

June 20, 2021

Given the submission of a lengthy number of proposed amendments to the revised bylaw put before the membership at the AGM held on June 18, and given that the meeting adjourned before any one of these proposed amendments was on the floor, the Board has prepared this response to these proposed amendments for the members' consideration. This document will be attached to communication with the members of STLHE required to complete the business left outstanding at the adjournment of the AGM.

For ease of reading, I have extracted the proposed amendments from the document produced on June 18, 2021 by Carolyn Hoessler and put before the membership at the AGM, and have noted our response in blue text with red emphasis.

I would especially like to thank Michelle MacDonald, our Executive Director, and Jordyn Allen, our legal counsel on governance, for their expert contributions to the crafting of this response.

Miriam Carey, Secretary

## Proposed Motion 1

### Section 3.2: TERM OF MEMBERSHIP

#### Amend to add bolded

The term of membership of an Institutional Member shall be one (1) year, to expire on December 31 of each year. Membership may be renewed annually upon payment of any membership dues as and when required under section 3.6.

The term of membership of an Individual Member shall be one (1) year, beginning on the date of payment of the membership dues and expiring on the next anniversary date. Membership may be renewed annually upon payment of any membership dues as and when required under section 3.6, **or is granted for lifetime or the number of years specified in the award letter sent by STLHE to award winners. An awardee may withdraw from this class of members.**

#### Response:

1. This proposed amendment is **redundant**. Lifetime and awardee members are members who do not have to pay dues; the terms of their free (gift memberships) last for the duration of the gift (lifetime or 2 years).
2. This proposed amendment is **based upon a fundamental misunderstanding** of lifetime and awardee memberships. There are only two classes of members under STLHE's bylaw (and this has been the case for many years now): individual and institutional. Lifetime and awardee members are individual members with all the rights and privileges that accrue to any individual member who has paid their dues.
3. This proposed amendment is **using the bylaw terminology incorrectly** in the final sentence. Lifetime and awardee members are not a special class of members; they are individual members who do not have to pay dues, and who retain the rights and privileges of individual members for the duration of their free (gift) membership.
4. The last sentence of this proposed amendment is also **redundant**. **From 2020, all awardee membership are equitably granted for two years only**, after which they expire. If those awardee members wish to continue to be a member of the Society, they are responsible for paying dues as owed in order to retain their individual membership.

## Proposed Motion 2

### Section 3.8: DISCIPLINE OF MEMBERS

#### Amend to add bolded, to remove iii and iv as highlighted

##### 3.8 DISCIPLINE OF MEMBERS

(a) The Board shall have authority to suspend or expel any Member from the Society for **any one of more of the following grounds:**

- o (ii) violating any provision of the Articles, By-law or written policies of the Society;
- o ~~(iii) carrying out any conduct which may be detrimental to the Society, as determined by the Board in its sole and absolute discretion; or~~
- o ~~(iv) for any other reason that the Board in its sole and absolute discretion considers to be reasonable, having regard to the purposes of the Society.~~

(b) If the Board determines that a Member should be expelled or suspended from membership in the Society, the Chair of the Board, or such other Officer as may be designated by the Board, shall provide twenty (20) days' notice of suspension or expulsion to the Member and shall provide reasons for the proposed suspension or expulsion. The Member may make a written submission to the Chair of the Board, or such other Officer as may be designated by the Chair before the end of the twenty (20) day period.

(c) In the event that no written submissions are received, the Chair of the Board or such other Officer as may be designated by the Board, may proceed to notify the Member that the Member is suspended or expelled from membership in the Society. If a written submission is received in accordance with this subsection (b), the Board shall consider such submissions in arriving at a final decision and shall notify the Member concerning such final decision

#### Response:

1. This proposed amendment represents a **change in the bylaw scope**, as it fundamentally alters the language and intention of this section of the previous bylaw.
2. This **language in the bylaw replicates exactly the language of the model bylaw provided by Corporations Canada**. This language **reflects best practice in governance** in replicating the language provided by Corporations Canada.
3. Our Society comprises over 900 individual members; a **disciplinary article is both necessary and justified** in order to deal effectively with unanticipated transgressions, including heinous acts which would **require a mechanism to remove a member** if they commit fraud, murder, etc. Removing ii and iii eliminates the possibility of terminating a membership for such heinous acts.
4. The language is couched in the terms of what is "**reasonable**": there is **due process** to provide the member with **notice**, the opportunity to **make a submission in response**, and the right to receive **notice of the decision**.

## Proposed Motion 3

### Section 4.2: SIZE OF THE BOARD

#### Amend to remove original proposed section b and to reiterate rights under the act as highlighted

##### 4.2 SIZE OF THE BOARD

(a) The Board will consist of a minimum of five (5) Directors and maximum of twenty (20) Directors, at least two (2) of whom are not Officers or employees of the Society or its affiliates.

~~(b) Immediately following confirmation of this Amended and Restated By Law by the Members, the number of Directors shall be fixed at twelve (12) Directors. The Members thereafter delegate to the Board the right to fix the number of Directors from time to time.~~

**(b) The members may fix the number of directors at an annual meeting of the members in a special resolution.**

#### Response:

1. The range of the number of Board members is set by the membership via a Special Resolution at the AGM (currently a minimum of 5 and a maximum of 20). There is **no change here**; specifically, there is no change to the members' rights to set the range of the number of Directors on the Board via a Special Resolution at the AGM.
2. This proposed amendment **restricts the setting of the actual number of Directors to a Special Resolution (requiring a 2/3 majority vote) held at the AGM**, thus reducing the flexibility currently in the bylaw which allows the Directors to set the actual number of Board members (currently 12).
3. This proposed amendment also **conflicts with our current electoral process**, by requiring the membership to set the actual number of Directors at the AGM which is held after the electronic election has produced the slate of candidates for ratification by the membership to Director positions. To illustrate this point, if, prior to the AGM, the actual number of Directors was 12 and there were 5 vacancies to be filled, the membership would be voting for 5 Directors amongst the candidates who put their names forward. However, if at that AGM, the membership decided to change the actual number of Directors to 10 instead of 12, the result would be 2 duly elected incoming Directors who now do not have office, and how would that possible eventuality be managed?

## Proposed Motion 4

### Section 4.4: TERMS OF DIRECTORS

Amend to specify one term (3 years) rather than two terms (6 years)

#### 4.4 TERM OF DIRECTORS

(a) Each Director elected hereunder will have a term of three (3) years, to expire at the third Annual Meeting following election, or, if no successor is elected at the Annual Meeting, to expire when a successor is elected.

(b) A Director is eligible for election for **two one** consecutive full terms, and afterwards is not eligible for re-election until a period of eleven (11) months has elapsed from the date such person ceases to be a Director.

#### Response:

1. The bylaw which precedes the revised version before the membership had no limit to the number of terms which could be served. The **revised bylaw before the members reflects the Society's actual practice and provides for a maximum of 2 consecutive terms before an 11 month break is required**. The possibility of serving a second, three year term allows expertise and skills developed in the first term of service to be deployed in a second term, should the members vote the candidate back into office. It also increases Director turnover by limiting the consecutive number of terms to two, allowing new voices and ideas to come to the Board table. It prevents the Board from becoming dominated by long-serving Directors.
2. The revised bylaw reflects both **best practice** and **common practice** in Board governance.
3. Directors who wish to serve a second term **still have to be elected into a second term** by the membership.
4. The **proposed amendment reduces the length of service to three years**, which occurs as **unnecessarily short**. Many Directors take a year or longer to come up to speed; many do not feel comfortable offering to take on an Officer position within their first term and wish to develop more experience. The proposed amendment may well create a **disincentive to serve** (why bother standing when I'll be off the Board in three years anyway?)
5. **Language error**: one term is, by definition, not consecutive.

## Proposed Motion 5

### Sections 5.8 (MEETINGS OF THE BOARD) and 7 (OFFICERS):

#### Amend to wording of proposed section b as highlighted

##### 7.1 APPOINTMENT

The Board may designate the offices of the Society, appoint Officers, specify their duties and, subject to the Act, delegate to such Officers the power to manage the affairs of the Society. An Officer ~~may, but need not be,~~ **must be** a Director ~~unless the By law otherwise provide~~. Two or more Offices may be held by the same person.

Unless otherwise determined by the Board, the term of office of each Officer ~~who is not an employee of the Corporation~~ shall be one (1) year, to expire at the next Annual Meeting following election or appointment. Any Officer who is an employee shall hold office at the pleasure of the Board, or pursuant to terms of employment.

#### Response:

1. **No language** provided for proposed amendments to **Section 5.8**.
2. The proposed amendment **requires that all Officers MUST be Directors** (and therefore members). It **precludes the possibility of expert members or staff being placed into an Officer position** for the Board as a non-Director, non-voting member of the Board. For example, if the Directors did not, amongst themselves, have the expertise to take on the role of Treasurer, they could approach a member with financial expertise to do so, and that member would become the Treasurer as a non-Director, non-voting member of the Board (because they were not elected by the whole membership). In our current situation, we have an Executive Director who is a staff person (and not a voting Board member): that practice could not continue.
3. In addition, we do not want an Executive Director to be a Director as that leads to a potential for **conflicts of interest**.
4. **Factual error**: it is **not a requirement of the Act** that Officers are elected Directors.

## Proposed Motion 6

### Sections 10 (AFFILIATED GROUPS) and 4 (BOARD OF DIRECTORS)

Amend the proposed bylaw changes in section 10 Affiliate groups to retain that “Each Constituency shall be entitled to nominate one (1) Director for election to the Board” and adds the 2016 STLHE Secretary’s idea for “members ratify the constituency representative at the AGM”.

#### Amend to wording of proposed section a to retain nominating & to add the membership vote to elect as directors.

6.2. ...**(a) Constituencies** — Constituencies are communities of practice whose mission is to work within the aims and structure of the Society to advance the Society’s purposes. They operate with a formalized governance structure and are responsible for ensuring that their respective initiatives and activities are aligned and consistent with goals and purposes of the Society. **Each Constituency shall be entitled to nominate one (1) Director for election to the Board.** At the annual meeting of the members, one individual representative from each constituency, where a constituency has nominated a person, will be presented for election as a director for one (1) years by a vote of the membership.

*[Note: one (1) year aligns with length of officers; allows for varying lengths to suit constituencies, but requires adjusting 4.4.]*

#### Response:

1. The proposed sentence in turquoise is a restoration of the sentence in the previous iteration of the bylaw. It is **redundant** (any constituency group can nominate any number of candidates to stand for election).
2. The meaning and interpretation of “**nominate**” is unclear. **IF** the interpretation of “nominate” in the sentence creates an **expectation of automatic election to the Board, it violates the Act** in which ex officio Directors are prohibited. This was exactly the case in the previous bylaw which is one of the reasons for the Board’s elimination of this sentence.
3. The Board also **objected to the word “entitlement”** in this sentence which it believes is an inappropriate position to take in the bylaw of the Society. Further, the “entitlement” of the three constituencies to “nominate” or have reserved spaces on the Board, when the other affiliated groups have none, is **patently inequitable**.
4. **Reserving spaces** for particular Directors elected by particular groups in the membership is **contrary to the Act**. All Directors must be elected by the entire membership.
5. The presentation of a particular candidate to be elected/ratified by the membership at the AGM is a transparent effort to **violate the spirit of the Act**. It also **violates our current nominations and elections process** which allows for a slate of candidates, duly

elected by the entire membership, to be voted into office by the membership at the AGM.

6. The presentation of a particular candidate to be elected/ratified by the membership at the AGM would allow for a **side-stepping of due electoral process** in the following way: should a candidate from a constituency group go through the normal election process, and fail to be elected, **this mechanism would allow the constituency group to “elect” that candidate to the Board despite the fact that the membership did not do so.**
7. The presentation of a particular candidate to be elected/ratified by the membership at the AGM would allow for the **assumption that that Director “represents” that constituency group.** The **Act requires that all Directors act in the interests of the Society as a whole,** not one particular group of its membership.
8. The addition of a one year term would **create inequities between Directors** (some having three year terms and some having one year terms). It would also create confusion and perhaps distort (dilute/diminish/lessen the power of) the accountabilities and fiduciary responsibilities of Directors with one year terms.

**adds the 2016 STLHE Secretary’s idea for “members ratify the constituency representative at the AGM”.**

#### 4.4 TERM OF DIRECTORS

(a) Each Director, **who is not a constituency-nominated candidate,** elected hereunder will have a term of three (3) years, to expire at the third Annual Meeting following election, or, if no successor is elected at the Annual Meeting, to expire when a successor is elected. Each Director, **who is a constituency-nominated candidate,** elected hereunder will have a term of one (1) years, to expire at the next Annual Meeting following election, or, if no successor is elected at the Annual Meeting, to expire when a successor is elected.

Response:

1. As stated in 8 above, the addition of a **one year term would create inequities between Directors** (some having three year terms and some having one year terms). It would also create confusion and perhaps distort (diminish/lessen the power of) the accountabilities and fiduciary responsibilities of Directors with one year terms.
2. The language additions in this proposed amendment **privileges constituency groups above all other affiliated groups** in the Society. It is **fundamentally inequitable.**

## Proposed Motion 7

### Section 10: AFFILIATED GROUPS

#### Amend the proposed bylaw changes as follows...

##### 6.2 CATEGORIES OF AFFILIATED GROUPS

The Board may establish different categories of Affiliates from time to time. As of the effective date of these By-laws, there are three (3) categories of Affiliates, consisting of :

(a) Constituencies — Constituencies are communities of practice whose mission is to work within the aims and structure of the Society to advance the Society's purposes. They operate with a formalized governance structure and are responsible for ensuring that their respective initiatives and activities are aligned and consistent with goals and purposes of the Society. Each Constituency shall be entitled to nominate one (1) Director for election to the Board. At the annual meeting of the members, one individual representative from each constituency, where a constituency has nominated a person, will be presented for election as a director for one (1) years by a vote of the membership. The constituencies include the Educational Developers Caucus, SoTL Canada, TAGSA, and the Council of Fellows.

*[Note: SoTL Canada nor TAGSA were not listed in 2015 but are added to this proposed amendment].*

#### Response:

1. The turquoise and yellow sentences have been dealt with in our response to proposed motion 6 above. They perpetuate the skirting of the intention of the Act and facilitate entitlement and inequity.
2. What is new in this proposed amendment is the sentence in purple. This proposed amendment would require that any time a constituency group changed its name, or was established, or was discontinued, the bylaw would have to be amended and approved by the entire membership at the AGM. It reduces flexibility in the members' ability to create these groups. And that rationale for this proposed amendment is unclear – what is the advantage?
3. Factual error: TAGSA is not a constituency group, but a Special Interest Group (SIG).