March 27, 2016

To Executive of VI Region:

My thoughts after attending the new “Societies Act” six hour workshop.

1. Commencement of New Act - November 28, 2016

If you have not revised your by-laws or constitution ready for the transition date of November 28, 2016 and if you have anything in your existing by-laws that conflicts with the new Act it will no longer be valid as at November 28, 2016 regardless of whether you have transitioned or not. There is a two year window to transition your society – it must be transitioned no later than November 28, 2018.

There are some sections of the New Act that will not be enforced until November 28, 2018 they are:

* Section 41 – restriction on employment/contracts with directors
* Section 42 (4) – written consent of directors
* Section 44 – statutory qualifications for directors
* Section 46 – restriction on renumerating directors
* Sub-section 61 (3) – statutory qualifications for senior managers

1. Changes to Note – Good

* Special Resolution default threshold has been lowed to 67% or 2/3rd – you can make it higher but you would do so in your By-laws (can’t be lower than the 2/3rd)
* Audit no longer required unless you include it in your by-laws
* No longer require a Court application to restore a Society
* Requirements for record keeping clarified
  + We will need to look at setting this up as will need to use a physical address where general public/members could come and check out our Society info as well as set times available for inspection of:
    - Certificate of incorporation, certified copy of constitution, bylaws, statement of directors and address
    - All other documents provided by the registrar
    - Orders regarding society
    - Register of directors
    - Consents of directors
    - Disclosure of interest
    - Register of members (with contact info)
    - Minutes of members minutes
    - Copies of ordinary and special resolutions in writing
    - Financial statements (if member-funded not required)
  + If By-laws don’t exempt them you must also have available
    - Directors meeting minutes
    - Directors resolutions in writing
    - Adequate accounting records for all fiscal years including record of each transaction materially affecting the financial position of the society

(I recommend that we include something in our by-laws to exempt these items from public/members)

NOTE we need to keep Directors/Members meeting minutes forever basically or tens years minimum and only if they are irrelevant. Records could be kept electronically but would need secure place and way to access them. Access is available to directors – members are allowed whatever is not restricted by the by-laws. Reason to restrict access to directors minutes by members – one is to restrict solicitor-client privilege, if members had access than any thing discussed in a directors meeting i.e. with lawyer could become public knowledge and everyone would be eligible to view. \* note there is no need to record who makes a motion and who seconds it – only record the motion itself.

1. Director qualifications

Statutory qualifications are:

* 18 years or older
* must not be incapable by a court or undischarged bankrupt or convicted of a criminal offence in past 5 years

By-laws can set out further qualifications

* if a director ceases to be qualified he/she must resign – it will be an criminal offense if they don’t

By-laws must set out how individuals are elected or appointed to the board, terms and term limits (default is one year terms)

Directors will need to confirm they consent to act as director – best way would be to have them sign a consent form.

1. Director Duties

* Act honestly, in good faith with a view to the best interests of the society (duty of loyalty)
* Exercise the care diligence and skill of a reasonably prudent person in similar circumstances (duty of care)
* Act in accordance with the Act and Regs
* Subject to above, act in accordance with bylaws
* Act with a view to society’s purposes
* Cannot be relieved of theses duties or liability for failure by contract

1. Director Liable for:

* Breach of duty, negligence
* Improper distributions from society (joint and several liability of all directors) - two year limitation period
* Due diligence defence available and discretionary relief

1. Director Removal

* New legislation will allow special resolution to rid yourself of a director and another method if provided for in the by-laws i.e. don’t attend 3 meetings can be removed

1. Conflict of Interest

* Expanded rules – directors with director or indirect material interest in a contract or transaction with society or a matter for consideration by the board must fully disclose the nature and extent of the interest, abstain from voting on resolution, leave board meeting when discussed, unless asked to provide information, leave board meeting when vote occurs, regardless, not take any actions indeed to influence the discussion or vote
* Reporting Remuneration – non member-funded societies need to report on financial statements any remuneration paid to directors – also renumeration of employees or contractors paid or $75,000 per annum

1. Membership Update

* Can have many types of members and member classes so long as rights and obligations are set out
* Terms v dues v indefinite membership
* Define the admission procedure
* Maintain a Register of Members

1. AGM

* The AGM must be held within six months of the fiscal year end – so I propose we change our financial year end to September 30th.
* Board should approve financial statements or the AGM
* Notice, reports and resolutions, nominations
* Directors must prepare and approve a Directors Report
* Plan Agenda
* Meeting can be in a physical place (location) also you can have a mix of physical and electronic with some participating online or a strictly online version of the meeting – electronic participants must be able to communicate with each other and adequately disclose the intention of the voters
* Every member of a society even non-voting members are entitled to notice of meeting
* Default notice of meeting by legislation is 14 days - if by-laws specify it can be as few as 7 days notice, but not ore than 60 days
* Notice can be waived – if you show up for the meeting notice is deemed waived
* Notice must be sent to every members – in manner agreed or as set out in by-laws - mail or e-mail (as long as an address has been provided)
* Set out in your by-laws the requirement for a quorum – the act says minimum of 3 voting members

So some food for thought and I will look at our existing constitution and by-laws and will create a draft for us to use a discussion point.

Karen Mallon