

Societies Act FAQs

Introduction to Societies Act FAQs

About these FAQs

The Societies Act FAQs were prepared by Pacific Legal Education and Outreach Society^[1] (PLEO) with help and support from the University of Victoria Faculty of Law Business Law Clinic. They were originally intended as a support for non-profit organizations in British Columbia undergoing transition to BC's then-new *Societies Act*^[2], SBC 2015, c 18.

In 2021, the FAQs were updated to remove the focus on transition, and additional content was added to help individuals understand how to incorporate, manage, and dissolve non-profits in BC. The FAQs were updated by British Columbia law student Sheldon Falk with help from Paul Wood. They were reviewed for accuracy by lawyer Martha Rans, Founder and Legal Director of PLEO.



For more information, resources, templates, workshops, and webinars, go to www.pacificlegaloutreach.com^[3].
For more information, see our About Us^[4] page.

About Pacific Legal Education and Outreach Society

The Pacific Legal Education and Outreach Society^[3] aims to empower artists and non-profits in Canada to access justice efficiently, effectively, and equitably. With this mission, PLEO works to shift the paradigm in how non-profits and artists experience the law, providing them with accessible tools, education, and information needed to prevent a legal issue before it happens.

For more information, see our About Us^[4] page.

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References

- [1] <https://www.pacificlegaloutreach.com>
- [2] <https://canlii.ca/t/544bg>
- [3] <https://www.pacificlegaloutreach.com/>
- [4] <https://www.pacificlegaloutreach.com/about>

Part One: Incorporating a Non-Profit Society

Societies, Charities, and Federal Not-For-Profit Corporations - What's the Difference?

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Pacific Legal Education and Outreach Society (PLEO) in January 2024.

What is a society?

In British Columbia, a non-profit organization is called a society. Societies are governed by a piece of legislation called the *Societies Act* ^[2], SBC 2015, c 18. The *Societies Act* sets out the rules and procedures for incorporating, managing, and dissolving a non-profit in British Columbia. Societies are registered with BC Registries through the Societies Online ^[1] website. Societies have less stringent reporting requirements than charities, but they cannot issue tax receipts for donations. A society can operate a business to support its purposes. Societies may have a wide range of purposes, including non-charitable purposes like sports and social clubs. For more information on incorporation, keep reading these FAQs or see the Registrar's Guide to Non-Profit Societies ^[2].

What is a charity?

Charities are registered with the Canada Revenue Agency (CRA). Charities can issue tax receipts for donations, but they have more stringent reporting requirements than societies. It can take 9-12 months to become a registered charity and is a major undertaking. A charity's activities must be exclusively charitable. There are also only four purposes the CRA accepts for charities: advancement of education; relief of poverty; advancement of religion; other purposes beneficial to the community (e.g. health, environment). According to CRA policy, while a charity can run a business, it must be either run substantially by volunteers or linked and subordinate to the charity's purpose. An organization will usually have to be legally established (i.e. incorporated) before it can apply for charitable status. This means that it is possible for some societies with appropriate charitable purposes and activities to later register for charitable status. For more information on registering for charitable status, see the CRA's Charity Registration FAQs ^[3], the CRA's Charity Registration Guide ^[4] and Charity Central ^[5].

What is a federal not-for-profit corporation?

Federal not-for-profit corporations are incorporated federally under the *Canada Not-For-profit Corporations Act* ^[6], SC 2009, c 23. Most federal not-for-profit corporations have ongoing operations in more than one province or territory.

Key Differences between Federal Not-for-profit Corporations and BC Societies

Topic	Federal Not-for-profit Corporation	BC Society (non-member funded)
Constitution	Contains name, purposes, registered office location, range of directors, restrictions on activities, liquidation clause	Contains name and purposes only
Bylaws	Directors may make, amend, and repeal bylaws to be approved by members	Voting members pass bylaw amendments at general meetings
Directors	Minimum one director; must have a public accountant on the board if soliciting corporation	Minimum three directors, one of whom resides in BC
Financial Review Requirements	Stringency of review depends on amount of revenue - can be onerous; members may waive audit if revenue below \$50,000	Not required to have an audit unless required by the members or the bylaws (or by funders)
Financial Disclosures	Must prepare financial statements every calendar year; Must send summary financial statements to members prior to AGM	Must prepare financial statements every calendar year; Must disclose all employees or contractors paid over \$75,000 per year; Directors can only be paid if bylaws permit; If directors receive any money from the society, it must be disclosed in financial statements; Must provide financial statements to members of public upon request

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References

- [1] <https://www.bcregistry.ca/societies/>
- [2] <https://www2.gov.bc.ca/gov/content/employment-business/business/not-for-profit-organizations>
- [3] <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/applying-registration/questions-answers-about-applying-registration.html>
- [4] <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/registering-charitable-qualified-donee-status/apply-become-registered-charity.html>
- [5] <https://www.charitycentral.ca/>
- [6] <https://canlii.ca/t/535b0>

Set up a Societies Online Account

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Pacific Legal Education and Outreach Society (PLEO) in January 2024.

Signing Up for a BCeID Account

What is BCeID?

BCeID is an online account that allows individuals to access a wide variety of online services provided by the government of British Columbia, including Societies Online. A BCeID account is required to incorporate a non-profit society.

What is Societies Online?

Societies Online is the online portal for directors to manage the non-profit's incorporation status, access foundational documents, and file annual reports. All non-profits in British Columbia are incorporated and managed using Societies Online. A BCeID account is required to use Societies Online. To sign in to Societies Online, go to <https://www.bcregistry.ca/societies/>.

How does someone create a BCeID Account?

Before a director can access the society dashboard on Societies Online, the director must create or sign into their own BCeID account. There are three types of BCeID accounts: basic, personal, and business. Directors can access Societies Online using a *basic* BCeID account. Since a BCeID account is tied to an individual, directors and senior staff who need to access Societies Online must each have their own BCeID account. To sign up for a basic BCeID account, go to <https://www.bceid.ca/>. Alternatively, go to <https://www.bcregistry.ca/societies/> and click *Register for Basic BCeID*.

Creating a New Non-profit Society

How does someone incorporate a new non-profit society?

In British Columbia, all non-profits are incorporated using Societies Online. While there are several steps to incorporation, the first step is to create a Basic BCeID account and sign in to Societies Online at <https://www.bcregistry.ca/societies/>. Once signed in to Societies Online, start the incorporation process by clicking *Incorporate a New Society*.

Accessing an Existing Non-profit Society

How does a director access an existing non-profit society on Societies Online?

Sign in to Societies Online at <https://www.bcregistry.ca/societies/>. Once signed in to Societies Online, access an existing non-profit by clicking *Access an Existing Society*. Type either the full or partial legal name or registration number of the non-profit you wish to access and click *Lookup*. Search shows only the top five results. If your non-profit does not show up, you may need to further refine your search.

Select the non-profit from the search results and enter the non-profit's registry key.

Registry Keys

How does a director get a registry key?

Anybody registering, incorporating, amalgamating or otherwise being formed under the *Societies Act* will be asked to set up a registry key.

Non-profits incorporated under the old *Society Act* were sent an onboarding letter containing a temporary registry key. This letter was sent out prior to 28 November 2016.

What if the directors can't find or have lost the registry key?

If the registry key has been lost, a new registry key can be requested from the Registrar. The Registrar can be contacted by emailing bcolhelp@gov.bc.ca or by calling 1-877-526-1526 (8:30am to 4:30pm PST, except weekends and holidays).

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Choose a Name

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Name Request

How does a director submit a name request?

Sign in to Societies Online at <https://www.bcregistry.ca/societies/>. Once signed in to Societies Online, click *Incorporate a New Society*. Then, click *Request a Name*.

Non-profit names must be unique and include either the word “association” or “society.” Conducting a name search using the NUANS database ^[1] is an easy way to determine if there is already a non-profit or business with the same name.

Acceptable names usually contain three parts: 1) a unique word, such as a person’s name or local area name (e.g. “Peggy” or “Deep Cove” 2) a word that describes the nature of the non-profit (e.g. “Artists” or “Soccer”) and 3) a corporate designation (e.g. “society” or “association”). For more information, see the BC Registry’s Info Page on Naming Rules ^[2].

Include "Society" or "Association" in the Name

Does the non-profit society have to include the word "society" or "association" in its name?

Yes. However, you are not required to use the non-profit's full legal name in all circumstances. For example, in logos or on social media, using the full legal name is not required.

Requesting Use of "BC" or "British Columbia" in the Name

Can a non-profit society use "BC" or "British Columbia" in its name?

A non-profit may only use "BC" or "British Columbia" in its name if it gets written consent to do so. For more information and to download or print request forms, see the Registry's webpage on Using BC in a Name ^[3].

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References

[1] <https://canada-nuans.ca/>

[2] <https://www2.gov.bc.ca/gov/content/employment-business/business/managing-a-business/permits-licences/businesses-incorporated-companies/approval-business-name>

[3] <https://www2.gov.bc.ca/gov/content/governments/celebrating-british-columbia/symbols-of-bc/bc-in-name>

Draft a Constitution

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Constitution

What is a constitution?

A non-profit's constitution is one of the two foundational documents that are required in order for a non-profit to incorporate. The constitution sets out:

- the name of the non-profit, and
- the purposes of the non-profit.

Can anything else be in the constitution?

No. Only the name of the non-profit and the non-profit's purposes can be in the constitution. Any other provisions, such as winding up and dissolution clauses, limits on membership, or office location, should be in the bylaws.

Can the constitution be changed?

Yes. The non-profit can change the constitution by passing a special resolution at a meeting of members, such as an AGM or SGM. Once members have passed a special resolution, the non-profit must file a constitution amendment application through BC Societies Online.

Exception: if the non-profit was incorporated before the new Societies Act took effect on 28 November 2016 and has not yet transitioned, special rules apply when those non-profits transition to the new Act. See the transition appendix for more information.

Name

What can the non-profit be named?

The name of the non-profit that is in the constitution must be one that was approved by the registrar. For more information on non-profit names, see the Choose a Name section.

Purposes

What purposes are allowed?

The purposes of the non-profit determine what actions the non-profit can undertake and can include agricultural, artistic, benevolent, charitable, educational, environmental, patriotic, philanthropic, political, professional, recreational, religious, scientific, social or sporting purposes. Examples include a theatre company, a curling club, a daycare, and a youth treatment centre. Note that not all permitted non-profit purposes are charitable, which could cause issues if in the future the non-profit wishes to become a registered charity. For more on charitable purposes, see the CRA Charities Directorate website ^[1].

What purposes are not permitted?

The non-profit may not state as its purpose the carrying on of a business for profit or private gain. In other words, the non-profit's purpose can't be to make money.

However, this doesn't prevent the non-profit from running a business, so long as the business proceeds go toward the non-profit purposes of the non-profit. For example, a seniors network might operate a thrift shop (a business), but all the proceeds go toward providing services and programming for seniors (the non-profit's purpose).

(Optional) Member Funded Society Clause

Despite the rule that only permits the name and purposes in the non-profit's constitution, if a non-profit wishes to be a member funded society, the constitution must include a clause to that effect.

However, member funded society status is a unique status that must be considered very carefully. For more information, see the Member-Funded Societies page.

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References

[1] <https://www.canada.ca/en/services/taxes/charities.html>

Draft Bylaws

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Bylaws

What are bylaws?

Bylaws are the rules by which the non-profit operates. They contain rules about important matters such as meeting rules, borrowing money, elections, and director remuneration. Bylaws are the second foundational document the non-profit needs to submit to the registrar in order to incorporate.

What needs to be in the non-profit society's bylaws?

At a minimum, these bylaws must contain rules regarding all of the matters listed in s. 11 ^[1] of the *Societies Act*. Both the Schedule 1 (Model) Bylaws ^[2] and the old Schedule B Bylaws ^[3] fulfill the minimum requirements. Under s. 11 ^[1], the minimum requirements for bylaws are:

- Membership:
 - how members are admitted;
 - any rights or obligations of membership;
 - whether members can lose good standing and what causes a member to lose good standing;
 - if there is more than one class of members, a description of each class and the respective rights and obligations.
- Directors:
 - how directors are elected or appointed;
 - the length or expiry of a director's term (if the bylaws don't address this, the default term is until the end of the next annual general meeting after the director's election or appointment).
- General Meetings:
 - quorum for general meetings, which is the minimum number of members required to conduct business (if the bylaws don't address this, the default is 3 voting members);
 - whether proxy voting is permitted;
 - if electronic voting, voting by mail, or delegate voting is permitted, the rules for how that vote is conducted.
- Restrictions, if any, on the:
 - activities of the non-profit;
 - powers of the non-profit.

What can't be in the non-profit society's bylaws?

The non-profit's bylaws can't contain any rules that are in conflict with the *Societies Act*. Any bylaw in conflict with the *Societies Act* is invalid and has no effect.

As a best practice, policies that govern the day-to-day operations of a non-profit should not be in the bylaws.

Model Bylaws

Is there a set of generic bylaws the non-profit can use? Where can I find example bylaws?

The non-profit does not need to draft bylaws from scratch, although that is certainly an option.

There are two sets of model bylaws the non-profit can either adopt as is or modify to fit its needs. The first of these bylaws is the Schedule 1 Bylaws ^[4] from the *Societies Act*. The second is the Schedule B Bylaws ^[3] from the old act. Both sets of bylaws are in compliance with the *Societies Act*. A comparison of the two sets of bylaws is below.

Another common practice is to adopt or modify the bylaws of an existing non-profit with similar purposes. However, take extra caution as those bylaws may not be compliant with the *Societies Act*.

In either case, the bylaws should reflect the nature, character, and operation of the non-profit, its board, and members.

What are the Model Bylaws (Schedule 1)?

The Model Bylaws are provided as an example of a set of bylaws that a non-profit can adopt when it is incorporated.

Does the non-profit society have to use the model bylaws?

No, the non-profit does not have to use the model bylaws. While the non-profit may choose to adopt the model bylaws, they are provided only as an example. A non-profit's bylaws ought to reflect the individual non-profit and relations amongst its members.

Schedule B Bylaws

Are the old Schedule B Bylaws compliant with the *Societies Act*?

Yes, the old Schedule B bylaws are compliant with the *Societies Act*. The Schedule B Bylaws are the model bylaws that were attached to the previous *Society Act*. Many non-profits adopted a version of these bylaws. If your non-profit has been using the Schedule B Bylaws and they have been working for you, it is likely that you will not have to change your bylaws. The non-profit may want to do some minor housekeeping and updating.

The Schedule B Bylaws can be found at BC Registry Services ^[3].

Major Differences Between Schedule 1 and Schedule B Bylaws

Schedule 1 Bylaws	Schedule B Bylaws	<i>Societies Act</i>
Annual membership dues, if any, are determined by the board	Annual membership dues are determined at the annual general meeting	Not required
A member is not in good standing if they failed to pay membership fees; A member not in good standing ceases to be a member after six months	All members are in good standing except those with unpaid membership fees; A member not in good standing ceases to be a member after 12 months	Good standing is not defined
A member not in good standing may not vote in a general meeting	Silent	Good standing is not defined
Silent	Rules and procedures for the expulsion of members	Set out in act
Silent	Rules about when the first annual general meeting must take place	Set out in act
Quorum for a general meeting is three members of 10% of all members, whichever is greater	Quorum for a general meeting is three members, or more if determined at a general meeting	Quorum is three members, unless bylaws provide for a higher threshold
Any member may be appointed to be the chair. Rules about who becomes the chair if none is appointed are similar to the old restrictions	Restrictions on who may chair a meeting, with the president or vice-president being the default	Silent
A notice of a general meeting must state the nature of any special business in sufficient detail to permit a member to form a reasoned judgement concerning that business	Silent	Set out in act
If a meeting is adjourned for more than 10 days, notice of the adjourned meeting must be given; If a meeting is adjourned for more than 30 days, notice of the adjourned meeting must be given	If a meeting is adjourned for more than 10 days, notice of the adjourned meeting must be given	Set out in act
Voting must be by a show of hands, an oral vote, or another method that adequately discloses the intention of the voting members; the chair or two voting members may request voting by secret ballot	Voting is by a show of hands	Set out in act
The non-profit must have no fewer than 3 and no more than 11 directors	There must be five or more directors or the number of directors may be determined at a general meeting	Minimum is three; no maximum
Silent	If a director ceases to hold office, directors must appoint a member to take their place	Set out in act
If a secretary is absent from a meeting, another individual must be appointed to act as secretary in that meeting; the treasurer can make arrangements for other people to conduct their duties (e.g. a bookkeeper)	Rules concerning duties of officers are largely the same, but some difference noted to the left	Duties set out in act
Any director, other than the president, can hold more than one officer role	Rules restricting a single individual from filling multiple officer roles	As set out in act
Silent	Debentures cannot be issued without authorization of special resolution	No longer required by the act

Silent	Members may, by special resolution, restrict borrowing powers of directors until the next annual general meeting	Act no longer sets limits
Contracts signed by the non-profit must be signed by the president and one other director; If the president is unable to provide a signature, contracts must be signed by the vice-president and another director; If both the president and vice-president are unable to provide a signature, contracts must be signed by any two other directors or by one or more individuals authorized by the board to sign contracts on behalf of the non-profit	Example	Not required in act
Silent	Rules concerning auditors under the act	act sets out rules

As you can see, the Schedule B Bylaws are more detailed than the Model Bylaws. Furthermore, the Model Bylaws contain certain things not required by the *Societies Act*. Thus, non-profits planning to use the Model Bylaws should read them carefully first and customize them to fit the non-profit's needs, rather than simply adopting them.

Custom Bylaws

Can the non-profit create its own custom bylaws?

Yes, as long as the non-profit's bylaws cover the minimum requirements and are not in conflict with the *Societies Act*.

Hybrid (Modified Model Bylaws)

Can the non-profit adopt a modified version of the Model Bylaws?

Yes, the non-profit can alter the Model Bylaws to meet its needs, as long as the modifications are not in conflict with the *Societies Act*. Some modifications to the Model Bylaws a non-profit might want to consider include:

- Allowing for members' meetings to be held electronically;
- Restricting access to s. 20(2) records (board minutes and accounting records).

Some modifications a non-profit might want to consider for Schedule B bylaws:

- Allowing for emailing the notice of a members' meeting (AGM/SGM);
- Removing the debentures limitation;
- Clarifying how officers are appointed;
- Removing seal provisions (non-profits do not need to have a seal under the *Societies Act*).

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References

- [1] https://www.bclaws.gov.bc.ca/civix/document/id/lc/statreg/15018_01#section11
- [2] https://www.canlii.org/en/bc/laws/regu/bc-reg-216-2015/latest/bc-reg-216-2015.html#Schedule_1__23022
- [3] https://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/registries-other-assets/schedule_b_bylaws.pdf
- [4] https://www.bclaws.ca/civix/document/id/complete/statreg/216_2015/search/search?84#Schedule1

Select Applying Directors

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Email Address

What email address should the non-profit provide?

The non-profit should list an email address at which it will consistently and regularly be able to receive emails. For this reason and to ensure continuity for future directors, the applicants for incorporation might consider creating an email account specifically for the non-profit, rather than using a personal email address.

Contact Information of Three Applying Directors

Can I apply for incorporation on my own?

No. To submit an application for incorporation, the non-profit must provide the names and contact information of at least three directors. At least one of the directors must live in British Columbia.

Registered Office

Does the non-profit's registered office need to be a staffed office?

No, the registered address does not need to be a staffed office. A registered office need only be an address at which the non-profit can receive mail. This could be the mailing address of a director, a post office (PO) box, or the non-profit's office. A non-profit can also use the address of another organization. For instance, if the non-profit uses the boardroom of a charity to hold meetings and receive mail, the non-profit can list that address as its registered office.

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Member-Funded Societies

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Pacific Legal Education and Outreach Society (PLEO) in January 2024.

What is a member-funded society?

A member-funded society is a special subset of non-profit societies. Incorporating as member-funded will be unusual for most groups of people who want to get together to do something to benefit the community. A member-funded society exists *primarily* for the benefit of its members. Some examples include golf courses or private benevolent organizations. Just because the non-profit is primarily funded by its members does not mean that the non-profit should incorporate as member-funded. *Only non-profits that are certain they will likely never receive sources of funds from anyone other than their members should consider doing so.*

In its constitution, the member-funded society must declare: “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.”

What kinds of non-profits cannot become member-funded societies?

Non-profits that cannot become member-funded societies include:

- non-profits that have received public donations, government funding, or a combination of the two with a total value greater than \$20,000 or 10%, whichever is greater, of the non-profit's gross income within a period of two financial years immediately preceding the current financial year of the non-profit;
- non-profits that are registered charities as defined in the *Income Tax Act*;
- non-profits that are designated recipients of the *Provincial Sales Tax Act* or are otherwise entitled to receive taxes, fees, or other revenue received by the government as agents of the non-profit;
- are student societies as defined in the *College and Institute Act* or *University Act*;
- are hospitals or manage/operate a community care facility as defined in the *Hospital Act*, or that are designated as hospital societies;
- are in a class of non-profits that is prohibited under the regulations from having the statement in its constitution.

If you still have questions, the Registry has a useful table on page four of their Transition Guide that explains some differences between member-funded and non-member-funded societies: BC Registry Transition Guide ^[1].

Topic	Member-funded Societies	Other Non-Profit Societies
Distribution of assets on winding up	No restrictions; assets could go to members	Assets can only be distributed to certain entities (e.g. non-member-funded societies, registered charities, or community service cooperatives)
Number of directors	One director is sufficient; no residency requirements	At least three, one of whom is ordinarily resident in BC
Composition of board of directors	No restrictions on number of directors who are employed by or under contract with the non-profit	Majority of directors must not be employed by or be under contract with the non-profit
Financial statements	No public right to copies	Public has right to obtain copies
Disclosure of remuneration	Not required	Financial statements must set out remuneration paid to directors and highly-paid employees and contractors
Conversion to company	Can convert	Cannot convert

source: BC Registry Services, *"Preparing for B.C.'s New Societies Act: A Guide to the Transition Process"*

How do we decide whether to become a member-funded society?

Member-Funded Society – A Challenging Choice (by Paul Wood)

As Chair of the Governance Committee of a non-profit serving a reasonably sophisticated community, working our way through a Constitution and Bylaw review, thoughts turned to Part 12, Division 1 of the *Societies Act*, which provides for member-funded societies.

A member-funded society is a non-profit that is funded primarily by its members to carry on activities for the benefit of its members. Common examples might include some sports clubs, golf courses and professional associations.

This seemed a perfect fit. Although a non-profit cannot be a member-funded society if it receives public donations or government funding beyond specific thresholds, there was a high degree of confidence that this fit our circumstances, until we spoke with a lawyer. Working through the language of the Act and the due diligence necessary to come to a confident conclusion, doubts crept in. Shifting the focus from the due diligence of an historic review of financials, decisions and minutes over at least the past two years, to a view looking forward, and the potential constraints selecting member-funded status might impose on future directions and decision-making, doubts were no longer merely creeping, they were striding confidently.

At this point, it was prudent to step away from thinking solely from the perspective based on first impression, "of course we are member-funded", to one that turned things around and looked at the decision from the point of view of what does member-funded status achieve. What are the benefits?

Member-Funded Societies Considerations

- s. 28 Financial Statements: no right of access to public
 - Is it really appropriate and in the non-profit's best interests to restrict public access? What are the implications?
 - Are there circumstances where public access should take place?
 - How will access be policed?
- s. 36 Disclosure of remuneration on Financial Statements: no need to disclose director remuneration or salaries paid to senior staff in notes to financial statements
 - Is it appropriate, even in a member-funded society, to not be open and transparent about director remuneration and senior staff salary?
 - Shouldn't the members be entitled to this information?
- s. 40 Number of Directors: only one director required, none need be ordinarily resident in BC
 - Clearly this applies to a very small and peculiar set of non-profits.
- s. 41 Employment of Directors: no restriction on number of Board members employed by or under contract
 - What are the circumstances or nature of a non-profit where it would be appropriate to have a majority of the board to be employed by, or in a contractual relationship with, the non-profit? Is this in a non-profit's best interest?
- s. 124(2) Distribution of assets on winding up: the constraints of this section do not apply and distribution can be made to any person specified in the bylaws or by ordinary resolution
 - Is it in a non-profit's best interest that the distribution of its assets on winding up would be subject to an ordinary resolution? Or even a bylaw, subject to change?
- s. 154(2) Property held in joint tenancy: the constraints of this section do not apply and property simply devolves to other joint tenants
 - Is it the case now, or is it likely to be the case, that the non-profit holds, or would hold, property in joint tenancy with an entity other than another non-profit (not member-funded) or charity or community service cooperative as defined by the act?

- s. 198 Conversion: can be converted to a company under the Business Corporations Act
 - Is this likely to ever be the case?

In the end, in our circumstances, the decision was one of balancing the “real” benefits of member-funded status against the need for proper due diligence in ensuring our non-profit met the detailed tests set up in the act, and the constraints that it would impose on the non-profit in terms of receiving public donations or government funding in the future.

Cautions

Becoming a member-funded society is a significant choice that needs to be authorized by a special resolution of the members. If you have any doubt about whether your non-profit can or should become a member-funded society, you should seek legal advice before transitioning. Member-funded designation is a choice that must be made at incorporation, otherwise a court order is needed. It is one of the most challenging areas of the *Societies Act*.

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References

- [1] https://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/registries-other-assets/societies_act_transition_guide.pdf

Part Two: Managing a Non-Profit Society

Member Rights and Participation

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Pacific Legal Education and Outreach Society (PLEO) in January 2024.

Member Rights

What are the rights of non-profit members?

Members who are not directors have certain rights. Members have a right to vote at a members' meeting (Annual General Meeting or Special General Meeting) unless they belong to a non-voting class of members. Voting members have the right to requisition a members' meeting, provided they meet the required threshold of 10% of voting members (or less if the bylaws provide). Voting members also have the right to submit a members' proposal, provided they fulfill the requirements of the *Societies Act* including meeting the minimum threshold of 5% (or less if the bylaws provide).

All members have the right to receive written notice and reasons for their expulsion and the right to make reasonable representations to the non-profit regarding their expulsion. Members have the right to request the attendance of the non-profit's auditor at a meeting during which the financial statements or the appointment or removal of the auditor will be considered, provided the non-profit receives a written request at least 7 days before the meeting. Finally, members have the right to inspect records listed under s. 20 ^[1] of the *Societies Act*, though the non-profit may impose a notice period and time restrictions.

How many votes can a member have? Can family memberships get two votes? Can we use weighted voting?

Under s. 84 ^[2] of the *Societies Act*, a voting member has only one vote.

What can a member or director do if the non-profit isn't following its bylaws or the *Societies Act*?

Many disputes can be resolved internally through communication and cooperation. However, sometimes this is not possible. Non-profit disputes are governed by the Civil Resolution Tribunal ^[3]. The CRT has a solutions explorer ^[4] which you can use to determine what remedies are available in your situation.

Member Participation

Can anyone become a member of the non-profit?

No person has a right to membership in a non-profit, unless the bylaws say otherwise. Under the *Societies Act*, it is up to the directors of the non-profit to accept or deny memberships, subject to the non-profit's bylaws. However, courts have decided that if the non-profit wants to be selective about memberships, then criteria for rejecting members must be included in the bylaws. The directors cannot reject applicants based on criteria they themselves determine (*Farrish* at paras 52-63) ^[5]. In addition, once a person is a member, there is a process that must be followed (s. 70 ^[6]) to discipline or remove that person as a member.

Finally, the *Societies Act* requires that individuals be 19 or older to become members, unless the bylaws state otherwise.

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- [1] https://www.bclaws.gov.bc.ca/civix/document/id/lc/statreg/15018_01#section20
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- [3] <https://civilresolutionbc.ca/>
- [4] <https://civilresolutionbc.ca/how-the-crt-works/getting-started/societies-and-cooperative-associations/>
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- [6] https://www.bclaws.gov.bc.ca/civix/document/id/lc/statreg/15018_01#section70

Meetings of Members (AGM, SGM)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Pacific Legal Education and Outreach Society (PLEO) in January 2024.

Statutory Requirements

When does the AGM need to be held?

The *Societies Act* requires that non-profits hold an annual general meeting (AGM) once every calendar year. However, a non-profit does not need to hold an AGM in the calendar year during which it was incorporated.

The best practice is for non-profits to hold their AGM on a date that falls within six months following the last day of the non-profit's financial year so members can approve the full and complete financial statements for the previous year, as well as discuss the non-profit's activities of the previous year. Another reason for this suggested AGM timing is that the financial statements must be approved within six months of the end of the financial year.

What activities need to happen at the AGM?

Legally speaking, the non-profit's financial statements must be presented to members. If the non-profit has an auditor, then the non-profit's audit report must also be presented to members. The non-profit must also deal with any matters that are required to be dealt with at an AGM per the non-profit's bylaws. For example, many non-profits' bylaws state that director elections must occur at the AGM. However, these minimum requirements do not limit what non-profits *may* do at an AGM. For example, some non-profits use AGMs to gain member input, conduct year-end reviews, conduct volunteer development, or do strategic planning for the upcoming year.

What if there isn't enough time to plan an AGM before the end of the calendar year?

If the non-profit anticipates the AGM cannot be held before the end of the calendar year, between November 1 and December 31 of the calendar year during which the AGM must be held, the non-profit may request a deadline extension from the registrar of companies through Societies Online. An extension can be granted up until March 31 of the following year.

Or, if an Annual General Meeting is not held prior to December 31 the non-profit may file the Annual Report as "No Meeting Held" between January 1 and January 31 of the following calendar year.

Notice

When does notice of general meetings need to be sent?

If the non-profit's bylaws don't specify, the default from s. 77^[1] of the *Societies Act* is that notices of every general meeting must be sent out between 14 and 60 days before the day the meeting will be held. The bylaws may be amended to require a different number of days' notice, but it cannot be less than 7 or more than 60 days. Per the *Interpretation Act*, days means calendar days.

What needs to be included in the notice?

Notice of a general meeting must include the date, time, and location of the meeting. The notice must also include the text of any special resolutions to be considered at the meeting. If the meeting will be held either fully or partially by electronic means (e.g. video conference), then the notice must include instructions for how to attend, participate, and vote in the meeting by electronic means.

Should we change our bylaws to allow for electronic notice to members?

The 'written' notice required by the act includes electronic messages, such as email. However, if your bylaws do not permit electronic notices, this change is advisable. It requires a special resolution at a general meeting.

Quorum

What is quorum?

Quorum is the minimum number of members present that is required to conduct official non-profit business.

How many members are needed to meet quorum?

Unless the bylaws state otherwise, quorum is three voting members. The bylaws may be amended so that quorum is greater than three members. Quorum can never be set at less than three members.

Rules of Procedure

What rules of procedure (meeting rules) should the non-profit use for meetings of members (AGMs and SGMs)? Do we have to use Robert's Rules of Order for a non-profit AGM?

Unless the bylaws state otherwise, non-profits do not need to use Robert's Rules of Order. Many non-profits use a simplified or modified version of Robert's Rules of Order^[2] because it is familiar and common. However, it is up to the non-profit to decide which decision-making procedures are most appropriate to meet the non-profit's needs. Other examples of rules of procedure include talking circles^[3], dynamic facilitation^[4], and consensus^[5].

See also: consensus flowchart^[6], Robert's Rules flowchart^[7], Robert's Rules cheat sheet^[8].

Electronic Participation

How do we hold electronic meetings of members?

You can change your bylaws to include electronic meetings. You need to give some thought to the logistics and technology necessary to accomplish this.

An example is set out below:

PART [X] - MEETINGS OF MEMBERS

Electronic Participation in General Meetings

The board may determine, in its discretion, to hold any general meeting in whole or in part by electronic means, so as to allow some or all members to participate in the meeting remotely.

Where a general meeting is to be conducted using electronic means, the board must take reasonable steps to ensure that all participants are able to communicate and participate in the meeting adequately and, in particular, that remote participants are able to participate in a manner comparable to participants present in person, if any.

Persons participating by permitted electronic means are deemed to be present in person at the general meeting.

RELEVANT DEFINITIONS

"Electronic Means" means any system or combination of systems, including but not limited to mail, telephonic, electronic, radio, computer or web-based technology or communication facility, that:

- in relation to a meeting or proceeding, permits all participants to communicate with each other or otherwise participate in the proceeding contemporaneously, in a manner comparable, but not necessarily identical, to a meeting where all were present in the same location, and
- in relation to a vote, permits voters to cast a vote on the matter for determination in a manner that adequately discloses the intentions of the voters.

Member Proposals

What is a member proposal?

A member proposal gives members the ability to raise issues for discussion at a general meeting. The proposal must be in writing, no more than 500 words, include the text of any special resolution required to be considered, and signed by at least the minimum number of proposers. If the bylaws do not specify, then the default minimum number of proposers is 5% of voting members.

If members of a non-profit properly submit a member proposal, does the proposal have to be discussed or voted on at the AGM?

Section 81^[9](4) of the *Societies Act* states that if a non-profit receives a member proposals at least 7 days before the AGM notice is sent, the non-profit must include with the notice the proposal, the names of the members submitting the proposal, and a statement of support if requested. At the AGM, the society must allow one of the proposers, who must be a voting member, to present the proposal at the AGM. However, if the proposal relates substantially to a matter that was already considered at a general meeting within the previous two calendar years, then the society does not have to include the proposal with the AGM notice, and it does not have to allow a proposer to present the proposal at the AGM.

Voting and Resolutions

How do members vote?

The non-profit's bylaws may specify the manner of voting, such as by show of hands or secret ballot. In addition, the *Societies Act* allows some votes to be done in writing. For example, a special resolution may be passed either by 2/3 majority of voting members present at a general meeting or in writing by unanimous consent of voting members.

For an example of a member voting provision in the bylaws, see below:

PART [X] - VOTING BY MEMBERS

Ordinary Resolution Sufficient

Unless the *Act*, these bylaws or adopted rules of order provide otherwise, every issue for determination by a vote of the Members will be decided by an Ordinary Resolution.

Entitlement to Vote

Each Member in good standing is entitled to one (1) vote on matters for determination by the members. No other person is entitled to vote on a matter for determination by the members, whether at a general meeting or otherwise.

How do we allow proxy voting?

Under s. 85 ^[10] of the *Societies Act*, if a non-profit wants to allow proxy voting, it must have a bylaw permitting it. See below for an example provision for proxy voting:

PART [X] PROXY VOTING *Proxy voting is permitted* A voting member may appoint another such member to act and vote as the member's proxy at a general meeting.

A member must not hold more than three proxies.

The instrument appointing a proxy must be in the following form, or in any other form that the board approves:

I, _____, of _____, hereby appoint _____, of _____, as my proxy to vote for me and on my behalf at the general meeting of ABC Society on the ____ day of ____, 20__, and at any adjournment thereof. Signed at _____ this ____ day of _____, 20__.

A proxy must be received not fewer than 15 minutes before the time set for the start of a general meeting.

A proxy is only valid for the meeting for which the proxy is given, and any adjournment of that meeting.

What is an ordinary resolution?

Most of the business requiring voting by a non-profit will be done through an ordinary resolution. The Act dictates that several things be done by ordinary resolution, such as dissolution of the non-profit and appointment of a new director in the event that one is removed. The bylaws of the non-profit may specify other circumstances where an ordinary resolution is required, and the model bylaws created by the government suggest that most votes should be determined by ordinary resolution.

An ordinary resolution is passed at a general meeting by receiving a simple majority (more than 50%) of votes cast by present voting members in accordance with the Act or rules specified in the non-profit's bylaws. In addition, an ordinary resolution may be passed if agreed to in writing by 2/3 of the total voting members in the non-profit.

What is the difference between ordinary and special resolution? When do we need a special resolution?

A special resolution is required when a resolution will have particular significance to the structure or ethics of the non-profit. The Act sets out when a special resolution is required:

- the constitution or bylaws of the non-profit are altered;
- a director or other member is removed from the non-profit or disciplined;
- the non-profit wants to enter into a contract that may result in a conflict of interest for a director;
- other significant financial alterations to the non-profit, such as liquidation, sale of assets, or leasing of assets;
- If a general meeting will discuss matters relating to a special resolution, the text of the special resolution for the meeting must be provided in the notice of the general meeting. A special resolution is passed at a general meeting by receiving 2/3 of the votes cast by present voting members in accordance with the *Societies Act* or unless otherwise specified by the non-profit's bylaws. The *Societies Act* provides that the bylaws can increase the threshold of required votes needed for a special resolution (up to 100% or unanimity) except in cases dealing with the removal of directors. In addition, a special resolution may be passed if agreed to in writing by all of the voting members in the non-profit.

How long does a resolution last? Can a resolution remain binding over future conduct of the non-profit?

Motions, written properly, can authorize conduct in future years, such as a yearly donation that increases by a set amount each year. However, the current members of the non-profit can seek to have any ordinary resolution repealed if the circumstances no longer warrant continuing the practice.

What is the minimum vote threshold to pass an ordinary or special resolution?

If voted on at a general meeting, an ordinary resolution requires a simple majority (more than 50%) of voting members present to pass. A special resolution requires a 2/3 majority support of voting members present to pass. In either case, it is the number of votes cast by the voting members present that counts, not the total current membership of the non-profit.

If voted on in writing, an ordinary resolution requires 2/3 majority support of all voting members to pass. A special resolution must receive unanimous support of all voting members to pass in writing. In either case, written resolutions must be sent to all voting members, and it is the total current voting members of the non-profit that counts for the threshold.

Amending the Bylaws and Constitution

How often can a non-profit update its bylaws?

Bylaws can be changed at any meeting of members. A non-profit's directors can call a general meeting at any time they wish, under s. 74 ^[11] of the *Societies Act*. At a general meeting, a non-profit can update or change its bylaws through a special resolution. The bylaw changes have to be included in the notice of the meeting.

Elections

How can a non-profit ensure only eligible, consenting individuals are elected as directors?

The *Societies Act* requires that every director who is designated, appointed, or elected must either consent in writing to be a director or agree in-person to be a director at the meeting at which they are designated, appointed, or elected. The *Societies Act* also requires the non-profit keep a record of every consent to act as a director. If the person verbally

consents to being a director at a general meeting, the person's consent should be recorded in the general meeting minutes.

The best practice is to have every director sign a Consent to Act as a Director Form which records their consent and which records the director's affirmation that they meet the eligibility requirements to be a director of the non-profit. An example of a Consent to Act as a Director Form can be found here ^[12].

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References

- [1] https://www.bclaws.gov.bc.ca/civix/document/id/lc/statreg/15018_01#section77
- [2] <https://www.pacificlegaloutreach.com/s/Roberts-Rules-Basic-Guide.pdf>
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- [11] https://www.bclaws.gov.bc.ca/civix/document/id/lc/statreg/15018_01#section74
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Directors: Eligibility, Duties, Liability, Remuneration, Conflicts of Interest

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Pacific Legal Education and Outreach Society (PLEO) in January 2024.

Eligibility to be a Director

What are the minimum qualifications for directors?

The *Societies Act* lists criteria for the eligibility of directors:

- Unless the bylaws allow 16- or 17-year-old directors, directors must be at least 18 years of age;
- Directors cannot have been found by any court to be:
 - incapable of managing their own affairs;
 - be an undischarged bankrupt;
 - be convicted of an offence in connection with promotion, formation or management of a corporation or unincorporated entity, or of an offence involving fraud (subject to exceptions under section 44 of the Societies Act).

These requirements are not exhaustive and the bylaws of a non-profit may set out more requirements. If a director ceases to be qualified, the director must resign promptly.

Every non-profit should start using a Consent to Act as Director Form to ensure that every director has indicated whether or not they are qualified. For an example, see this Consent to Act as a Director Form ^[1] (Note, however, that you do not need to add the requirement to sign a consent form in your bylaws).

We want to have a director who is 16 or 17 years old. How do we do this?

Non-profits wishing to have a director of 16 or 17 years of age may do so if they have a bylaw permitting them to do so. Those wishing to do so should also create a policy to guide the non-profit. Among other things, 16 and 17 year olds do not have the legal capacity to enter into contracts so it is important to consider the limits that may be operating upon them before they become directors.

What is an ex-officio director (unofficial director)?

An ex-officio director is a person who is a director “by reason of their office” rather than by being elected or appointed to the position. This means that this person’s director position is due to their power or influence. Ex-officio directors can hold the same rights as other directors. Most non-profits will not have ex-officio directors. If they do, the specific rights for ex-officio directors should be clarified by including them in the non-profit’s bylaws.

Duties of Directors**What are the duties of directors?**

A director of a non-profit must:

- Act honestly and in good faith (without ulterior motives) in the best interests of the non-profit
- Act toward the purposes of the non-profit
- Exercise the care, diligence, and skill of a reasonable person in the circumstances
- Follow the bylaws of the non-profit
- Follow the law, including the Societies Act

Director Liability**What is meant by director’s liability?**

The term liability refers to the *responsibility* of directors and organizations for the consequences of conduct that fails to meet a predetermined legal standard. Usually, the term consequences refers to damage or loss experienced by someone.

What can a director be held liable for?

A director can be held personally liable for:

- Failure to fulfill their duties as director
 - Failure to disclose a conflict of interest
 - Failure to deduct and remit employee income taxes to the CRA (including CPP and EI)
 - Failure to pay wages owed to employees
 - Authorizing the distribution of money or property contrary to the bylaws or the *Societies Act*
-

What can a non-profit be held liable for?

The non-profit can be held liable for, among other things:

- Failure to pay rent
- Failure to pay other creditors
- Failure to collect and remit taxes such as GST and PST

Why is a director personally liable for some things and not for others?

In Canadian law an incorporated entity such as a non-profit is treated as though it is a separate person from its directors. However, in certain circumstances, the courts and certain statutes may “pierce the corporate veil” and ignore the separate person principle. For example, s. 227 of the *Income Tax Act* allows the CRA to hold directors personally liable for failure to deduct and remit taxes. Most other creditors do not have the powers of the CRA.

Can contracts or the non-profit’s bylaws reduce or eliminate director liability?

No. Neither a contract nor the non-profit’s bylaws can relieve a director from their duties under the *Societies Act* nor from liabilities arising from the director’s negligence, default, breach of duty, or breach of trust. In addition, liabilities do not go away if the non-profit is dissolved.

What if a director voted for or consented to a resolution based on information that turned out to be incorrect?

In general, a director must ensure the information they act upon is correct. However, a director will not be held liable if they reasonably and in good faith relied on any of the following:

- The financial statements of the non-profit
- Statements about the non-profit’s financial position by the director or senior manager responsible for the preparation of financial statements
- The written report of the non-profit’s auditor
- The written report of a person whose profession lends credibility to that statement (e.g. lawyer, accountant, engineer, appraiser)
- A statement of fact by another director or a senior manager
- Any record, information, or statement the court decides was reasonable grounds for the director’s actions, even if there was forgery, fraud, or inaccuracies.

What are the consequences of being held liable?

Generally, a director who is found personally liable must return whatever money or property is owed. However, directors should be aware that certain misconduct constitutes a criminal or regulatory offense.

If liability arose from a resolution passed by the directors, each director who voted for or consented to the resolution is held responsible for the entire amount owed. However, if a director pays back more than their share of what is owed, they are entitled to contributions from the other liable directors.

What can directors do to protect themselves from liability?

The best protection is to proactively learn about directors’ duties and to always act honestly in the best interests of the non-profit using the best available information. Directors should not vote for or consent to resolutions when they are unsure about the consequences or legality of that resolution. In addition, s. 66 ^[2] of the *Societies Act* permits a non-profit to purchase liability insurance, which can cover directors and/or senior managers of the non-profit. Persons considering becoming a director of a non-profit ought to enquire about the sort of insurance the non-profit carries, including any directors and officers policies.

Paying Directors (Remuneration)

Can we remunerate our directors?

Under s. 46^[3] of the *Societies Act*, the non-profit is only allowed to remunerate directors if its bylaws permit for this and the amount is disclosed in the financial statements. However, many funders, such as BC Housing, do not permit directors to be remunerated.

What does remuneration of a director include?

Remuneration for being a director means that the non-profit is paying a fee to the director for coming to meetings and doing the duties of a director. It is common in the business context but not in the non-profit world.

Remuneration for being a director does not include reimbursing directors for expenses arising from their duties, such as the cost of travelling to a meeting.

Remuneration for being a director also does not include remunerating a director for performing work for the non-profit unrelated to their duties as a director, such as paying a director to cater an event. However, this would require the director to declare a conflict of interest, not vote on the board consideration of the contract, and not seek to influence the vote. In addition, the director must leave the meeting while the contract is being discussed, except when their presence is required to provide the board with further information. The board can then decide to waive the conflict and enter into the contract for services with the director.

Conflicts of Interest

What is a conflict of interest?

A conflict of interest is a situation in which an individual or organization is involved in multiple interests that may be incompatible, where acting upon one interest could compromise another. A conflict of interest includes not only a material interest but the perception of an interest. In the legal context, this term is used to describe a situation in which a person has a duty to act in the best interests of an organization or party, yet they may have personal interests that conflict with that duty. For example, a board director voting on an increase in salary for a family member who works for the non-profit. The *Societies Act* requires non-profits to keep records of any conflicts of interest.

What should a director do if they have a conflict of interest?

S. 56^[4] of the *Societies Act* provides guidance to non-profits on how to address conflicts of interest. A director with a conflict of interest *must*:

- Immediately disclose they have a conflict of interest and the full nature and extent of the conflict;
 - Not vote on the matter;
 - Not attempt to influence the vote or discussion on the matter;
 - Leave the meeting while the matter is discussed except when they are required to be present to provide information; and,
 - Leave the meeting while the rest of the board votes on the matter.
-

Directors Employed by the Non-profit Society

We are a church. Can the priest/minister/pastor be a member of the board?

People employed by or under contract with the non-profit can sit on a non-profit's board as long as the majority of the directors are not employed by or under contract with the non-profit. Any non-profit with these practices should have a conflict of interest policy in place to guide directors.

Directors who are also Lawyers

What is the role of a lawyer on a board?

The willingness of lawyers to contribute their time, experience and knowledge to the not-for-profit sector by serving on boards, or committees, is laudable and rewarding. Nonetheless lawyers serving on boards must be mindful of some of the risks that flow from these activities.

Key risks, insurance coverage issues aside for a moment, go to the heart of your knowledge and expertise; namely whenever a legal issue arises in a meeting, everyone will turn to you for your thoughts, your input and, more critically, your advice. The fundamental challenges as everyone awaits your response include:

- do you have the full and complete information that a lawyer, retained to provide advice, would insist upon?
- do you have time to thoughtfully consider a response?
- is the issue one that falls within your area of knowledge and expertise?
- is your advice independent, or is it clouded by loyalty to the organization, or a particular policy position you may feel strongly about?

While it will likely bring frowns to the faces of other board members, or quizzical looks, the response, "this question raises important legal issues; we need to get the advice of outside counsel" is more often than not the correct response.

This information is not provided to dissuade you from contributing your time and expertise, but rather to let you do so "eyes wide open".

As pointed out in the Law Society of British Columbia's guidance, having a frank discussion of the constraints on your role on accepting a position on a board, and refreshing that discussion annually, is excellent advice.

Having dealt with the risks and constraints, you still have a great deal to contribute to, and benefit from, service in the not-for-profit sector.

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- [1] https://lawfor nonprofits.ca/sites/default/files/2023-04/LFNP.consenttoact.doc_1.pdf
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- [3] https://www.bclaws.gov.bc.ca/civix/document/id/lc/statreg/15018_01#section46
- [4] https://www.bclaws.gov.bc.ca/civix/document/id/lc/statreg/15018_01#section56

Meetings of Directors

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Pacific Legal Education and Outreach Society (PLEO) in January 2024.

What is a consent resolution?

A consent resolution of directors is a directors' resolution that is passed without having a meeting of directors. To pass a consent resolution, a copy of the resolution must first be sent to all directors. The default requirement from the *Societies Act* is for all the directors to agree. However, this can be reduced to a lesser number through the bylaws. The consent must be given in writing or as provided for by the bylaws.

Do the directors of a non-profit have the ability to make and pass motions that would ultimately change the purpose of the non-profit once they are acted upon? Or, would these types of motions need to go to an AGM or special general meeting for all of the non-profit members to vote on?

Under s. 15^[1] of the *Societies Act*, to change the purposes of a non-profit the members of the non-profit would need to pass a special resolution at a general meeting of the members whether that is an AGM or special general meeting.

One of the duties of a director is that they must exercise their powers and duties in accordance with the purposes of the non-profit (s. 53(3)^[2] of the *Societies Act*).

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References

[1] https://www.bclaws.gov.bc.ca/civix/document/id/lc/statreg/15018_01#section15

[2] https://www.bclaws.gov.bc.ca/civix/document/id/lc/statreg/15018_01#section53

Senior Managers and Officers

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Pacific Legal Education and Outreach Society (PLEO) in January 2024.

What is a senior manager?

A senior manager is any individual that is appointed by the directors to exercise their authority and manage the activities or internal affairs of the non-profit. Senior managers can be an employee, contractor, or volunteer, so long as they exercise decision-making authority. The fact that a person is a manager in a senior role does not automatically make them a senior manager under the *Societies Act*. A senior manager of a non-profit is similar to an officer in the business world: they are a category of people with particular duties. Every non-profit should be very careful about delegating its authority to anyone outside the directors or an employee by contract.

What is the difference between a director and an officer?

A director is a person in charge of managing, or supervising the management of the activities and internal affairs of a non-profit. Directors are elected or appointed in accordance with the non-profit's bylaws. Directors are usually elected by the members.

Officers are directors who have been given specific responsibilities. These roles are usually president, vice-president, secretary, and treasurer. The directors with these responsibilities are often referred to as the executive.

Directors are people with rights and responsibilities under the *Societies Act*, whereas the *Societies Act* does not mention officers.

Do we have to have a secretary and a treasurer?

No. The *Societies Act* is silent on board positions. They are set out in the optional Model Bylaws, which is why many non-profits have these roles. The directors of the non-profit can share the duties of the various positions or assign them to individuals. The important thing is that records are maintained, minutes are taken, financial statements are prepared, and that there is a board policy that covers how these basic functions are done.

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Recordkeeping and Privacy

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Pacific Legal Education and Outreach Society (PLEO) in January 2024.

What are the official records that a non-profit society must keep?=¹

s. 20^1:

- Certificate of Incorporation
- Constitution
- Bylaws
- Statement of Directors and Registered Office
- Orders by any court, tribunal, or federal, provincial or municipal body
- Register of Directors, including contact information
- Written consents to act as director
- Written resignation of directors
- Any disclosures of a director's or senior manager's interest
- Register of Members, organized by class, including contact information
- Minutes of each meeting of members, including text of resolutions passed
- Ordinary resolutions, special resolutions, and consent resolutions, including copies of consents
- Financial Statements and Auditors Reports

s. 20^[1](2): Minutes of directors' meetings, including a list of directors present, and the text of each resolution passed

- Directors' consent resolutions, including copies of consents
- Adequate accounting records for each financial year

Where must official records be kept and in what form?

A non-profit must store its official records at its registered office or in another BC location with a notice at the registered office.

Records may be kept in a physical or electronic form so long as there is simple, reliable, and prompt access. For example, a non-profit could create a physical or electronic folder entitled *Official Records* and store the official records in that folder. The records in that folder can be further organized into categories or years, depending on what makes the most sense.

Access to Records

Who can inspect the non-profit society's official records?

Records under s. 20(1):

- Any director
- Any member
- Any person, other than a member or director, may, if and to the extent permitted by bylaw, inspect s. 20 records, other than the Register of Members

Records under s. 20(2):

- Any director
 - Any member, unless the bylaws provide otherwise, save for a record of a director's or senior manager's interest
-

- Any person, other than a member or director, may, if and to the extent, permitted by bylaw, inspect s. 20 records, other than the Register of Members

Are there any restrictions on who can access a non-profit society's official records?

Under s. 25 ^[1] of the *Societies Act*, directors may by resolution restrict members' right to inspect the Register of Members if the inspection might be harmful. Harm might be where your members are vulnerable individuals or there are legitimate privacy/security concerns such as police officers not wanting their addresses public. This will be rare. This provision was considered by the Civil Resolution Tribunal in *Sellers v. Kitty Cat P.A.L. Society* ^[2], 2020 BCCRT 376. In that case, the tribunal member restricted use of the register to the uses listed in s. 25(7) of the *Societies Act*.

If the directors have restricted access to the Register of Members, a member may still inspect the Register of Members by applying in writing to the non-profit. The application must include the applicant's name and a statement that the information in the Register of Members will not be used except for the purposes listed under s. 25(7) ^[3] of the *Societies Act*. Under s. 25(7) of the *Societies Act*, a Register of Members that has been restricted may only be used for requisitioning a meeting of members, submitting a member proposal, calling a meeting of members under s. 138 ^[4] of the *Societies Act*, or attempting to influence voting members.

Can a non-profit society charge a fee to inspect an official record?

Non-profits may not charge a fee to members or directors who wish to inspect an official record. However, non-profits may charge a fee to a person who is neither a member nor a director for inspecting records, up to the maximums listed in the *Societies Regulation* ^[5]. Under s. 4 of the *Societies Regulation* ^[6], the fee may not exceed \$10 per day, regardless of the number of records inspected.

Can a non-profit society charge a fee to copy an official record?

Directors are entitled to receive, without charge, a copy of any official record listed under s. 20 ^[1] of the *Societies Act*. Members are entitled to receive, without charge, one copy of the current constitution, bylaws, and most recent financial statements.

The *Societies Regulation* ^[6] sets out the fees a non-profit may charge for copies of records. Regardless of whether a person is entitled to inspect a record, the maximum fee a non-profit may charge is \$0.50 per page, or \$0.10 per page if the copy is provided by email. As an exception, if a person is requesting a copy of the financial statements and they are not entitled to inspect the financial statements, the non-profit may charge a maximum fee of \$10 plus \$0.50 per page, or \$10 plus \$0.10 per page if the copy is provided by email.

Can a non-profit society prevent its members from inspecting the official records?

Yes, to a point. A non-profit can prevent a member from inspecting minutes of directors meetings and accounting records. These limitations must be set out in your bylaws. For example:

Bylaw [X] - Inspection of Official Records Only official records under s. 20(1) are available for inspection by, and disclosure to, members.

All other records are only accessible at the sole discretion of the directors.

The directors will establish procedures for the inspection and disclosure of all official records.

Can a non-profit society prevent its members from accessing the register of members?

Inspection of the register of members can be restricted by a directors' resolution if the directors believe that access would be harmful to the non-profit or a member.

Members may only request access to the register of members for a purpose permitted under s. 25 ^[1](7) of the *Societies Act*. Those reasons are:

- requisitioning a meeting of members;
- submitting a member proposal;
- calling a meeting of members under s. 138 ^[4] of the *Societies Act*; and
- attempting to influence voting members.

How long do we have to keep our documents and records?

Certain documents must be held for longer than others depending on the statute. The non-profit records that must be kept are listed under s. 20 ^[7] of the *Societies Act*. S. 21 ^[8] of the act states that the s. 20 records do not need to be kept once 10 years have passed since the record was created or last altered **and** the record is no longer relevant to the activities or internal affairs of the non-profit. The CRA requires that financial records be kept for 7 years.

Privacy Policy

Does the non-profit society need a privacy policy?

Yes. Under the *Personal Information Protection Act* ^[9], every non-profit is required to have a privacy policy.

What needs to be in a privacy policy?

Every non-profit's policy will differ depending on its information needs. In general, a privacy policy should state what information is collected, how the information is stored, who can access the information, and how the information is used. An example privacy policy can be found here ^[10].

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Finances and Borrowing

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Pacific Legal Education and Outreach Society (PLEO) in January 2024.

Non-Profit Finances

Can a non-profit society operate a business or own a for-profit corporation?

A non-profit can own a for-profit business if operating the business supports the non-profit's purposes. This may be a situation, however, where the non-profit wants to make sure that it has legal and accounting advice.

What are debentures?

A debenture is a legal agreement used to raise money by borrowing from others. Debentures are typically used to raise short term capital for specific purposes (for instance an upcoming expansion). Debentures are unsecured by collateral or assets, and are generally backed up by the creditworthiness of the borrower. The term is found in many non-profit bylaws because the old *Society Act* did not permit the issuing of debentures without a special resolution. Under the *Societies Act*, non-profits can borrow funds and issue debentures whenever the directors determine, unless it is prohibited by the bylaws. A non-profit that wishes to can limit the borrowing powers of the board in its bylaws.

Non-Profit Financial Statements

What is the difference between accounting records and financial statements?

Financial statements and accounting records are not the same thing.

Financial statements are a broad overview of the non-profit's financial position, presented to members at each AGM. Financial statements generally include four documents: Income Statement, Balance Sheet (Statement of Financial Position), Statement of Cash Flows, and Equity Statement (Statement of Retained Earnings).

Accounting records is a broad category which includes details on individual financial transactions such as the date and amount of deposits or withdrawals, cheque numbers, bank account numbers, daily balances, etc. Normally it is called the *general ledger*. Since there is much more detailed and sensitive information in accounting records, it may be in the non-profit's best interest to restrict access to such records.

Non-profits may restrict access to records listed under s. 20(2) of the *Societies Act*, which includes accounting records, in the non-profit's bylaws. Non-profits may not restrict access to records listed under s. 20(1), which includes financial statements. For more on recordkeeping, see Non-Profit Recordkeeping and Privacy.

Do we need to submit financial statements to the Registrar?

No. This is not a requirement of the *Societies Act*. The Registry does not accept any financial statements or accounting records of a non-profit. However, every non-profit is obligated to produce financial statements on an annual basis and provide them to its members.

Do the non-profit society's financial statements need to be prepared by an accountant or bookkeeper?

The *Societies Act* requires that a non-profit keep sufficient accounting records and are able to produce a set of financial statements for its members. The *Societies Act* does not require that the non-profit get professional help, nor does the CRA. Thus, a non-profit's treasurer could provide financial statements.

Note that if a non-profit becomes complicated enough financially, it may be a good idea to get a bookkeeper then an accountant to prepare and approve annual financial statements. Some funders require audited financial statements. The *Societies Act* sets out the qualifications of an auditor but does not require an audit. For more information, see the CRA's guide to filing the Annual Information return ^[1].

Non-Profit Accounting Records

What are accounting records?

Accounting records are the general ledger of the non-profit and all related documentation such as bank statements and donation receipts. They may include a great deal of personal information. For this reason, it is a best practice to restrict access to accounting records in your bylaws.

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Audits and Auditor

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Pacific Legal Education and Outreach Society (PLEO) in January 2024.

Do we need to hire an auditor?

Unless required by the bylaws, most non-profits will not need to have their accounting records (aka the "Books") audited. In fact, an audit may not even be worthwhile, especially if the cost of the audit would cost a significant portion of the non-profit's overall budget. Generally, the greater the amount of funds managed by the non-profit, the greater the need and pressure will be to have an auditor. In fact, it is often funders who may require that the non-profit's books be audited as a condition for grant approval. If an auditor is required, then the non-profit must follow the requirements of the *Societies Act*.

How does a non-profit society appoint an auditor?

The first auditor of the non-profit must be appointed by a resolution of the directors, to hold office until the close of the following AGM. Every auditor thereafter must be appointed by the members at the AGM. However, if there is a vacancy in auditor due to death or resignation, the directors may appoint an auditor until the close of the next AGM.

Who can be an auditor?

Only individuals who are chartered professional accountants (CPAs) or firms whose members are CPAs may be appointed as auditors of a non-profit. In addition, the auditor must be independent from the non-profit. Among other things, *independent* means the auditor cannot be a director, senior manager, or employee of the non-profit. The auditor also cannot be a partner of, be related to, employ, or be employed by a director, senior manager, or employee of the non-profit.

What is a review engagement?

A review engagement is a less thorough and thus less costly type of financial audit. Since it is less thorough than a full financial audit, it can only provide limited assurance about the accuracy of the non-profit's financial statements. During a review engagement, an auditor reviews the non-profit's financials and makes inquiries. The auditor then reports if they have any reason to believe the financial statements are not being presented accurately. In other words, a review engagement might help a non-profit catch any red flags while avoiding the higher cost of a full financial audit.

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Seal

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Are we required to have a seal?

No. A non-profit is not required to have a seal.

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Part Three: Dissolving a Non-Profit Society

Dissolution Process

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Pacific Legal Education and Outreach Society (PLEO) in May 2021.

How do I dissolve a non-profit society?

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Pacific Legal Education and Outreach Society (PLEO) in January 2024.

Most dissolutions will happen voluntarily, at the request of the members. In order to dissolve voluntarily, the following steps must be taken:

Step One: Pass an Ordinary Resolution

The non-profit's members must pass an ordinary resolution at a members' meeting (AGM or SGM) empowering the board to seek dissolution from the registry as soon as it is practical or at a certain date. If the bylaws do not specify the qualified recipient of the non-profit's remaining assets upon dissolution, the members may also pass a resolution specifying the qualified recipient at this meeting.

An example dissolution resolution could read:

Be it resolved that the board is empowered to seek dissolution of the society from the registry as soon as is practical.

Step Two: Pay the Non-Profit's Liabilities

Once the members' ordinary resolution has been passed, the directors must pay or make arrangements to pay all the non-profit's liabilities.

Step Three: Distribute Remaining Assets to Qualified Recipient

After the liabilities have been paid, any remaining assets must be distributed to the qualified recipient listed in the non-profit's bylaws. If the non-profit's bylaws do not specify the qualified recipient, the remaining assets must be disbursed to a qualified resolution specified by a resolution of the members. If a resolution of the members is not possible, a resolution of the directors specifying the qualified recipient will suffice.

Step Four: Submit a Dissolution Request to the Registrar

Once arrangements have been made to settle the non-profit's liabilities and disburse the non-profit's remaining assets, the directors must submit a request for dissolution to the Registrar. With the request for dissolution, the directors must provide a copy of the members' ordinary resolution authorizing dissolution. The directors must also provide an affidavit sworn by at least two directors (or sworn by one director if there is only one director), declaring that to the best of their knowledge, the non-profit has no liabilities or has made adequate arrangements for the payment of the non-profit's liabilities and that the remaining assets of the non-profit, if any, have been disbursed to the qualified recipient.

What is a qualified recipient?

A qualified recipient is an organization that is eligible and designated by the non-profit's bylaws or a resolution of the members or directors of the non-profit to receive the non-profit's remaining assets upon dissolution. The *Societies Act* states that a qualified recipient may only be another society (cannot be a member-funded society), a community service cooperative, a registered charity, or a trust for a charitable purpose.

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Appendices

If You Have Not Yet Transitioned to the New Act

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Pacific Legal Education and Outreach Society (PLEO) in January 2024.

About this Appendix

This appendix *only* applies to non-profit societies in existence before the the current BC *Societies Act* came into effect that have not yet transitioned to the new act. **Therefore, the following information does not apply to non-profits incorporated after 28 November 2016.**

Overview of the *Societies Act*

- Every non-profit in BC will have two years to electronically file a transition application consisting of their constitution, bylaws, a statement of directors and their registered office, all as they existed before the new Act comes into force.
 - It is important that every non-profit ensure that the statement of directors and their registered office is up to date prior to transitioning.
 - If a non-profit's information is incorrect at the time of transition, the non-profit will be required to make a separate filing after their transition is complete.
 - It is also important that all annual reports are up to date in the annual reporting filings. Any non-profit whose annual reports are not up to date will not be able to transition.
 - This transition application will require non-profits to make changes to their current constitution and bylaws, as well as re-file those documents in electronic format with the Corporate Registry.
 - Major change to the constitution is to remove any provisions outside the name and purposes of the non-profit.
 - Special provisions will now have to be moved to the bylaws.
 - To make these changes, a non-profit will not be required to pass a special resolution at their AGM. Non-profits will be permitted to move these provisions for the transition application.
 - When moving unalterable provisions out of the constitution, these provisions must be identified as "previously unalterable." Once a non-profit has transitioned, these unalterables can be changed by following the new Act's bylaw amendment procedures.
 - Non-profits should be wary of adopting the new Model Bylaws provided in Schedule 1 of the new Act without considering its implications and possible modifications.
 - It is not necessary to adopt the new Model Bylaws.
 - There are many differences from the old Schedule B Bylaws that could cause issues for certain non-profits.
 - For example, the quorum requirement in the Model Bylaws is 3 members or 10% of the membership, whichever is greater. For non-profits with a large membership base, this could be very problematic. As the new Act only requires 3 members for quorum, we recommend reading the new Model Bylaws carefully before adopting, and making necessary changes.
-

Other information regarding the new Societies Act

Please visit BC Registry Services ^[2] for more information regarding the new *Societies Act*, including:

- a transition guide
- a link to the new Act and its regulations
- links to the new Model Bylaws as well as the old Schedule B Bylaws
- tables comparing the old Society Act to the new Societies Act
- more FAQs

FAQs About Transitioning to the New Societies Act

When can we pass the updated bylaws and constitution?

When you transition, you will remove any unalterable provisions from your constitution and place them in their own section in your bylaws, indicating that they are "previously unalterable." You should not change your purposes upon transitioning. If all you are doing is moving the unalterables to your bylaws the non-profit does not need to take those changes to the membership.

What do we do with the winding up and dissolution clause in our constitution?

Under the new act only the name and purposes can be included in the constitution. Additional clauses including the winding up and dissolution clauses should be added to the bylaws in a separate section under a sub-heading such as "Other Provisions", "Former Constitutional Provisions", etc. If the clause was unalterable then the words "previously unalterable" need to be added. A special resolution is not required to make this change.

Do we need the approval of the CRA to move the winding up and dissolution clause out of the constitution?

No. The new *Societies Act* does not change the non-profit's relationship to the CRA. Those non-profits that are registered charities will have to notify the CRA about changes to the non-profit's constitution and bylaws and provide the CRA with a copy of the amended documents.

Do we need a special resolution when we move the winding up and dissolution provisions from the constitution to our bylaws?

Simply moving provisions, such as the winding up and dissolution provision, from the constitution to the bylaws will not require a non-profit to hold a vote or even a general meeting. However, any previously unalterable provisions will have to be identified as previously unalterable when they are moved. Once the non-profit has transitioned then the non-profit can remove the "previously unalterable" language. However, to do that the non-profit will need to pass a special resolution.

What does unalterable mean?

Unalterable means something that cannot be changed. In the new *Societies Act*, unalterable bylaw provisions are no longer permitted.

Are the Schedule B Bylaws compliant with the new Societies Act?

The Schedule B Bylaws are mostly compliant with the new act. If your non-profit has been using the Schedule B Bylaws and they have been working for you, it is likely that you will not have to change your bylaws. The non-profit may want to do some minor housekeeping and updating; however, the new act does not require the non-profit to do so. If the non-profit is using the Schedule B it does not have to adopt the new model bylaws on the transition. If the

non-profit decides to change its bylaws it can do so at any time after they transition.

On transition, can we correct the spelling errors that were on the original filed bylaws?

Yes, you may correct spelling errors when you transition.

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