

# Societies Act FAQs

Societies Act Transition

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# Introduction to Societies Act FAQs

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## The new *Societies Act*

On 28 November 2016, BC's new *Societies Act* took effect. All pre-existing societies must transition to the new Act within two years of this date. These FAQs have been compiled to help non-profit societies transition to and comply with the new Act. The FAQ's are part of the Societies Act Transition project of Law For Non Profits <sup>[1]</sup>. We thank the law students of the University of Victoria Faculty of Law Business Law Clinic for their help with this project.

These FAQs have been grouped into categories roughly corresponding to sections in the Schedule B Bylaws. There are also categories for common areas of concern, such as member-funded societies and record-keeping. Use the table of contents or the navigation boxes at the right and bottom of the screen to browse through the FAQs and look for the answer to your question. If you can't find it in the first category you click on, try some related ones to see if you can find it there.

## Overview of the new *Societies Act*

- Every society 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 Society ensure that the statement of directors and their registered office is up to date prior to transitioning.
  - If a society's information is incorrect at the time of transition, the society 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 society whose annual reports are not up to date will not be able to transition.
- This transition application will require societies 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 bylaws is to remove any provisions outside the name and purposes of the society
  - Special provisions will now have to be moved to the bylaws
  - To make these changes, a society will *not* be required to pass a special resolution at their AGM. Societies 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 society has transitioned, these unalterables can be changed by following the new Act's bylaw amendment procedures.
- Societies should be wary of adopting the new Model Bylaws provided in Schedule 1 of the new Act.
  - 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 societies.

- For example, the quorum requirement in the Model Bylaws is 3 members or 10% of the membership, whichever is greater. For societies 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 <sup>[2]</sup> 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*, and
- more FAQs.

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## References

[1] <http://lawforprofits.ca>

[2] <http://www.bcregistryservices.gov.bc.ca/bcreg/societiesact/index.page>

# Transition

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## 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 Society does not need to take those changes to the membership.

If, however you are changing your bylaws you could submit those to the membership before you transition. However, the Special Resolution must state that the bylaw changes do not come into effect until proclamation of the new Societies Act, November 28, 2016. Once passed, this special resolution is NOT filed. After proclamation, when the Society is ready to transition you can do so with updated bylaws. The system will ask for the date of the special resolution which you will then enter into the system.

## How do we consolidate bylaws?

Often, societies have special resolutions in addition to their bylaws. A common example is a special resolution to allow for electronic means of sending notice to members. Below is an example for consolidating bylaws:

### Before Consolidation

#### Part 11 — Notices to Members

58: A notice may be given to a member, either personally or by mail to the member at the member's registered address.

59: A notice sent by mail is deemed to have been given on the second day following the day on which the notice is posted, and in proving that notice has been given, it is sufficient to prove the notice was properly addressed and put in a Canadian post office receptacle.

60(1): Notice of a general meeting must be given to

- (a) every member shown on the register of members on the day notice is given, and
- (b) the auditor, if Part 10 applies.

(2): No other person is entitled to receive a notice of a general meeting.

**Special Resolution** (Form 10) to add the words "or by electronic mail" to section 58.

### After Consolidation

#### Part 11 — Notices to Members

58: A notice may be given to a member, either personally by mail, **or by electronic mail**, to the member at the member's registered address.

59: A notice sent by mail is deemed to have been given on the second day following the day on which the notice is posted, and in proving that notice has been given, it is sufficient to prove the notice was properly addressed and put in a Canadian post office receptacle.

60(1): Notice of a general meeting must be given to

- (a) every member shown on the register of members on the day notice is given, and
- (b) the auditor, if Part 10 applies.

(2): No other person is entitled to receive a notice of a general meeting.

## **Do we have to do anything before November 28, 2016?**

Technically, no. You have two years after November 28, 2016 to file your transition application. However, there are things you can do in order to prepare for transition. The Registry Services lists some of these things on its timeline <sup>[1]</sup>. However, you do not need to do all of the things listed. For example, if your society will not become member-funded, there is no need to pass a special resolution to adopt a member-funded society status when filing your transition application.

## **What changes take effect automatically on November 28, 2016 and what changes take effect only after transitioning to the new Act?**

When you transition has no effect on when the provisions in the new Societies Act take effect. The changes in the new Act take effect when the new Act takes effect, on November 28, 2016. These changes happen all at once for all societies across BC - the changes are not implemented on a society-by-society basis as each society transitions. Here are some of the changes that will take effect when the new Act comes into effect on November 28, 2016:

- the default for passing of a special resolution (not a majority vote) will change from 75% to 2/3rds.
  - However, keep in mind that if your bylaws currently require a 75% threshold to pass a special resolution, this will still be the standard for your society despite the lowered threshold in the new Act.
- The requirement for new financial statement disclosure
  - Your financial disclosures will have to be included on your financial statements as soon as the new Act is in force, even before you 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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## **References**

[1] [http://www.bcregistryservices.gov.bc.ca/local/bcreg/documents/SocActFiles/Timeline\\_On\\_Amendments.pdf](http://www.bcregistryservices.gov.bc.ca/local/bcreg/documents/SocActFiles/Timeline_On_Amendments.pdf)

# Constitution

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## What is a constitution?

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

1. the name of the society and
2. the purposes of the society.

The purposes of a society will determine what actions the society can undertake, and can include agricultural, artistic, benevolent, charitable, educational, environmental, patriotic, philanthropic, political, professional, recreational, religious, scientific, social or sporting purposes. Examples would include: a theatre company, a curling club, a daycare and a youth treatment centre.

Under the new *Societies Act* a society's Constitution can only have the name and purpose. Matters often found in existing Constitutions such as winding up or dissolution, must be dealt with on transition. See topics below.

## Can we change the constitution?

Yes. You can change the constitution must be made by special resolution passed by the membership. Under the new Societies Act changes to the constitution will be made by way of a constitution amendment application.

**Exception:** when transitioning under the new Act, simply moving provisions such as the winding up and dissolution provisions from the constitution to the bylaws will not require a society 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. A society may not state as its purpose the carrying on of a business for profit and gain. Under the new Act constitutions cannot have provisions that deal with the subject matter outside the name and purposes of the society.

## 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 society's relationship to the CRA. Those societies that are registered charities will have to *notify* the CRA about changes to the society'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 society 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 society has transitioned then the society can remove the "previously unalterable" language. However, to do that the society will need to pass a Special Resolution.

## **Do we have to move the location of our office from our constitution?**

Yes. The constitution of a society after transition should only contain the society's existing name and purposes, word-for-word as they appear in the society's constitution on file with the Corporate Registry. Everything in the constitution, other than the name and purposes, must be moved to the bylaws.

## **What do we do with constitutional provisions that limit membership?**

Provisions that limit membership, e.g. restricting membership to First Nations or other specific communities or groups, need to be moved from the constitution to the bylaws of the society. Under the new *Societies Act* the constitution of a society shall only contain the society's existing name and purposes, word-for-word as they appear in the society's constitution on file with the Corporate Registry.

## **What does unalterable mean?**

Unalterable means something that cannot be changed. In the BC *Societies Act*, an unalterable provision is one that cannot be changed.

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# Schedule B Bylaws

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

The Schedule B Bylaws are mostly compliant with the new Act. If your society 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 society may want to do some minor housekeeping and updating however, the new Act does not require the Society to do so. If the Society is using the Schedule B they do not have to adopt the new model bylaws on the transition. If the society decides to change their bylaws they can do so at any time after they transition.

The Schedule B Bylaws can be found at BC Registry Services <sup>[1]</sup>.

## What are the differences between Schedule 1 and Schedule B?

*Note: This question is reproduced in New Model Bylaws for convenience.*

Schedule 1 of the *Societies Act*, also known as the Model Bylaws, are default bylaws that can be adopted by a society under the new Societies Act. They are similar to the Schedule B bylaws in the old Society Act with some important changes. A comparison of the two sets of bylaws can be found below.

Note: The Model Bylaws are not required to be used. A society can draft its own bylaws or select from the Model Bylaws that suit it.

Schedule B Bylaws	Model Bylaws	New Societies Act
Annual membership dues are determined at the annual general meeting	Annual membership dues, if any, are determined by the board	Not required
A member not in good standing ceases to be a member after 12 months	A member not in good standing ceases to be a member after six months	Good standing is not defined
Silent	A member not in good standing may not vote in a general meeting	As above
Rules and procedures for the expulsion of members	Silent	Set out in act
Rules about when the first general annual meeting must take place	Silent	Set out in Act
Quorum for a general meeting is three members, or more if determined at a general meeting	Quorum for a general meeting is three members or 10% of all members, whichever is greater	Quorum is three
Restrictions on who may chair a meeting, with the president or vice-president being the default	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	
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	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 ten 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	Set out in act
Voting is by a show of hands	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	Set out in act

There must be five or more directors or the number of directors may be determined at a general meeting	The Society must have no fewer than 3 and no more than 11 directors.	Minimum is 3, no maximum
If a director ceases to hold office, directors must appoint a member to take their place	Silent	Set out in Act
Rules concerning duties of officers are largely the same, but some differences noted to the right	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	Duties set out in Act
Rules restricting a single individual from filling multiple officer roles	Any director, other than the President, can hold more than one officer role	As set out in Act
Debentures cannot be used without authorization of special resolution	Silent	No longer required by the Act
Members may, by special resolution, restrict borrowing powers of directors until the next annual general meeting	Silent	Act no longer sets limits
Silent	Contracts signed by the Society must be signed: <ul style="list-style-type: none"> <li>• by the president, together with one other director,</li> <li>• if the president is unable to provide a signature, by the vice-president together with one other director,</li> <li>• if the president and vice-president are both unable to provide signatures, by any two other directors, or</li> <li>• by one or more individuals authorized by the Board to sign the record on behalf of the society</li> </ul>	Not required in Act
Rules concerning auditors under the Act	Silent	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 new *Societies Act*. Thus, societies planning to use the Model Bylaws should read them carefully first and customize them to fit their society's needs, rather than simply adopting them as their bylaws.

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## References

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

# New Model Bylaws

## What are the Model Bylaws (Schedule 1)

The Model Bylaws are provided as an example of a set of bylaws that a Society can adopt when it is incorporated. A pre-existing society that uses the "Schedule B" bylaws or has its own set of Bylaws DOES NOT HAVE TO ADOPT THE NEW MODEL BYLAWS.

## What are the differences between Schedule 1 and Schedule B?

*Note: This question is reproduced in New Model Bylaws for convenience.*

Schedule 1 of the *Societies Act*, also known as the Model Bylaws, are default bylaws that can be adopted by a society under the new Societies Act. They are similar to the Schedule B bylaws in the old Society Act with some important changes. A comparison of the two sets of bylaws can be found below.

Note: The Model Bylaws are not required to be used. A society can draft its own bylaws or select from the Model Bylaws that suit it.

Schedule B Bylaws	Model Bylaws	New Societies Act
Annual membership dues are determined at the annual general meeting	Annual membership dues, if any, are determined by the board	Not required
A member not in good standing ceases to be a member after 12 months	A member not in good standing ceases to be a member after six months	Good standing is not defined
Silent	A member not in good standing may not vote in a general meeting	As above
Rules and procedures for the expulsion of members	Silent	Set out in act
Rules about when the first general annual meeting must take place	Silent	Set out in Act
Quorum for a general meeting is three members, or more if determined at a general meeting	Quorum for a general meeting is three members or 10% of all members, whichever is greater	Quorum is three
Restrictions on who may chair a meeting, with the president or vice-president being the default	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	
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	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 ten 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	Set out in act
Voting is by a show of hands	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	Set out in act
There must be five or more directors or the number of directors may be determined at a general meeting	The Society must have no fewer than 3 and no more than 11 directors.	Minimum is 3, no maximum

If a director ceases to hold office, directors must appoint a member to take their place	Silent	Set out in Act
Rules concerning duties of officers are largely the same, but some differences noted to the right	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	Duties set out in Act
Rules restricting a single individual from filling multiple officer rules	Any director, other than the President, can hold more than one officer role	As set out in Act
Debentures cannot be used without authorization of special resolution	Silent	No longer required by the Act
Members may, by special resolution, restrict borrowing powers of directors until the next annual general meeting	Silent	Act no longer sets limits
Silent	Contracts signed by the Society must be signed: <ul style="list-style-type: none"> <li>• by the president, together with one other director,</li> <li>• if the president is unable to provide a signature, by the vice-president together with one other director,</li> <li>• if the president and vice-president are both unable to provide signatures, by any two other directors, or</li> <li>• by one or more individuals authorized by the Board to sign the record on behalf of the society</li> </ul>	Not required in Act
Rules concerning auditors under the Act	Silent	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 new *Societies Act*. Thus, societies planning to use the Model Bylaws should read them carefully first and customize them to fit their society's needs, rather than simply adopting them as their bylaws.

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# Membership

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## Do you know who your members are?

Several sections in the new Act provide additional rights of access to members of societies. They include access to official records and the ability to bring member proposals to the agenda of an AGM. Every society should take the opportunity to consider whether the current membership structure is working for the society or whether it is time for a change.

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# Meetings Of Members

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## How do we hold electronic meetings of members?

You can change your bylaws to include electronic meetings. An example is set out below:

### 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:

1. 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
2. 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.

### 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 at the General Meeting.

## How do members vote?

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 set out proxy voting in our bylaws?

Under s 85 of the new Act, if proxy voting is allowed, the bylaws must provide for it. See below for an example provision for proxy voting:

#### **Proxy Voting**

1. Proxy voting is permitted
2. A voting member may appoint another such member to act and vote as the member's proxy at a general meeting.
3. A member must not hold more than three proxies.
4. 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\_\_.*
5. A proxy must be received not fewer than 15 minutes before the time set for the start of a general meeting.
6. A proxy is only valid for the meeting for which the proxy is given, and any adjournment of that meeting.

*Thanks to Michael Blatchford and Anders Ourom for making these materials available.*

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# Proceedings At Meetings

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## What is a member proposal?

A “member proposal” gives members the ability to place issues on the agenda at a general meeting. This is a new provision under the Societies Act. The proposal must be in writing, less than 250 words, submitted and received by the Society no later than 7 days before the AGM.

## How often can a Society update its bylaws?

Bylaws can be changed at any meeting of members. A Society's directors can call a general meeting at any time they wish, pursuant to s74 of the *Societies Act*. At a general meeting, a society can update or change its bylaws through a special resolution. The bylaw changes have to be included in the notice of the meeting.

## What is an ordinary resolution?

Most of the business requiring voting by a society will be done through an ordinary resolution. The Act dictates that several things be done by ordinary resolution, such as dissolution of the society and appointment of a new director in the event that one is removed. The bylaws of the society 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 (50%+1) of votes cast by present voting members in accordance with the Act or rules specified in the societies' bylaws. In addition, an ordinary resolution may be passed if agreed to in writing by 2/3 of the total voting members in the society.

## What is the difference between ordinary and special resolution? And 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 society. The Act sets out when a special resolution is required:

- the constitution or bylaws of the society are altered
- a director or other member is removed from the society or disciplined
- the society wants to enter into a contract that may result in a conflict of interest for a director
- other significant financial alterations to the society, 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 Act or unless otherwise specified by the societies' bylaws. The 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 society.

## **How many people do we need for an ordinary or special resolution?**

The new Societies Act requires a 2/3 threshold to pass a special resolution. An ordinary resolution can be passed by simple majority. In either case, it is the number of votes cast by the voting members present that counts, not the total current membership of the society.

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# **Directors And Officers**

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## **What are the minimum qualifications for directors?**

The New *Societies Act* adds new criteria for the eligibility of directors:

1. Directors have to be at least 18 years of age.
2. Directors cannot have been found by any court to be
  - incapable of managing their own affairs;
  - be an undischarged bankrupt; or
  - 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 new *Societies Act*).

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

Every Society should start using a Consent to Act as Director form to ensure that every Director has indicated whether or not they are qualified. An example can be found on the Law for Non Profits website. (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?**

Societies 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 society. 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 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 society. Senior managers can be an employee, contractor or volunteer, so long as they exercise decision-making authority. Senior managers are subject to a duty to disclose conflicts of interest. If they happen to also be a director, they are subject to the same duties as directors as well.



## **We are a church. Can the priest/minister/pastor be a member of the Board?**

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

## **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 society. Directors are elected by the membership subject to the bylaws. Officers are those directors who have specific roles under the Society Act. They are president, VP, secretary, and treasurer. They are often referred to as the executive.

## **Can we remunerate our directors?**

Under the new *Societies Act*, the society is allowed to remunerate directors so long as its bylaws provide authorization for this. However, most funders do not permit directors to be remunerated.

## **What does remuneration mean?**

Remuneration means money paid to someone for their work or services. Most funders expect society directors to be acting as volunteers and not to be paid for being directors. A director can be remunerated for performing work for the society such as catering an event. However, this would require the director to declare a conflict of interest and not vote on the Board consideration of the contract. The Board can then decide to waive the conflict and enter into the contract for services with the director.

## **What does remuneration of a director mean?**

Remuneration for being a director means that the Society 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. A society can pay a director their expenses for coming to meeting but most societies do not pay directors for being directors. Section 46 of the *Societies Act* states that a director can only be remunerated if this is allowed by the bylaws.

## **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 society. The new Societies Act requires societies to keep records of any conflicts of interest. You can find a policy in our resources page on the [lawforprofits.ca](http://lawforprofits.ca) website.

## **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. The specific rights for ex-officio directors may vary from organization to organization, and can be clarified by writing them in the organization’s bylaws.

## **What is the role of a lawyer on a Board?**

*(Thanks to Paul Wood for providing this answer)*

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 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.

The Law Society of British Columbia <sup>[1]</sup> provides guidance to members.

This guidance includes a link to a useful checklist <sup>[2]</sup> from Law Pro [Lawyers Professional Indemnity Company, Ontario]

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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## **References**

[1] <https://www.lawsociety.bc.ca/page.cfm?cid=212&t=Directors-and-committee-members>

[2] [http://www.practicepro.ca/practice/pdf/Nonprofit\\_board\\_risk\\_management\\_checklist.pdf](http://www.practicepro.ca/practice/pdf/Nonprofit_board_risk_management_checklist.pdf)

# Proceedings Of Directors

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## What is a consent resolution?

A consent resolution of directors is a directors' resolution that is passed without having a meeting of directors. The default requirement from the 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.

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## Duties Of Officers

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Whoops, it looks like we don't have any FAQs for this section yet. We will be updating this page as we receive relevant questions. If you have a question about this subject, please let us know! <sup>[1]</sup>

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## References

[1] <http://lawfornonprofits.ca/contact-us/>

## Seal

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### Are we required to have a seal?

No. A Society is not required to have a seal.

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# Borrowing

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## What are debentures?

A debenture is a debt instrument used to raise capital. 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. Under the new Act, societies can borrow funds and issue debentures whenever the directors determine, unless it is prohibited by the bylaws. Under the current Society Act a special resolution was required for a society to issue a debenture. A society that wishes to can continue to limit the borrowing powers of the Board in its bylaws.

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## Auditor

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Whoops, it looks like we don't have any FAQs for this section yet. We will be updating this page as we receive relevant questions. If you have a question about this subject, please let us know! <sup>[1]</sup>

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## References

[1] <http://lawforprofits.ca/contact-us/>

# Notice To Members

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

Yes, this change is advisable. It requires a special resolution at a general meeting.

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## Record-Keeping

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### What are records to be kept? [s. 20]

#### Group 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 or Special Resolutions or Consent Resolutions including copies of consents
- Financial Statements and Auditors Reports

#### Group 2

- Minutes of Directors Meetings including a list of Directors present and text of each resolution passed including consent resolutions and copies of consents
- Adequate accounting records for each financial year

## **For how long? [s. 21]**

Until the Record is no longer relevant and 10 years have passed since last altered

## **Where and in what form? [s. 22 & 23]**

- At the Registered office or in another BC location with a notice at Registered Office
- In physical or electronic form so long as there is simple, reliable and prompt access

## **Who can inspect? [s. 24]**

### Group 1

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

### Group 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 extent, permitted by bylaw, inspect s. 20 records, other than the register of members

## **Any restrictions on access? [s. 25]**

- Directors may by resolution restrict a member's rights to inspect the register of members if the inspection might be harmful, save for the purpose of that member requisitioning or calling a general meeting or advancing a members' proposal
- May charge a fee to a person other than a member or director for inspecting records
- Copies at a reasonable fee not to exceed that permitted by regulation with some exceptions for directors and members related to bylaws, constitution and recent financial statements

## **Can we prevent our members from inspecting the official records?**

Yes, to a point. A Society can prevent a member from inspecting minutes of directors meetings and accounting records. The limitations must be set out in your bylaws. Section 20(1) of the new *Societies Act* provides that its official records can be accessed for inspections.

## **Can we prevent our 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 society or a member.

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# Member-Funded Societies

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## What is a member-funded society?

A member-funded society is a society that exists primarily for the benefit of their members. It does not receive public donations or government funding beyond the threshold set in the regulations. Examples include professional or trade associations, or social or sports clubs. 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 societies cannot become member-funded societies?

Societies that cannot become member-funded societies include:

1. societies 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 society’s gross income within a period of two financial years immediately preceding the current financial year of the society,
2. societies that are registered charities as defined in the Income Tax Act,
3. societies 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 society,
4. are student societies as defined in the College and Institute Act or University Act,
5. are hospitals or manage/operate a community care facility as defined in the Hospital Act, or that are designated as hospital societies, or
6. are in a class of societies 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 helps determine whether a society can become a member-funded society: BC Registry Transition Guide <sup>[1]</sup>

## How do we decide whether to transition as a member-funded society?

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

As Chair of the Governance Committee of a society serving a reasonably sophisticated community, working our way through the new Societies Act, the Constitution and Bylaw review necessary for all societies in BC at this time, and the key considerations, thoughts turned to Part 12, Division 1, which provides for Member-Funded Societies.

Preparing for B.C.’s New Societies Act: A Guide to the Transition Process, tells us: On transition, each pre-existing society will be asked whether it wishes to designate itself as a “member-funded society” by including a statement to that effect in its constitution. A member-funded society is a society 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 for us. Although a society 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 society’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 societies.
- 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 society where it would be appropriate to have a majority of the board to be employed by, or in a contractual relationship with, the society? Is this in a society’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 society’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 society holds, or would hold, property in joint tenancy with an entity other than another society (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 society met the detailed tests set up in the new Act, and the constraints that it would impose on the society 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 society 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 on transition, otherwise a court order is needed. It is one of the most challenging areas of the new Societies Act.

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### **References**

[1] [http://www.bcregistryservices.gov.bc.ca/local/bcreg/documents/SocActFiles/Societies\\_Act\\_Transition\\_Guide.pdf](http://www.bcregistryservices.gov.bc.ca/local/bcreg/documents/SocActFiles/Societies_Act_Transition_Guide.pdf)

## **Miscellaneous**

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### **What does proclamation mean?**

Once a bill has gone through three readings of the Legislative Assembly and receives Royal Assent, the bill becomes an Act. However, this does not necessarily mean that the Act has legal force yet. In the case of the Societies Act, the Act will only come into legal force by proclamation under order of the Lieutenant Governor in Council, which is expected to occur on November 28, 2016. At this time, the two year transition period for existing societies will begin.

### **Is there any way around the requirement of having an office that is staffed?**

A society can use the address of another charity or organization. For instance, if your charity uses the board room of another charity to hold meetings and receive mail, your charity can list that charity as your office.

### **Do we need to submit financial records to the Ministry?**

No. This is not a requirement of the new Act. The Registry does not accept any financial records of a society. A Society is however obligated to produce financial statements on an annual basis and provide them to their members.

### **Do we have to have an accountant or bookkeeper prepare financial statements?**

The *Societies Act* requires that a society 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 society get professional help, nor does the CRA. Thus, a society's treasurer could provide financial statements.

Note that if your society 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 will require audited financial statements. The *Societies Act* sets out the qualifications of an auditor but does not require an audit. Here <sup>[1]</sup> is the guide from the CRA on filing the Annual Information return.

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## References

- [1] <http://www.cra-arc.gc.ca/E/pub/tg/t4117/t4117-14e.pdf>