

REPORT OF THE BY-LAWS SUBCOMMITTEE

TO: The Beth Tzedec Board of Governors

FROM: The By-Laws Subcommittee

Date: March 28, 2018

The Beth Tzedec President, on behalf of the Executive Committee, asked Brian Segal to draft a new constitution for Beth Tzedec, to reflect evolving best practices in governance. Brian Segal struck a Subcommittee comprised of:

Brian Segal, Chair
Baker & McKenzie LLP

Ava Kanner
Davies Howe LLP

David Matlow
Goodmans LLP

Alan Sless
Borden Ladner Gervais LLP

The Subcommittee met on a number of occasions to review the Congregation's existing by-laws and discuss proposed revisions. The Subcommittee received input from members of the Congregation's executive, interested members of the Congregation and the Executive Director. The Subcommittee also reviewed by-laws of other Congregations, both in Canada and the United States, as well as "A Guide to Writing & Revising Congregational Constitution and By-Laws" prepared by the United Synagogue of Conservative Judaism. The Subcommittee reviewed the provisions of the *Corporations Act* (Ontario), the current governing statute, and the *Not-for-Profit Corporations Act* (Ontario), which is expected to replace the existing Act, as well as a template by-law prepared by Ontario's Ministry of Consumer Services for use under the new Act.

The Subcommittee provided for consideration by the Board of Governors a draft of the new by-laws to replace the Congregation's existing by-laws and on February 22, 2018, the Subcommittee met with the Board to discuss the draft by-laws. The Board had a number of constructive comments, as did others. Following the meeting with the Board on February 22, 2018, the

Subcommittee revised the by-laws to take into account a number of suggested changes. On March 27, 2018, after considering the changes, the Board enthusiastically approved the by-laws subject to confirmation by the members of the Congregation at the annual general meeting (AGM) to be held on May 29, 2018. If the new by-laws are approved (which will require a two-thirds vote of the members present at the AGM), the by-laws will become effective immediately following the 2018 AGM.

We have set out below an overview of the Subcommittee's general approach to the by-law review process, an outline of the next steps towards the implementation of the by-laws, and a summary of what we believe to be the major differences between the draft by-laws and the Congregation's existing by-laws.

Overall Approach

The Subcommittee determined that rather than amending the Congregation's existing by-laws, it would use the Ministry's template as a starting point. The Subcommittee also determined that the new by-laws should be consistent with evolving governance best practices and enable the Congregation and its board and committees to operate effectively. Where the *Not-for-Profit Corporations Act* (Ontario) does not permit deviation from the statute, the statutory language of the Act is provided for in the by-laws. The Subcommittee recognizes that the results of its efforts is a document that looks significantly different from its predecessor, but it is hoped that the benefit of this approach is a modern and effective document.

Next Steps

The Subcommittee recommended to the Board that the new by-laws, together with this explanatory memorandum, be distributed to the members of the Congregation and that the Board convene a "town hall" meeting of members in order to explain the rationale behind the changes, to receive feedback from the members and, if appropriate, to make changes to the new by-laws prior to the 2018 AGM. The Board has wholeheartedly endorsed this approach. Accordingly, the "town hall" meeting will be held at the Synagogue on April 16, 2018. We welcome your comments.

Summary of Major Changes

Business Day

A definition of Business Day has been included which excludes Saturdays, Sundays and the days of Jewish holidays. A notice period that ends on a day that is not a Business Day is extended to the next Business Day.

Execution of Contracts

The current by-laws require all contracts to be approved by the governors. The effect of this is that significant time is spent at board meetings dealing with operational matters rather than strategic ones. Section 1.05 proposes to enable the board of directors to establish signing authorities from time to time providing the board with flexibility to determine the value and duration of contracts that require board review and those which require approval other than at the board. Among other things, this will permit delegation, as appropriate, to the Executive Director to permit the Executive Director to carry out the administrative tasks necessary to the orderly operation of the Synagogue.

Directors

Section 2.01 contemplates that there will be 18 elected directors each elected for a three year term. The election of directors will be staggered so that six directors will be elected at each annual meeting. This will require a phasing in over three years. Currently, there are 20 elected directors each elected for a two year term. In the first year following the passage of the new by-laws, there will be a total of 19 directors, which will reduce to 18 beginning the following year. The term "Director" has been chosen instead of the traditional "Governor" to reflect language more consistent with modern governance.

The by-laws contemplate a term limit of four terms (five for a person who served on the Executive Committee in the first four terms) as compared to a maximum of eight two year terms under the current by-laws. The change from 2 year terms to 3 year terms recognizes the importance of continuity at the director level.

In addition to the eighteen elected directors, the President of the Men's Club, the President of the Sisterhood and the immediate Past President will be non-voting members (unless elected as directors by the members). The current by-laws provide that the two immediate Past Presidents are non-voting members of the board.

Election of Directors

The by-laws set out in Section 9.09 the procedure for the Nominating Committee including the timing parameters for the various steps in the nomination process. Section 9.09 also sets out the requirement for the appointment of a Chief Electoral Officer and describes the powers of this position which is designed to ensure that there are fair and transparent elections.

Board Committees

Section 2.04 contemplates that the board must have the following seven committees in addition to the Executive Committee: Budget and Finance, Audit, Membership, Ritual, Nomination, Cemetery and Building. This is a significant reduction from the 27 committees required by the current by-laws. The by-laws contemplate that the board will establish other committees from time to time as it determines necessary or desirable, however the existence of the other committees will no longer be enshrined in the by-laws. This provides the board with flexibility to address evolving needs for committees in real time, and avoid the requirement to have committees which are no longer necessary.

Executive Committee

The Executive Committee will be comprised of the Chair, President, Vice-President, Secretary, Treasurer and the Chair of the Ritual Committee. The board has the discretion to add one other member to the Executive Committee. The *Parnas* is no longer proposed to be an officer or required member of the Executive Committee, as it is anticipated that the head of the Ritual Committee will perform this function. The position of vice-chair has been eliminated because it is considered redundant. The board will choose a director to run board meetings if the chair is unable to attend the meeting.

Directors' Meetings

In order to make directors' meetings productive, Section 3.04 of the by-laws require (except in limited circumstances) that an agenda setting out the matters to be discussed at the meeting be provided at least 3 days before the meeting.

Membership

Under Section 8.01 membership is open to persons of the Jewish faith who are 18 and older. Members must pay a membership fee determined by the board. The privileges of membership are set out in Section 8.02.

Borrowing

Section 4.02 provides that aggregate borrowings by the Congregation not exceed \$3 million without majority approval of the members at a Members' meeting (other than to purchase Israel bonds). Currently the cap is \$1 million which can be exceeded only with a by-law amendment.

Role of the Chair, Officers and of the Clergy

The by laws set out the role of the Chair, the President, the Secretary, the Treasurer as well as that of the Rabbi and the Cantor. In particular, the by-law enshrines the paramountcy of the *halachic* authority of the Rabbi, as *mara d'atra*.

Notice

The by-laws provides that notice and other information can be given by email and dispenses generally with the requirement to provide notice by mail to Members.

Final Comments

The by-laws reflect the Subcommittee's unanimous recommendation, recognizing that the document looks very much different than the current by-laws and indeed reflect a different approach to governance than is currently the case. In order to eliminate the need to amend the by-laws once the new Act is in force, the by-laws contain provisions which are mandatory under the new Act.

We provided an earlier version of the proposed by-laws to Richard Powers for his input. Professor Powers has been working with the board on governance issues. Prof. Powers was very much supportive of the approach taken by the Subcommittee in drafting the new by-laws.

We understand that change is difficult and the by-laws cannot possibly address every member's specific interest. We are, however, hopeful that the proposed by-laws strike the appropriate balance between the need to protect the interests of the members at large and the Board's need for the authority to carry out its mandate in a timely and efficient manner, and to delegate to others as appropriate.

We look forward to the upcoming "town hall" meeting and the confirmation of the new by-laws at the 2018 AGM.

All of which is respectfully submitted,

Brian Segal, Chair
Ava Kanner
David Matlow
Alan Sless

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