

# Transitioning an Existing Society

A How-to Guide for Non-profits in BC

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# Introduction

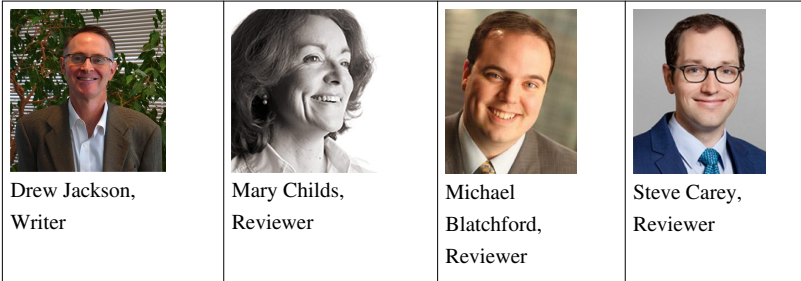
There's a new law that governs how non-profit societies in British Columbia are created and run. A new *Societies Act* <sup>[1]</sup> came into effect in BC on November 28, 2016. All societies in the province must "transition" under the new Act within a two-year period after the new law came into effect.

Aimed at those who work at a non-profit society in British Columbia or sit on a board of directors, *Transitioning an Existing Society: A How-to Guide for Non-profits in BC* covers the steps in transitioning a society under the new Act.

The information in this guide **applies in the province of British Columbia, Canada**. It is

produced for educational purposes and is not intended as legal advice. If you need advice about a specific legal problem, please contact a legal professional. Some sources of legal help are highlighted in the "Further Help" section.

This guide was written by Drew Jackson, a lawyer and librarian who writes about law for the public. It was reviewed for legal accuracy by Mary Childs, Michael Blatchford and Steve Carey, three British Columbia lawyers who advise non-profit societies.



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## References

[1] <http://canlii.ca/t/8v16>

# What the New Societies Act Means for Existing Societies

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This section was last reviewed for legal accuracy by Mary Childs, Michael Blatchford and Steve Carey in November 2016.

A new law governing how non-profit societies in British Columbia are created and run came into effect on November 28, 2016. This section covers five key ways the new *Societies Act* affects existing societies.

## You need to "transition", but the new Act applies right away

All societies in BC are required to "transition" under the new *Societies Act* by filing an application in a new electronic system called Societies Online <sup>[1]</sup>. Societies have a two-year period, until November 28, 2018, to file this application.

When a society files its transition application does not affect when the new regime applies. **The new law applies to all pre-existing societies as of when the law came into force on November 28, 2016.**

One result is that any provision in a society's bylaws that is inconsistent with the new Act has no effect. The matter is governed by the new Act.



Three things you absolutely must know about transition:

1. The new rules apply to your society as of November 28, 2016 whether or not your society has "transitioned".
2. Any existing bylaw of your society that is inconsistent with the new Act has no effect; the matter is governed by the new Act.
3. Meeting the basic requirements to transition is a straightforward process that takes a couple of hours - but transitioning is an excellent opportunity to put your society's house in order by reviewing your existing bylaws and governance.

## What does transitioning involve?

The transition process features filling out a form and uploading documents on the Corporate Registry's system, Societies Online <sup>[1]</sup>.

The key documents are your society's constitution and bylaws, which will need to be rearranged to meet the Registry's requirements. A society that rearranges its constitution and bylaws as required but makes no other amendments to its bylaws can complete the transition application **without requiring member approval**.

Optionally, societies can revise their bylaws as part of the transition process. Societies may wish to do this to update bylaws that are in conflict with the new Act, or to take advantage of increased flexibility offered by the new Act. A society that revises its bylaws as part of transitioning will need to have the changes approved by a special resolution of members.

See the section "Preparing for Transition" for more detail on the transition process. "Reviewing Your Society's Bylaws" takes you through the steps of conducting a bylaw review, and "Filing a Transition Application" features a walkthrough of the filing process.

### **What if you don't transition right away?**

After November 28, 2016, a pre-existing society will not be able to do the following **until it transitions**:

- The society will not be able to amend its constitution or bylaws.
- The society will not be able to amalgamate.
- The society will not be able to become a member-funded society (this new designation is explained below).

A pre-existing society will still be able to make the filings required to change their registered office or directors, and to file annual reports following an annual general meeting.

### **What if you don't transition within the two-year window?**

A pre-existing society must file its transition application within the two-year window after the new *Societies Act* came into force. The resulting deadline is November 28, 2018. If a society doesn't file its transition application by this date, it would be considered to be in default of a requirement under the Act and at risk of being dissolved by the Corporate Registry.

### **Your society's constitution may be affected**

As part of the process to transition under the *Societies Act*, your society's constitution may need to be rearranged - carefully.

On transition, your constitution must consist of only the society's name and purposes - **which cannot be changed**.

The Corporate Registry requires that any provisions in a society's constitution other than the name or purposes of the society **must be moved to the society's bylaws** on transition. For example, a society may have a provision in its constitution about remuneration of board members or about the disposition of its assets on dissolution. These provisions must be moved to the bylaws on transition.

### **If the constitution has "unalterable provisions"**

Many societies have constitutional provisions that are designated as "unalterable" - that is, provisions that can't be changed. For example, a society may have a provision restricting its activities to a certain geographic area, and have designated that provision as unalterable. Or at the request of a funder, a society may have designated as unalterable provision dealing with disposition of its assets on dissolution.

On transition, any such "unalterable" provisions in a society's constitution - other than the name or purposes of the society - must be moved to the society's bylaws, and must be identified as having been "previously unalterable". **These provisions cannot be changed on transition.**

For further details, including an example of how this requirement can be handled, see the section on "Preparing for Transition".

## Changing "previously unalterable provisions"

Once a society has transitioned, any previously unalterable provisions that have been moved to the society's bylaws can be altered by a special resolution of members. Unless the society's bylaws provide for a higher voting threshold, a special resolution requires 2/3 of votes cast at a members' meeting.

The result is that after transition, for many societies, a previously unalterable provision could be changed by 2/3 of those voting.

Flexibility in the new Act relating to special resolutions can be used to offset this result. In its bylaws, a society can provide a higher voting threshold of up to 100% of voting members. The higher threshold can apply generally or be set for specific special resolutions. After transition, a society could choose to require a threshold of 100% of voting members to change a bylaw provision that was previously unalterable. The society could at the same time choose to retain the default threshold of 2/3 of the votes cast for other bylaw amendments.

Finally, note that certain societies will need the written consent of government officials to alter previously unalterable provisions. These societies include:

- recipients of sales tax or other government revenue
- recipients of loans or grants from BC Housing
- community care facility service providers



Some societies have unalterable provisions in their constitution in order to preserve the charitable status of the society. If you have any doubt about whether making changes to previously unalterable provisions will adversely affect the society's charitable status, you should seek legal advice.

## Your society's bylaws should be reviewed for compliance with the new Act

When the new *Societies Act* came into force on November 28, 2016, any provision in a society's bylaws that is inconsistent with the new Act ceased to have effect. The matter is governed by the new Act.

Most organizations have at least some bylaws that are inconsistent with the new Act.

As well, the new Act presents opportunities for societies to adopt bylaw changes in areas where the new law offers increased flexibility. The section "Reviewing Your Society's Bylaws" discusses options in conducting a bylaw review and key clauses to consider in the review.



One option available to societies in transitioning under the new *Societies Act* is to adopt a new set of bylaws entirely. The new set could be the model bylaws found in Schedule 1 of the Societies Regulation<sup>[2]</sup>, with or without amendments. These model bylaws contain basic clauses that align with the new Act. See the section "Reviewing Your Society's Bylaws" for more on the model bylaws.

## You need to decide whether to become a member-funded society

On transition, a society will be asked whether it wishes to designate itself as a **member-funded society**. A member-funded society is one that is funded primarily by its members to carry on activities for the benefit of its members. Examples of societies that might meet this designation are private clubs, sports leagues, and professional associations.

Member-funded societies are exempt from several public transparency provisions which apply to other societies:

- they don't have to provide public access to annual financial statements
- they are not required to disclose director or employee remuneration

As well, member-funded societies have more flexibility in their governance structure and can distribute their assets to their members on dissolution.

| Item                                         | Member-funded society                                                    | Other societies                                                                               |
|----------------------------------------------|--------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| <b>Number of directors</b>                   | 1 director is sufficient                                                 | At least 3 directors                                                                          |
| <b>Residency of directors</b>                | No residency requirement                                                 | 1 director must be resident in BC                                                             |
| <b>Composition of board of directors</b>     | No restrictions on number of directors employed or contracted by society | Majority of directors must not be employed or under contract with society (effective in 2018) |
| <b>Distribution of assets on dissolution</b> | Assets can go to members                                                 | Assets can only go to certain types of qualifying societies or registered charities           |
| <b>Conversion to a company</b>               | Can be converted to a company                                            | Cannot be converted to a company                                                              |

## To become a member-funded society

To become a member-funded society, a society must meet a qualification test and get the approval of its members in a special resolution. The test to qualify as a member-funded society has two parts:

- **Part 1, excluded societies:** The society cannot be from a list of excluded societies. Excluded societies include registered charities, student societies, hospital societies, recipients of sales tax or other government revenue, recipients of loans or grants from BC Housing, community living support service providers, and independent schools. If a society is any one of these, it can't qualify as a member-funded society.
- **Part 2, funding test:** The society's funding from public donations and government sources must be below a certain threshold. In the two-year financial period before the current one, the society must either:
  - have received \$20,000 or less in public donations and government funding, or
  - if the society received more than \$20,000 in public donations and government funding, the amount must have been less than 10% of the society's gross income.

## Issues to consider in deciding to become a member-funded society

If a society decides that it meets the two-part qualification test and is eligible to be a member-funded society, it must determine whether or not it wishes to be designated as one.

A significant issue is that a member-funded society **cannot be a registered charity**.



Use the Charities Listings search <sup>[3]</sup> on the Canada Revenue Agency website to find organizations that are or have been registered as a charity with the CRA.

Other issues to consider include:

- **Funding limitations:** The society must stay under the specified threshold for public donations and government funding in order to retain its status as a member-funded society. As well, the society could be disqualified from receiving certain types of government funding. For example, the BC Gaming Policy and Enforcement Branch has indicated that it will not give community gaming grants to member-funded societies.
- **Tax-exempt status:** The taxable income of a non-profit society is exempt from tax, as long as the society meets certain conditions. One of the conditions is that the society must not distribute any of its income for the personal benefit of a member. Yet one of the potential advantages of becoming a member-funded society is the ability to distribute assets to members on dissolution. Before becoming a member-funded society, it is important to consider how this feature might impact the society's tax-exempt status.
- **Timing of becoming a member-funded society:** If a society doesn't adopt the member-funded society designation on transition, it will need a court order to do so later.

If you have any doubt about whether your society can or should become a member-funded society, you should seek legal advice before transitioning.

## There's a new electronic filing system

With the new *Societies Act*, there is a new electronic filing system, Societies Online <sup>[1]</sup>. The majority of filings are self-serve and immediate. It should be easier to file annual reports and update information such as the name and address information for your society's directors.

With the new electronic filing system, there are online forms to complete when your society alters its constitution or bylaws. Special resolutions no longer need to be filed with the Registrar.

Some low volume, complex filings remain as paper filings, such as an amalgamation application.

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## References

[1] <http://www.gov.bc.ca/SocietiesOnline>

[2] [http://www.canlii.org/en/bc/laws/regu/bc-reg-216-2015/latest/bc-reg-216-2015.html#Schedule\\_1\\_\\_24312](http://www.canlii.org/en/bc/laws/regu/bc-reg-216-2015/latest/bc-reg-216-2015.html#Schedule_1__24312)

[3] <http://www.cra-arc.gc.ca/chrts-gvng/lstngs/menu-eng.html>



# 10 Changes in the New Act You Should Know About

This section was last reviewed for legal accuracy by Mary Childs, Michael Blatchford and Steve Carey in November 2016.

If you work at a non-profit society in British Columbia or sit on a board of directors, the new *Societies Act* affects your world as of November 28, 2016. This section highlights 10 changes in the new Act that you should know about.

## There is greater access to a society's records

Under the new *Societies Act*, members have greater access to a society's records. The Act spells out the records a society must keep, including a register of members, minutes of members' and directors' meetings, accounting records, and financial statements.

By default under the Act, members are entitled to inspect all records of the society (as are directors). For some records, member access can be restricted. For example, a society's bylaws can restrict members' access to accounting records.

The public is entitled to receive a copy of a society's financial statements and auditor's report if requested. A society can choose to grant access to the public to more of its records. The only record that is excluded from public accessibility is the society's register of members.

| Records a society must keep include these records (this list is not exhaustive)                                  | Director access | Member access                                                              | Public access     |
|------------------------------------------------------------------------------------------------------------------|-----------------|----------------------------------------------------------------------------|-------------------|
| Register of members                                                                                              | Yes             | Yes, though directors may restrict                                         | No                |
| Minutes of members' meetings and copies of all ordinary and special resolutions                                  | Yes             | Yes                                                                        | Bylaws may permit |
| Minutes of directors' meetings and copies of all consent resolutions of directors                                | Yes             | Yes, though bylaws may restrict (except relating to conflicts disclosures) | Bylaws may permit |
| Any disclosures by directors or senior managers of a conflict of interest                                        | Yes             | Yes                                                                        | Bylaws may permit |
| Accounting records, including a record of each transaction materially affecting the society's financial position | Yes             | Yes, though bylaws may restrict                                            | Bylaws may permit |
| Financial statements and any auditor's report on the financial statements                                        | Yes             | Yes                                                                        | Yes               |

## **Remuneration paid to directors and certain employees and contractors must be disclosed**

Under the new Act, a society must disclose any remuneration paid to a director. Remuneration is money or other compensation paid for work or services performed. Amounts paid to a director for being a director and for acting in any other capacity must be disclosed separately. The disclosure must be made in a note to the annual financial statements, which are available to society members and to the public.

(In a change that takes effect in 2018, a society must not remunerate a director for being a director unless the bylaws expressly permit; see below.)

As well, societies must disclose the remuneration of any employees or contractors making over \$75,000. If a society has more than 10 employees or contractors making over that amount, they must disclose the top 10.

To counterbalance privacy concerns, the names of the directors, employees and contractors need not be included in the financial statements. The disclosure can be done by position or contract; individual names don't have to be disclosed. As well, a society can pool the information by disclosing the total number of employees and contractors making over \$75,000 and the total amount of remuneration paid to them.



The new rules relating to disclosure of remuneration paid to directors and certain employees and contractors apply from when the new *Societies Act* came into force. Any financial statements prepared or presented by a society after November 28, 2016 need to comply with these new requirements.

## **There is greater flexibility in conducting members' meetings**

The new Act provides greater flexibility in conducting members' meetings. Participating by telephone or other communications media is recognized as the norm. Unless a society's bylaws provide otherwise, members can participate in meetings by phone or using other technology so long as all the people participating are able to communicate with each other.

An annual general meeting can now be held entirely in writing. All voting members must consent to a written resolution covering the matters that must be dealt with at the AGM, including the presentation of the financial statements and any auditor's report.

## **The voting threshold for a special resolution has been lowered**

The new *Societies Act* lowers the voting threshold for approving a special resolution. A special resolution approved by a society's members is required to make fundamental changes to a society, including changing its name or bylaws.

Under the old *Society Act*, a special resolution required at least 3/4 of votes cast at a members' meeting in order to be approved. Under the new Act, a special resolution requires 2/3 of the votes cast.

The new Act also allows societies flexibility in setting a higher threshold for special resolutions if they choose. In its bylaws, a society can provide a threshold of up to 100% of voting members. The higher threshold can apply generally or be set for specific special resolutions. For example, the bylaws can require a unanimous vote to change the bylaw that sets out where the society's assets are to go on dissolution, while retaining the default threshold of 2/3 of the votes cast for other bylaw amendments.



If your society's bylaws currently require that a special resolution be approved by at least 3/4 of votes cast, then that threshold still applies under the new *Societies Act*. Under the new Act, the default voting threshold to pass a special resolution is 2/3 of the votes cast at a members' meeting. But if a society's bylaws impose a higher threshold, the higher threshold in the bylaws prevails. The exception is for a vote to remove a director from office – the new default threshold of 2/3 applies to that situation regardless of what the bylaws say.

## Members now have the right to bring a "member's proposal"

Members of a society have always been able to requisition a member's meeting for a specific purpose, provided that at least 10% of voting members sign the requisition. The new Act introduces a right for members to add specific issues to the agenda of an annual general meeting. A **member proposal** must be added to the agenda if the proposal is signed by at least 5% of the society's voting members. The proposal must be received by the society at least seven days before notice of the AGM is sent.

A society's board of directors have the discretion to reject the proposal if it is substantially similar to an issue that has already been voted on at a member's meeting in the previous two years.

## Members have more remedies

Under the new Act, members are able to apply to court for a remedy if the society's activities are oppressive or unfairly prejudicial to one or more members. In applying for such an **oppression remedy**, a member will need to show they had a reasonable expectation to be treated in a certain way. They will also need to show that the society's conduct was burdensome, harsh and wrongful, or had an unjust and inequitable effect on them.

If a member's oppression claim succeeds, the court has wide discretion to make things right, including by directing or prohibiting any act, removing or appointing a director, varying a transaction or a resolution, directing compensation, or appointing an investigator.

Also under the new Act, members may bring a **derivative action**. In such an action, a member can enforce rights of the society when the directors refuse to act.

## There is a new category of "senior managers"

The new Act introduces a new category of **senior managers**. These are individuals appointed by the board of directors to manage the activities and internal affairs of a society or a principal unit of a society.

A senior manager may be an employee, a contractor, or a volunteer. The intent of the individual or the board doesn't matter; so long as the individual is appointed by the board and has the requisite authority, they are a senior manager under the Act.

Being deemed a senior manager does not alter a person's job title, duties, authority, or legal relationship with the society.

The Act imposes duties on all senior managers, including the duty to act "honestly and in good faith with a view to the best interests of the society" and the duty to disclose a conflict of interest (see the next item). The Act also limits the liability of senior managers, inviting a court to relieve the manager from liability for any negligence or breach if the manager "acted honestly and reasonably and ought fairly to be excused".

## **There are expanded procedures for managing conflicts of interest**

Under the new *Societies Act*, there are expanded procedures for how conflicts of interest are managed. A conflict of interest is a situation in which someone has a duty to act in the best interests of an organization, yet they may have personal interests that conflict with that duty. For example, a board director may work at a law firm that the society is considering retaining. Or an executive director may be related to a web designer that the society is contemplating hiring.

A director or senior manager is in a conflict of interest when they have a "direct or indirect material interest" in a contract or transaction with the society or a matter for consideration by the board. A "material interest" is an interest that is not insignificant and could reasonably be considered to affect a person's decision-making.

A director or senior manager who is in a conflict of interest must:

- promptly and fully disclose the conflict to the directors
- leave the room during any discussion or vote at a board meeting on the conflict matter
- refrain from any action intended to influence the discussion or vote
- in the case of a director, abstain from voting on the conflict matter

As well, societies must now keep records of any disclosures by directors or senior managers of a conflict of interest.

## **Changes are coming in 2018 relating to who can be a director**

Changes that take effect for pre-existing societies in November 2018 affect the qualifications to be a director of a non-profit in BC. Under the new Act, a director must be at least 18 years old, unless the bylaws expressly allow directors who are age 16 or 17. If the bylaws allow directors who are age 16 or 17, the majority of the society's directors must be age 18 or over.

As well, a director of a society **cannot**:

- be declared incapable by a court,
- be an undischarged bankrupt, or
- have been convicted of fraud or certain other criminal offences within last 5 years (unless they received a pardon).

These are ongoing requirements. If a director becomes disqualified, he or she must resign. It is an offence for a non-qualified person to act as director.

**These provisions don't come into effect for pre-existing societies until November 28, 2018.**

## **Changes are coming in 2018 that affect whether directors can be paid**

Also coming into effect in 2018 for pre-existing societies is a provision that a society must not remunerate a director for being a director unless the bylaws expressly permit. Remuneration is money or other compensation paid for work or services performed – in this case, the work of being a director.

Reimbursement of a director for reasonable expenses is permitted, unless the bylaws restrict reimbursement.

Subject to the conflict of interest rules, a director can be paid to be an employee of or contractor to the society. However, at all times a majority of directors must not be getting paid as employees or contractors.

Finally, another provision coming into effect in 2018 for pre-existing societies is a requirement that a director must consent to act as a director. The consent can either be by signing a written consent or by being present at a meeting where the appointment or election was made and not refusing to be a director.



Even though the requirement that a director must consent to act doesn't come into force until 2018, many societies are introducing a consent to act form beforehand. On the form, you can also set out the qualifications for directors that come into effect in 2018, and have the director self-certify that they meet those qualifications.



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## Preparing for Transition under the Societies Act

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This section was last reviewed for legal accuracy by Mary Childs, Michael Blatchford and Steve Carey in November 2016.

All existing societies in BC are required to "transition" within a two-year period from when the new *Societies Act* came into effect on November 28, 2016. Transitioning involves filing an application online. This section covers the steps a society should take to **prepare** for filing the transition application.

### Optional preliminary step: Order a transition package

To file the transition application, you will need to submit an electronic version of the society's constitution and consolidated bylaws. To put this material together, you may want to order a **transition package** from the Corporate Registry for \$40. **This step is optional.**

A transition package for a society includes certified copies of any documents that the Registry has on file for the society, including the original constitution, the original bylaws, and any special resolutions amending the society's constitution or bylaws. You can use the filings to create complete, consolidated versions of the constitution and bylaws (see steps 3 and 4 below).

You can order a transition package online <sup>[1]</sup>.

### Step 1. Consider member-funded society status

On transition, a society will be asked whether it wishes to designate itself as a **member-funded society**. A member-funded society is one that is funded primarily by its members to carry on activities for the benefit of its members.

To become a member-funded society, a society must meet a qualification test and get the approval of its members in a special resolution. If a society doesn't adopt the member-funded society designation on transition, it will need a court order to do so later.

See the section "You need to decide whether to become a member-funded society" for the issues to consider in whether to adopt this designation.

## Step 2. Update Corporate Registry filings

Ensure the society is up-to-date in its annual report filings with the Corporate Registry. If annual reports are outstanding, the society will not be able to transition.

Also ensure that the information on file with the Corporate Registry about the society's directors and registered office is up to date. The most current directors and registered office information will be automatically included in the society's transition application. If this information is inaccurate at the time of transition, it will need to be changed by making a separate filing after the society's transition is completed.



Under the new Act, it is no longer required that you provide the Corporate Registry with the residential address of each director. You can provide another address at which the director can usually be served with records during normal business hours (between 9 am and 4 pm, Monday to Friday).

## Step 3. Prepare the society's constitution

To file the transition application, you will need to submit an electronic version of the society's constitution, with these modifications:

- The constitution must consist of only the society's name and purposes – **which cannot be changed on transition**. The name and purposes must be word-for-word as they appear in the society's constitution on file with the Corporate Registry.
- If the constitution currently includes any other provisions, **these must be moved to the society's bylaws**. For example, a society may have a provision in its constitution about remuneration of board members or about the disposition of its assets on dissolution. Such provisions must be moved to the society's bylaws as part of preparing for transition – see step 4 for more detail.
- If the society chooses to become a member-funded society (see step 1), add this statement to the constitution:  
*This society is a member-funded society. It is funded primarily by its members to carry on activities for the benefit of its members. On its liquidation or dissolution, this society may distribute its money and other property to its members.*

## Step 4. Prepare the society's consolidated bylaws

To file the transition application, you will need to submit a single, consolidated set of the society's bylaws in electronic form. In other words, you must create one document that reflects the original bylaws as well as all subsequent amendments to the bylaws filed with the Corporate Registry.

The document can be a word processing document or a PDF. If your society's constitution and bylaws are currently in a single document, you will need to separate them into two documents; the bylaws must be in a single, consolidated document.

To assemble this document, the transition package described in the optional preliminary step above can be very helpful. For societies that use the model bylaws in Schedule B of the old *Society Act*, a Word version of the Schedule B bylaws<sup>[2]</sup> available on the Corporate Registry website can be used as a starting point to assemble your society's consolidated bylaws. You will need to update that document with any amendments to the society's bylaws that were filed with the Corporate Registry.

## Moving provisions from the society's constitution

For any provisions in the society's constitution other than the society's name and purposes, move those provisions to the society's consolidated bylaws. You can add them to a new part at the end of the bylaws under a separate heading such as "Provisions from the Society's Pre-Transition Constitution" or "Former Constitutional Provisions".

If you are moving an "unalterable" provision from the society's constitution to the bylaws, mark that provision as having been "previously unalterable". For example, a society might have an unalterable provision in its constitution about remuneration of board members:

*3. The society shall be carried on without purpose of gain for its members. No member of the board shall be paid any remuneration for services rendered to the society but may be paid his reasonable expenses. This paragraph is unalterable.*

On moving this provision to the consolidated bylaws, it could look like this:

### ***Provisions from the Society's Pre-Transition Constitution***

*40. The society shall be carried on without purpose of gain for its members. No member of the board shall be paid any remuneration for services rendered to the society but may be paid his reasonable expenses. This provision was previously unalterable.*

Note that **on transition, any previously unalterable provisions cannot be amended**. Other provisions you move from your society's constitution to your bylaws (and other bylaws for that matter), can be amended on transition – with member approval. But any potential amendments to previously unalterable provisions must wait until after the society has filed its transition application.

## If the society was a reporting society

If the society was a reporting society under the old *Society Act*, incorporate the new reporting society provisions into the consolidated bylaws.

Reporting societies under the old *Society Act* include hospitals, insurance societies and other societies that require government consent to incorporate, as well as any society that has a subsidiary. Approximately 1% of BC's 27,000 societies are reporting societies, and most can expect to be notified of this status by the Corporate Registry by November 2016. (A society is not reporting just because it files annual reports with the Corporate Registry.)

The new reporting society provisions are in Schedule 3 of the Societies Regulation<sup>[3]</sup>. They contain special rules, such as the requirement to have an auditor.

A reporting society under the old *Society Act* must include these provisions without alteration in the bylaws filed with the transition application. Once the provisions have been included in a society's bylaws on transition, they can be altered like any other bylaw.

## Step 5. Review the society's bylaws

A society that rearranges its constitution and prepares consolidated bylaws as outlined above **without** any other amendments can proceed directly to file the transition application. The society does not require member approval and **can proceed with the transition without holding a general meeting of members.**

It is a best practice to seek board of directors approval at this stage.

There is one more step, though, that is highly recommended before filing a transition application. **This is an ideal time to conduct a review of your society's existing bylaws.**

When the new *Societies Act* came into force on November 28, 2016, any provision in a society's bylaws that is inconsistent with the new Act ceased to have effect. The matter is governed by the new Act.

Having bylaws that are inconsistent with the new Act is a risk. Effectively, you can't trust your bylaws between November 28, 2016 and when you conduct a review to ensure they are harmonized with the new Act. There are also opportunities to take advantage of the increased flexibility offered by the new Act.

The next section covers reviewing your society's bylaws, including options, examples, and key clauses to consider in reviewing your bylaws.

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## References

- [1] [https://www.bcregistryallservices.gov.bc.ca/sofi/sofi.htm?\\_flowId=society/requestTransitionPackage&filingType=STRPF](https://www.bcregistryallservices.gov.bc.ca/sofi/sofi.htm?_flowId=society/requestTransitionPackage&filingType=STRPF)
- [2] [http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/corporations/societies/schedule\\_b\\_bylaws.docx](http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/corporations/societies/schedule_b_bylaws.docx)
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# Reviewing Your Society's Bylaws

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**This section was last reviewed for legal accuracy by Mary Childs, Michael Blatchford and Steve Carey in November 2016.**

A non-profit society's bylaws set out the rules for governing and operating the society. When the new *Societies Act* became law on November 28, 2016, most existing societies had some bylaws that were inconsistent with the new Act. As of that date, those bylaws ceased to have effect. If you haven't yet had a chance to do so, conducting a review of your society's bylaws is highly recommended to harmonize them with the new Act. It also presents an opportunity to make positive organizational change.

## Options for reviewing your bylaws

There are three ways to approach a review of your society's bylaws:

- **Option 1:** Revise your society's existing bylaws to align with the new Act.
- **Option 2:** Adopt the new model bylaws and revise them to fit your society's needs.
- **Option 3:** Undergo a detailed review of your society's vision and operations and use this opportunity to overhaul your bylaws.

The third option is the most ambitious. It also has the biggest payoff. You could think of it this way. Transitioning under the new Act presents an opportunity to do something that organizations rarely make time to do: take a detailed look at the organization's governing documents and policies, and revise as needed to realize the organization's vision.

While the third option is encouraged, this guide focuses on the first two options, recognizing that many non-profits are constrained by time and resources.



Why review your bylaws now?

- **To minimize confusion.** Having bylaws that conflict with the new *Societies Act* means that members and directors might be confused about what rules prevail.
- **To reduce risk.** Effectively, you can't trust your bylaws between November 28, 2016 and when you conduct a review to ensure they are harmonized with the new Act.
- **To take advantage of increased flexibility under the new Act.** Even if you are generally satisfied with your society's existing bylaws, you may want to take advantage of increased flexibility offered by the new Act in some areas.

## Option 1: Revise your society's existing bylaws

This option features working through your society's current bylaws to consider whether provisions in the new *Societies Act* are at odds with the bylaws or offer options to adapt the bylaws to better fit your society's needs.

If your society currently uses the model bylaws under the old *Society Act*, they may not need radical changes. The old model bylaws, often called **Schedule B bylaws** because they appeared in Schedule B of the old Act, are for the most part compliant with the new Act. That said, there are a few clauses in the Schedule B model bylaws that are somewhat in tension with the new Act: two are highlighted in the discussion below on conducting a clause-by-clause analysis.

As well, other clauses in the Schedule B bylaws don't take advantage of the flexibility provided under new Act. For example, under the new Act a society's directors have discretion to issue a debenture on borrowing funds, unless the bylaws restrict that discretion – which the Schedule B bylaws do, by requiring a special resolution of members to issue a debenture. So effectively that clause of the Schedule B bylaws curtails the flexibility introduced with the new Act.

For these reasons, even though those using the old Schedule B model bylaws may not need to make extensive changes, conducting a bylaw review is still recommended.

Alternatively, you could replace your bylaws with the new model bylaws, customizing them to your society's needs. Which brings us to option 2.



If your society currently uses the model bylaws under the old *Society Act*, often called Schedule B bylaws, there may not be many changes needed to your bylaws. The Schedule B bylaws – available as a Word document <sup>[1]</sup> on the Corporate Registry's website – have a few clauses that are somewhat in tension with the new Act, and others that don't take advantage of the flexibility provided under the new Act. The section below on key clauses to consider highlights clauses to pay particular attention to if you are currently using the Schedule B bylaws.

## Option 2: Adopt the new model bylaws

An option available to societies with the introduction of the new *Societies Act*, instead of preparing a consolidated set of existing bylaws (with or without further revisions), is to adopt a new set of bylaws entirely. The new set could be the **new model bylaws** found in Schedule 1 of the Societies Regulation <sup>[2]</sup>; a Word version <sup>[3]</sup> is available through the Corporate Registry website.

These model bylaws contain basic clauses for governing and operating a society – such as the conduct of meetings and the role of directors – that align with the new Act.

The model bylaws may be a good option for societies with a small membership that need a very simple structure or societies that need a temporary solution.

**It is not recommended to adopt the model bylaws straight out of the box.** The model bylaws will likely need several changes to reflect the specific needs of your society. Below in the section on key clauses to consider are some comments on provisions in the model bylaws to have a particularly close look at in considering whether they are a good fit for your society.

## Conducting a clause-by-clause analysis

Whether you are working from your society's existing bylaws or the new model bylaws, you should work through each clause with an eye to two factors:

- Step 1: Does the clause align with the new Act?
- Step 2: Does the clause support the needs of your society?

### Example 1: Expelling a member

Let's look at an example. Bylaws often include a clause dealing with expelling a member.

The relevant provision in the new *Societies Act* reads:

#### **Discipline and expulsion of member**

**70** (1) The bylaws of a society may provide for the discipline or expulsion, or both, of members.

(2) Unless the bylaws provide otherwise, a member of a society may be disciplined or expelled by special resolution.

(3) Before a member of a society is disciplined or expelled under subsection (2) or the bylaws, the society must

(a) send to the member written notice of the proposed discipline or expulsion, including reasons, and

- (b) give the member a reasonable opportunity to make representations to the society respecting the proposed discipline or expulsion.

Let's assume the relevant provision in the society's existing bylaws was drawn from the old Schedule B model bylaws under the old *Society Act*, which read:

**Part 2 – Membership**

- 8 (1) A member may be expelled by a special resolution of the members passed at a general meeting.
- (2) The notice of special resolution for expulsion must be accompanied by a brief statement of the reasons for the proposed expulsion.
- (3) The person who is the subject of the proposed resolution for expulsion must be given an opportunity to be heard at the general meeting before the special resolution is put to a vote.

The new model bylaws do not address the expulsion or discipline of a member.

**Step 1: Does the clause align with the new Act?**

The wording in the existing bylaws is similar but slightly different from provision in new Act. The bylaw deals only with expulsion; the new Act deals with expulsion and discipline. The bylaw provides the member with "an opportunity to be heard at the general meeting"; the new Act provides the member with "a reasonable opportunity to make representations to the society", which is broader wording, not restricted to the general meeting or to an opportunity to say something.

There's an argument to make that the existing bylaw and the Act don't fully conflict; that is, that the Act **extends** the wording of the bylaw. But to whatever extent that the existing bylaw and the Act are in conflict, the Act would prevail.

**Step 2: Does the clause support the needs of the society?**

The new Act provides that a member can be disciplined or expelled by special resolution **unless the bylaws provide otherwise**. Consider whether the needs of your society would be better met by having a different procedure spelled out in the society bylaws, such as one involving a board of directors process.

If you are revising the existing bylaws, the options would be to:

- Delete the provision from the existing bylaws (and let the matter of expulsion or discipline of a member be governed by the provision in the Act).
- Revise the provision in the existing bylaws to provide a different procedure for dealing with expulsion or discipline of a member.

If you are working from the new model bylaws, the options would be to:

- Do nothing (and let the matter of expulsion or discipline of a member be governed by the provision in the Act).
- Add a provision outlining a different procedure for dealing with expulsion or discipline of a member.

## Example 2: Quorum at general meetings

Let's look at a second example, dealing with quorum at general meetings.

The relevant provision in the new *Societies Act* reads:

### Quorum

**82** (1) Subject to subsections (3) and (4), the quorum for the transaction of business at a general meeting is

- (a) 3 voting members, unless paragraph (b) of this subsection applies, or
- (b) if the bylaws provide for a quorum greater than 3 voting members, that quorum.

(2) The bylaws of a society may, for the purposes of subsection (1)(b), provide for a quorum that is greater than 3 voting members, by doing either of the following:

- (a) specifying the number of voting members that constitutes a quorum;
- (b) requiring that the quorum be calculated as a specified percentage of voting members or on another basis.

(3) If a society has fewer voting members than the quorum provided for in subsection (1), the quorum for the transaction of business at a general meeting is all of the voting members.

(4) The bylaws of a society may provide that if a general meeting is adjourned until a later date because a quorum is not present, and if, at the continuation of the adjourned meeting, a quorum is again not present, the voting members present constitute a quorum for the purposes of that meeting.

Let's say the provision in the society's existing bylaws was drawn from the old Schedule B model bylaws, and reads:

**16** (3) A quorum is 3 members present or a greater number that the members may determine at a general meeting.

The provision in the new model bylaws reads:

**3.7** The quorum for the transaction of business at a general meeting is 3 voting members or 10% of the voting members, whichever is greater.

### Step 1: Does the clause align with the new Act?

There are some issues arising from the society's existing bylaws when read together with the relevant provision in the new Act:

- The existing bylaws refer to "members present". The provision in the new Act refers to "voting members".
- The provision in the new Act contemplates the bylaws specifying the number of voting members or requiring a calculation as a percentage of voting members or on another basis. Yet the existing bylaws say "or a greater number that the members may determine at a general meeting". That wording does not specify a number of voting members or a calculation. Which places the wording in the existing bylaws somewhat in tension with the wording of the new Act.

### Step 2: Does the clause support the needs of the society?

Let's turn our attention to the quorum provision in the new model bylaws. The bylaw provides for a quorum of 3 voting members or 10% of voting members, whichever is greater. Consider whether 3 voting members is too few for your society, what percentage of voting members might be a good fit for your society, and whether a different mechanism to determine quorum (so long as it complied with the Act) would be preferable.

For example, for societies with larger memberships, 10% can be hard to achieve. For a society with 2,000 members, 10% is 200 people – a very large number to try to get out to an AGM. A higher fixed number and a lower percentage – say, 20 voting members or 2% of voting members – could be a better fit for a society of that size.

## Key clauses to consider

This section covers some of the key clauses to consider in conducting a bylaw review. It is organized based on the parts in the new model bylaws. **This list is not intended to be exhaustive**, but rather to help you get started on your bylaw review.

### Members

| Item                              | Provision in new Act                                                                                                                                     | Scope of what bylaws can or must do                                            | Implications for your bylaws                                                                                                                                                                                             |
|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Classes of membership</b>      | Society can have more than one class of members. If it does, at least one class must be voting members.                                                  | Bylaws must set out rights and obligations of each class of members.           | Under old Act, non-voting members had to be fewer in number than voting members. That restriction has been removed in new Act.                                                                                           |
| <b>Application for membership</b> | Bylaws must provide for how members are admitted to membership.                                                                                          | Bylaws must provide procedure.                                                 | New model bylaws provide that a person may apply to board and becomes a member on board's acceptance of application. Consider whether more formal application and approval process is needed.                            |
| <b>Age of members</b>             | An individual under age 19 may be admitted as a member.                                                                                                  | Bylaws may provide otherwise.                                                  |                                                                                                                                                                                                                          |
| <b>Membership dues</b>            | Bylaws must provide any rights and obligations arising from membership.                                                                                  | If there are membership dues, bylaws must provide for how they are determined. | New model bylaws provide that directors determine annual membership dues. Old Schedule B model bylaws provided that directors determined first annual membership dues, and after dues were determined by members at AGM. |
| <b>Transferability</b>            | Membership is non-transferable.                                                                                                                          | Bylaws may provide otherwise.                                                  |                                                                                                                                                                                                                          |
| <b>Expulsion of members</b>       | Member may be disciplined or expelled by special resolution. Society must send member notice, including reasons, and give member opportunity to respond. | Bylaws may provide otherwise.                                                  | New model bylaws are silent. Old Schedule B model bylaws had provisions that were similar but slightly different from wording in new Act.                                                                                |

## Members' meetings

| Item                                             | Provision in new Act                                                                                                                              | Scope of what bylaws can or must do                                                                                                                                                                                                                                                    | Implications for your bylaws                                                                                                                                                                                                                         |
|--------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Timing of AGM</b>                             | An AGM must be held in each calendar year (requirement under old Act that AGM be held within 15 months of last AGM is removed).                   | New model bylaws say timing of AGM is at director's discretion. Old Schedule B model bylaws included requirement that AGM be held within 15 months of last AGM.                                                                                                                        | If using old Schedule B model bylaws, consider removing requirement that AGM be held within 15 months of last AGM.                                                                                                                                   |
| <b>Notice of general meetings</b>                | Notice of date, time and location of general meeting must be sent to every member at least 14 days before meeting.                                | Bylaws may provide a different notice period of at least 7 days and not more than 60 days before meeting. For societies with more than 250 members, bylaws may permit a new alternate notice mechanism (featuring emailing members and publishing notice on society website).          | Consider reducing notice period for general meetings to as few as 7 days. For societies with more than 250 members, consider adding clause permitting new alternate notice mechanism.                                                                |
| <b>Quorum at general meetings</b>                | Quorum is 3 voting members or a greater number if bylaws provide.                                                                                 | Bylaws may provide for a quorum that is greater than 3 voting members by specifying the number of voting members or that it be calculated as a percentage or on another basis. New model bylaws provide for quorum of 3 voting members or 10% of voting members, whichever is greater. | If considering the new model bylaws provision, consider whether 3 voting members is too few for your society, and what percentage might be a good fit for your society (e.g., for societies with larger memberships, 10% can be hard to achieve).    |
| <b>Participation at general meetings</b>         | Members may participate by telephone or other communications medium if all persons participating are able to communicate with each other.         | Bylaws may provide otherwise. For example, bylaws could restrict or prohibit electronic participation at members' meetings.                                                                                                                                                            | Act already states that society is not obligated to provide means for electronic participation to occur. Decision to hold a meeting by electronic means is at discretion of board.                                                                   |
| <b>Proxy voting</b>                              | Bylaws must specify whether proxy voting is permitted.                                                                                            | Bylaws may permit proxy voting. Unless bylaws provide otherwise, a proxy is valid only at the meeting for which it is given.                                                                                                                                                           | If you decide to permit proxy voting, consider establishing requirements in bylaw for proxies to be effective.                                                                                                                                       |
| <b>Voting threshold for a special resolution</b> | Voting threshold to pass a special resolution is 2/3 of votes cast at a member's meeting (under old Act, voting threshold was 3/4 of votes cast). | Bylaws may set a higher voting threshold than 2/3, either generally or for specific resolutions. The voting threshold must be spelled out as unanimous, a fraction or percentage of votes cast, or as a formula.                                                                       | If your bylaws currently set a voting threshold of 3/4, that threshold prevails - unless you alter the bylaw. The exception is for a vote to remove a director from office - the new default threshold of 2/3 applies regardless of what bylaws say. |

## Directors

| <b>Item</b>                                                                    | <b>Provision in new Act</b>                                                                                                                                                                            | <b>Scope of what bylaws can or must do</b>                                                                                                                | <b>Implications for your bylaws</b>                                                                                                                                                                                |
|--------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Number of directors</b>                                                     | Society must have at least 3 directors, no maximum.                                                                                                                                                    | Bylaws may set minimum and maximum number of directors (can't go below 3 directors, unless a member-funded society, which can have as few as 1 director). | New model bylaws set minimum number of directors at 3 and maximum at 11. Old Schedule B model bylaws set minimum at 5 directors. A society is <b>not</b> required to set a minimum or maximum number of directors. |
| <b>Election or appointment of directors</b>                                    | Bylaws must provide for how directors are elected or appointed. New Act provides more flexibility for how directors are elected or appointed.                                                          | Bylaws must provide procedure.                                                                                                                            | New model bylaws provide that at each AGM, voting members elect or appoint board.                                                                                                                                  |
| <b>Director's age</b><br>(effective in 2018 for existing societies)            | Individuals aged 16 or 17 can act as directors or senior managers, so long as majority of directors are at least age 18.                                                                               | Bylaws may set out additional qualifications for directors.                                                                                               | If society wishes to have 16- or 17-year-old directors or senior managers, bylaws must provide authorization as of 2018 - consider adding this clause now.                                                         |
| <b>Director's qualifications</b><br>(effective in 2018 for existing societies) | Directors cannot be declared incapable, be undischarged bankrupt, or have committed certain crimes within last 5 years.                                                                                | Bylaws may set out additional qualifications for directors.                                                                                               |                                                                                                                                                                                                                    |
| <b>Director's term of office</b>                                               | Director's term of office expires at the close of the next AGM after election or appointment.                                                                                                          | Bylaws may provide otherwise.                                                                                                                             | Bylaws could set different terms of office, such as two-year terms or staggered terms. If your society uses a board policy to set terms for longer than one year, that provision will need to be added to bylaws.  |
| <b>Indemnification</b>                                                         | Directors and senior managers who are found legally liable (e.g., for negligence) can be indemnified by society in certain situations.                                                                 | Bylaws may restrict society's ability to indemnify directors and senior managers.                                                                         | Bylaws could prohibit the payment of indemnity, restrict the circumstances for its payment, or cap the amounts that may be paid.                                                                                   |
| <b>Removal of directors</b>                                                    | Director may be removed by special resolution of members (despite any provision of bylaws) or by any method provided in bylaws. (Under old Act, director could only be removed by special resolution.) | Bylaws may provide any method for removing directors.                                                                                                     | If bylaws don't currently have a mechanism for removing a director, consider adding a provision allowing directors to remove a director.                                                                           |

## Directors' meetings

| Item                            | Provision in new Act                                                                                                                                 | Scope of what bylaws can or must do                                                                                                               | Implications for your bylaws                                                                                                                                                                                                                           |
|---------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Proceedings of directors</b> | Directors may pass directors' resolution without a meeting if all directors consent in writing.                                                      | Bylaws can provide for a written consent resolution to be passed by a fewer number of directors or "in any other manner".                         | New model bylaws are silent. Old Schedule B model bylaws require all directors to sign written consent resolution. Consider whether to take advantage of flexibility in new Act to have a fewer number of directors pass a written consent resolution. |
| <b>Borrowing of funds</b>       | Society may borrow funds at director's discretion. (Under old Act, issuing a debenture on borrowing funds required a special resolution of members.) | Bylaws may limit directors' ability to borrow funds - e.g., by requiring an ordinary or special resolution of members before borrowing can occur. | Old Schedule B model bylaws require a special resolution of members to issue a debenture (effectively curtailing the increased flexibility provided under new Act).                                                                                    |
| <b>Investment of funds</b>      | Society may invest its funds in any prudent investment.                                                                                              | Bylaws may expand or limit society's power to invest - e.g., by expanding the permissible types of investment to include more risky ones.         | New model bylaws and old Schedule B model bylaws are both silent on investment of funds.                                                                                                                                                               |

### Remuneration of directors and signing authority

| Item                                                                        | Provision in new Act                                                                                 | Scope of what bylaws can or must do                                                                                                                              | Implications for your bylaws                                                                                                                                              |
|-----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Director's remuneration</b> (effective in 2018 for existing societies)   | Directors can not be paid for being directors unless remuneration is authorized by society's bylaws. | If society wishes to remunerate directors for being directors, bylaws must provide authorization. Bylaws could cap remuneration or impose conditions on payment. | Given that in 2018, a society wishing to remunerate directors for being directors will require bylaw authorization to do so, it makes sense to consider such a bylaw now. |
| <b>Reimbursement of expenses</b> (effective in 2018 for existing societies) | Directors' expenses, so long as they are reasonable, may be reimbursed.                              | Bylaws may restrict or prohibit reimbursement. Bylaws could cap reimbursement or impose conditions on payment.                                                   | New model bylaws are silent. Old Schedule B model bylaws require that directors "must be reimbursed for all expenses necessarily and reasonably incurred".                |

### Inspection of records

| Item                            | Provision in new Act                                                                         | Scope of what bylaws can or must do                                                                                                                                                                          | Implications for your bylaws                                                                                                                 |
|---------------------------------|----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Member access to records</b> | Members are entitled to inspect all records of a society (as are directors).                 | Bylaws may restrict member access to some records (accounting records and records of directors' meetings except relating to conflicts disclosures).                                                          | If your bylaws currently restrict member access to records more than is permitted by the new Act, you may want to remove or amend the bylaw. |
| <b>Public access to records</b> | Public is entitled to receive a copy of society's financial statements and auditor's report. | Bylaws may grant public access to more of the society's records (e.g., minutes of members' and directors' meetings, accounting records, and conflict disclosures), but not to society's register of members. | New model bylaws and old Schedule B model bylaws are both silent on public access to records.                                                |



## Bylaws that can't be amended

Note that on transition, there are two types of bylaws that cannot be amended:

- previously unalterable provisions, and
- reporting society provisions.

### Previously unalterable provisions

On transition, any provisions that are in a society's constitution other than the name or purposes must be moved to the society's bylaws. Any "unalterable" provisions must be identified as having been "previously unalterable".

**The unalterable provisions must not be changed on transition.** Once a society has transitioned, the previously unalterable provisions can be altered by a special resolution of members. But on transition, the previously unalterable provisions cannot be amended.



Any amendments to previously unalterable provisions must be approved by a special resolution passed or consented to **after** the society has filed its transition application. In other words, societies cannot approve changes to previously unalterable provisions to be effective after transition in a members' meeting held before the completion of the transition process. This two-step process (transition first, then consider amendment later) is intended to ensure that members have the opportunity to consider any amendments to these previously unalterable provisions, which typically incorporate fundamental principles or values of a society.

### Reporting society provisions

If a society was a reporting society under the old *Society Act*, it must incorporate new reporting society provisions into its bylaws. Reporting societies under the old Act include hospitals, insurance societies and other societies that require government consent to incorporate, as well as any society that has a subsidiary. (A society is not reporting just because it files annual reports with the Corporate Registry.)

The new reporting society provisions, which are in Schedule 3 of the Societies Regulation <sup>[2]</sup>, contain special rules, such as the requirement to have an auditor. These provisions **must be included without alteration** in the bylaws filed with the transition application. Once the provisions have been included in a society's bylaws on transition, they can be altered like any other bylaw.

## How to amend bylaws or adopt new ones

To amend existing bylaws or adopt new bylaws on transition requires member approval by special resolution.

Changes made to bylaws before November 28, 2016 required approval by 3/4 of the votes cast at a members' meeting. After that date, changes to bylaws require approval by 2/3 of votes cast. The exception is if a society has a higher voting threshold for special resolutions (such as 3/4) set out in their bylaws. In that case, the higher threshold will apply, as increased thresholds are permitted under the new Act.

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## References

- [1] [http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/corporations/societies/schedule\\_b\\_bylaws.docx](http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/corporations/societies/schedule_b_bylaws.docx)
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# Filing a Transition Application

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**This section was last reviewed for legal accuracy by Mary Childs, Michael Blatchford and Steve Carey in November 2016.**

All existing societies in British Columbia are required to "transition" within a two-year period from when the new *Societies Act* came into effect on November 28, 2016. Transitioning involves filing an application in a new electronic system called Societies Online <sup>[1]</sup>.

## First, are you sure you're ready to file?


To file the transition application for a society, **you must first complete the five steps in preparing for transition.** Here is a checklist of what you must have done in advance:

- You decided whether the society wishes to designate itself as a member-funded society. (And if the answer is yes, your members have approved this by special resolution.)
- You brought the society up-to-date in its Corporate Registry filings: its latest annual report is filed and you checked that the registered office and director information is up-to-date.
- You have in hand the society's constitution, rearranged as required, in an electronic format that can be copied and pasted, such as a word processing document.
- You have in hand the society's bylaws, consolidated as required or duly adopted by the members, in an electronic format that can be uploaded, such as a word processing document or a PDF.

## Step 1. Get your society's Registry Key

In November 2016, every society in BC should have received by regular mail an onboarding letter from the Corporate Registry. This letter included a **Registry Key** (similar to a password) that is unique for your society. If your society did not receive an onboarding letter, contact the Corporate Registry at 1-877-526-1526 to receive your Registry Key.

You need to input this one-time Registry Key to access your society's information in the Societies Online system. Once you input the one-time Key, you will be prompted to change your society's Registry Key. (You will need to provide the updated Registry Key to anyone else who is responsible for completing filings on behalf of the society.)

|                                                                                     |                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | Once you input the Registry Key for your society in the Societies Online system, you become affiliated with that society. When you next login to Societies Online, you will go directly to your society's "dashboard" in the system. |
|-------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## Step 2. Get yourself a Basic BCeID

The BC government has an online service called BCeID that allows you to use one user ID and password to sign in securely to various government services. To file a transition application, you need your own **BCeID account**. A BCeID is different from the Registry Key. The Registry Key belongs to the society. A BCeID belongs to an individual.

There are three different kinds of BCeID accounts: Basic, Personal, and Business. To file a transition application, you need a **Basic BCeID account**, which does not require verification of your identity in person (unlike the Personal BCeID account).

You can obtain the Basic BCeID for free in a few minutes online:

- Go to the Basic BCeID Registration Page <sup>[2]</sup>.
- Provide the requested contact information and choose a User ID and password.

An email will be sent to the email address you provided confirming that you have registered a Basic BCeID account.

## Step 3. File the transition application

This slideshow <sup>[3]</sup> walks you through the process to file the transition application on Societies Online <sup>[1]</sup>.

## Step 4. If your society is a registered charity, notify Canada Revenue Agency

If your society is a registered charity, notify the Canada Revenue Agency about any changes to the society's constitution and bylaws, and provide the CRA with a copy of the amended documents. See the CRA website <sup>[4]</sup> for information on providing the CRA with a copy of the amended constitution and bylaws.

## Common questions

### Is there a fee to transition?

There is no fee to file the transition application. If your society has annual reports outstanding, or out-of-date information on file with the Corporate Registry about the society's directors or registered office, there are fees to bring that information up to date.

### When can the transition application be filed?

The Societies Online system <sup>[1]</sup> went live with the coming into force of the new *Societies Act* on November 28, 2016. Societies have a two-year window, until November 28, 2018, to file their transition application.

### Do you need CRA approval?

No. Societies that are registered charities will have to notify the Canada Revenue Agency about changes to the society's constitution and bylaws and provide the CRA with a copy of the amended documents. But as long as your society's charitable purposes are not altered, there is no need for CRA approval to complete the transition process under the new *Societies Act*.

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## References

- [1] <http://www.gov.bc.ca/SocietiesOnline>
- [2] [https://www.bceid.ca/register/basic/account\\_details.aspx?type=regular](https://www.bceid.ca/register/basic/account_details.aspx?type=regular)
- [3] <http://www.slideshare.net/mdrewjackson/filing-a-transition-application-on-societies-online>
- [4] <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtng/chngs/bylws-eng.html>

## Further Help

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**This section was last reviewed for legal accuracy by Drew Jackson in November 2016.**

Further information and some options for assistance in complying with the new *Societies Act*.

### The new law

- New *Societies Act* <sup>[1]</sup>, effective November 28, 2016
- New Societies Regulation <sup>[2]</sup>, Societies Transitional Interim Regulation <sup>[3]</sup> (2015) Societies Transitional Interim Regulation <sup>[4]</sup> (2016)

### Read more about the new law

- New Societies Act page <sup>[5]</sup>: From the Corporate Registry, FAQs about the new Act, links to word processing versions of the new model bylaws <sup>[6]</sup> and the old Schedule B model bylaws <sup>[7]</sup>, and a transition guide "Preparing for BC's New Societies Act <sup>[8]</sup>".
- Societies Act FAQs: From Law for Nonprofits <sup>[9]</sup>, frequently asked questions about the new legislation.
- Societies Act Research Guide <sup>[10]</sup>: From Courthouse Libraries BC <sup>[11]</sup>, links to backgrounders and other stages in the development of the new law.

### Learn more about the new law

- Societies Act videos <sup>[12]</sup>: This series of six videos created by Drew Jackson, author of this guide, takes you through the steps to transition an existing society under the new *Societies Act*, including conducting a bylaw review and filing the transition application online.
- Law for Nonprofits workshops <sup>[13]</sup>: In workshops on the new *Societies Act*, offered periodically, participants learn what they need to know to transition effectively under the new Act.
- Affordable housing sector webinars <sup>[14]</sup>: BC Non-Profit Housing Association and Law for Nonprofits are teaming up to provide free webinars focusing on changes under the Act that impact societies funded by BC Housing.

## Get support in your community

- Societies Act Transition Hubs <sup>[15]</sup>: Coordinated by Law for Nonprofits, the Transition Hubs provide access for smaller and rural non-profit societies to volunteer mentors for information and consultations on the new Act.
- Housing Hub <sup>[16]</sup>: BC Non-Profit Housing Association and Law for Nonprofits are teaming up to provide dedicated support to societies funded by BC Housing to transition under the new Act.

## Get individualized help

- Law for Nonprofits clinics <sup>[17]</sup>: Volunteer law students at UBC law school and University of Victoria law school's Business Law Clinic answer questions on the new Act via email.
- Access Pro Bono <sup>[18]</sup>: If you are a member of a small non-profit society in BC, Access Pro Bono may be able to find a lawyer to assist your organization on a pro bono basis (that is, for free) in meeting the requirements under the new Act.

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## References

- [1] <http://canlii.ca/t/8v16>
- [2] <http://canlii.ca/t/8z1m>
- [3] <http://canlii.ca/t/8z1n>
- [4] <http://canlii.ca/t/8z7t>
- [5] <http://www2.gov.bc.ca/gov/content/employment-business/business/not-for-profit-organizations/societies-act-transition>
- [6] [http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/corporations/societies/model\\_bylaws.docx](http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/corporations/societies/model_bylaws.docx)
- [7] [http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/corporations/societies/schedule\\_b\\_bylaws.docx](http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/corporations/societies/schedule_b_bylaws.docx)
- [8] [http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/corporations/societies/societies\\_act\\_transition\\_guide.pdf](http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/corporations/societies/societies_act_transition_guide.pdf)
- [9] <http://lawfornonprofits.ca/>
- [10] <http://www.courthouselibrary.ca/training/HowToGuides/societies-act>
- [11] <http://www.courthouselibrary.ca/>
- [12] [http://www.youtube.com/playlist?list=PL11-9Wt1f8KjcFm0\\_4xrm3hW3nURQashD](http://www.youtube.com/playlist?list=PL11-9Wt1f8KjcFm0_4xrm3hW3nURQashD)
- [13] <http://lawfornonprofits.ca/workshops/>
- [14] <http://bcnpha.ca/resources/new-societies-act/>
- [15] <http://lawfornonprofits.ca/transition-hubs>
- [16] <http://lawfornonprofits.ca/transition-hubs/transition-hubs-housing>
- [17] <http://lawfornonprofits.ca/transition-hubs/>
- [18] <http://accessprobono.ca/legal-help-non-profits>