in particular, to the government. Second, the bylaws tell a congregation how it will govern itself and relate to its members. There is some tension involved in this, in that the congregation wants to have 'biblical' bylaws and leadership structures, and it also knows that it needs to comply with legal requirements. Some insist that the church must be 'elder led' and interpret that to mean that the 'legal board' must be a 'board of elders.' Others draw a distinction between temporal and spiritual leadership, and so, there is a board of deacons who care for the temporal and a board of elders that care for the spiritual. Some think that the requirement of being 'elder led' is satisfied because the pastor or pastors are elders, and so, the board should be a deacons board and no elders board is needed. Whatever the fine tuning that is done, for incorporation to happen, the legal requirements of a governing board must be met. In the template, there is only a 'one board' option, one in which the 'legal board' may also be called the elders' board or deacons' board. The two-board option is not presented in the template.

The disadvantage with a two-board structure is that there must also be strong mechanisms to keep the two boards communicating and working together, that is, a 'Combined Council'. The other disadvantage is that a 'two board' structure uses up more human resources. It is more cumbersome to work with and doubles the number of people that are required to govern the affairs of the congregation. If there is a desire to work with a two-board model, please email the EMCC office for more information. Back to nomenclature.

Some prefer calling the governing board an elders board. Some opt to call it a deacons board. Some want a combined elders and deacons board. These are all possible. In my experience the particular nomenclature is much less important than integrity on the part of individuals in leadership, and particularly integrity as it pertains to board process. A tremendous amount of hurt, conflict and misunderstanding happens when the prior agreements established in bylaw and policy are subverted in the urgency of the moment. What matters is the character and ability of the board members, whatever the nomenclature. The template provided intends to meet the requirements of legal incorporation. And the template sets out the standards for deacons and elders as those required for congregational leadership, which includes the governing board, whatever its name. The reference passages are 1 Timothy 3 and Titus 1, wherein Paul sets out what to look for in congregational leaders. Let me make three observations: First, proven character and ability to govern are the two summary qualifications. Second, 'aptness to teach' is the one item that distinguishes someone qualified to be an 'elder.' No such requirement is set out for deacons. Third, there are also some different sensibilities concerning women as elders, less so for women as deacons or 'deaconesses.' Many a church board has been blessed by gifted women who have served humbly and well alongside their brothers in the Lord. Much of a church board's work is 'diaconal' in nature. As such it would be well to consider a name for the church board that does not raise unnecessary barriers.

In this template there is a provision for the legal governing board to be called a deacons board, or elders board or to have a combination of the two. The provision is a 'peg' on which to hang any additional requirements that the congregation believes are important, and to do it in a way that

does not require modification of the bylaw itself. One further thing is important to keep in mind – the importance of written policy.

In times past there was a tendency to put everything into the bylaw. Increasingly there is a recognition that the bylaw needs to include the pieces required by provincial legislation and not much more. There are some who may think that there is still too much in this template.

Nevertheless, it is important for a board to write, approve and keep a record of policy. Policy statements will ‘flesh out’ the way in which a particular bylaw is implemented. For example, some may be used to having a ‘trustee committee’ of say 5 people. If you write it in bylaw, then it becomes a matter of legal compliance, and you must have 5! But suppose in the meantime, that the church has decided to contract out those services or that only 4 qualified people are found? Now, if the ‘trustee committee’ is mandated by board policy (and not entrenched in bylaw) it becomes easier to make those adjustments. At the next board meeting, the board changes the policy. It is best to entrench only those things that need to be hard to change and need to be addressed by the wider congregation.

Remember there are built in safeguards for policy. Policy cannot contradict a bylaw, and, of course, bylaw cannot contradict the provincial legislation, that is, the ‘Act.’

We have also outlined a process wherein we review the document. It is an easy task if there are few modifications. It will take a little longer to process if you decide to make major modifications to the template.

Notes:

Special resolution: Special resolution refers to a vote that requires more than a bare majority. It varies from province to province. In Alberta it is $\frac{3}{4}$, that is 75%. In BC it is $\frac{2}{3}$, if not defined, or up to $\frac{3}{4}$ by specification. In Ontario it is $\frac{2}{3}$, that is, 66%. In Saskatchewan it is $\frac{2}{3}$, that is, 66%.

A revision date appears in the footer of the bylaw template and at the end of the application form. Please remove these document dates when preparing your material.

I hope that this helps you. If you need more help do not hesitate to ask for it. Start with your Regional Minister. We’ll make sure that we help you throughout the process.

Blessings.

Phil Delsaut
President, EMCC

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