



The new Societies Act

What BC societies need to know about the changing legislation



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Overview

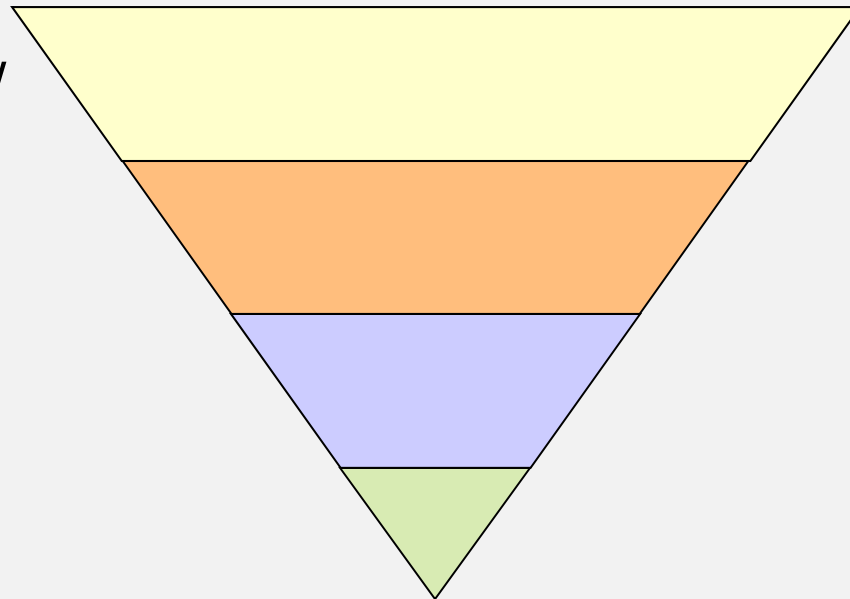
- background
- member funded society status
- good news
- constitution and bylaws
- significant changes
- transition methodology

Background

- 27,000 + societies in BC
 - registered charities, non-profits, sports clubs and teams, private clubs, associations, churches, community centres
 - most are volunteer run and have operating revenues under \$50,000
- wide variety of purposes, governance models, sophistication

Compliance Pyramid

- several layers of “rules” that societies must observe
- reverse pyramid shape rules on top overrule those below
 - > statute and case law
 - > constitution
 - > bylaws
 - > rules of order
 - > policies



Timeline

- 1977 - current *Society Act* enacted
- 2004 - minor amendments
- 2008 - BCLI Final Report
- 2009 - Review by Ministry of Finance
- 2011 - Initial Discussion Paper
- 2014 - White Paper
- March 25, 2015 – Bill 24 first reading
- May 15, 2015 – Bill 24 Royal Assent

Scope of Application

- applicable to every entity incorporated or continued under the *Society Act*
 - registered charities
 - non-profits
 - “not-for-profits”
 - whether headquartered in BC or elsewhere
- no application to
 - federally incorporated not-for-profits operating in BC
 - business corporations or Community Contribution Companies (C3)

Timing of Roll-Out

- will come into force **November 28, 2016**
 - regulations available now
 - registry preparing system for electronic filings
- applies to all societies **as of that date**
 - five sections deferred until November 28, 2018
- 2 year “transition” period to follow date of proclamation
 - transition not related to application of new rules
 - refers to re-registration of information

Delayed Application Sections

- not in force until November 28, 2018.
 - *section 41* – restriction on employment/contracts with directors
 - *subsection 42(4)* – written consent of directors
 - *section 44* – statutory qualifications for directors
 - *section 46* – restriction on remunerating directors
 - *subsection 61(3)* – statutory qualifications for senior managers

General Comments

- modernizes the Act in a number of beneficial ways
- increases governance flexibility
- relaxes certain rules for society that do not receive significant public funding
- greater public transparency
- increased member rights and participation

the result – **it's longer!**

What is a Member Funded Society?

- receive funds **predominantly from internal sources**
 - member dues/fees
 - contributions from insiders
 - earned revenues (social enterprise)
 - income from property (investment income, rent, royalties, etc.)
- designed with professional groups, associations, clubs, sports teams and leagues in mind

Member Funded Societies

- requires a **special resolution** to become member funded society, including on transition
- must include a specific statement in constitution
“This society is a member-funded society. It is funded primarily by its members to carry on activities for the benefit of its members. On its liquidation or dissolution, this society may distribute its money and other property to its members.”

Member Funded Societies

- member funded societies **exempt** from several new public transparency provisions
 - no public access to financial statements
 - not required to disclose remuneration
 - can have a single director
 - can have majority+ directors employed/contract
 - can distribute assets on dissolution to members or other “non-qualified recipients”
 - can convert to business corporation

Member Funded Society – Public Funding Threshold

- prescribed external funding threshold is the greater of:
 - \$20,000 or
 - 10% of gross income
- calculated over the period comprising the 2 fiscal years immediately preceding the current fiscal year

Member Funded Societies – Qualifications

- cannot qualify if:
 1. **registered charity/qualified donee**
 2. receives public donations over prescribed threshold
- “**public donations**” means donations, including bequests and gifts to a society other than donations made by
 - a) a voting member, director, senior manager or employee of the society,
 - b) the spouse of a person referred to in paragraph (a), or
 - c) a relative of a person referred to in paragraph (a) or (b),
- donations can be excluded from the definition by regulation
 - > none currently excluded

Member Funded Societies Qualifications (cont.)

- cannot qualify if receives government funding over prescribed threshold
 - “government funding” means funding by way of a **grant**, a **loan** without interest or with interest substantially below the market rate **or similar funding**, provided by
 - > the government of Canada, British Columbia or another province of Canada,
 - > a municipality in British Columbia or in another province,
 - > the governing body of a first nation in Canada,
 - > an organization that is owned or controlled by, or is an agent of, any of the governments or bodies referred to above, or
 - > a government, body or other organization that is included in this definition by regulation,
 - certain funding can be excluded from this definition by regulation
 - > none currently

Member Funded Societies Qualifications (cont.)

- cannot qualify if:
 - student society under the *University Act* or the *College and Institute Act*
 - hospital society under the *Hospital Act* (or designated as such)
 - owns manages or operates a licensed community care facility
 - designated recipient under *Provincial Sales Tax Act* or is otherwise entitled to receive taxes, fees or other revenue received by the government as agent of the society

Member Funded Societies (cont.)

- qualifications could fluctuate year by year
- if exceed the prescribed threshold over the period no longer qualified
 - must alter constitution to remove statement
 - does not require special resolution if no longer qualified
- except on initial transition, requires court approval to obtain or re-obtain status
- difficult for societies receiving some government funding or public donations
 - easy out, hard back in

Amalgamation of Member Funded Societies

- amalgamation restricted
- amalgamated society must not be member funded unless:
 - all societies amalgamating were designated as member funded, or
 - with court order confirming none of the parties was disqualified from being designated as member funded

Dissolution of Member Funded Societies

- more flexible
- can distribute to parties that are not “qualified recipients”
 - including members, third parties, other member funded societies
- as specified in the bylaws, or if not specified, as determined by ordinary resolution

Member Funded Societies - conclusion

- does your society want to be designated as member funded?
 - do the benefits appeal to you?
- are you disqualified by funding or status?
 - are you likely to be disqualified later?
- if no, will your members approve the necessary change to the constitution?

Some Good News

- **electronic transition**
 - “transition” wholly electronic
 - details not yet confirmed – may require login using the code for electronic filing of annual reports
 - not expecting a paper transition option
- **electronic filings**
 - annual report – 30 days of AGM, or Jan. 31 if none held (dissolution if miss 2 x)
 - change of directors, change of address, alteration of constitution or bylaws

Some Good News (cont.)

- special resolution **default threshold lowered to 2/3**
- can be increased to higher threshold by bylaws (up to unanimous consent) - not recommended
 - implications for current bylaws
- removes the requirement to obtain a special resolution of members if security required when borrowing and when incorporating a subsidiary
- phases out unalterable provisions
 - but...

Some Good News (cont.)

- societies **not required by the Act to be audited**
 - may be external requirements (funding, etc.)
 - if written in bylaws, required
 - bylaws can allow flexibility, for an annual determination of whether it is necessary and what level is appropriate (audit, review, notice)
- if required or chosen, Part 9 applies
 - auditor must be independent, CPA (or CGA)
- reporting society designation going away
 - but...

Reporting Societies

- designation disappearing
 - relates to required audit, preparation and advance notice of financial statements
- but current reporting societies are required to put “reporting society provisions” into their bylaws on transition
- can then be removed by special resolution

Some Good News (cont.)

- modernizes outdated and problematic amalgamation provisions
- restorations no longer require a court order

Some Good News (cont.)

- clear requirements for corporate record-keeping, including:
 - certificate of incorporation, certified copies of constitution, bylaws, statement of directors and address
 - all other documents provided by the registrar
 - orders regarding society (court, tribunal or regulatory)
 - register of directors, including contact information
 - consents of directors
 - disclosure of interest
 - register of members, with contact information
 - minutes of members' meetings
 - copies of ordinary and special resolutions in writing
 - financial statements

Record Keeping (cont.)

- also required:
 - 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”
- these documents only can be restricted from member access, by bylaw
- list does not replace what is required by CRA or under other statutory or regulatory regimes

Record Keeping (cont.)

- records can be kept physically
 - by default at the registered office, or another location specified by director resolution and notice posted at the registered office
- or electronically, so long as it can be inspected and copied at the registered office
- society must take reasonable precautions to ensure records are complete, safe, accurate and accessible
 - additional obligations protection of personal information

Access to Records

- directors have access to all required documents
- **members have access to all required documents, unless bylaws restrict**
 - can only limit access to the records on the second page, not the first
 - must be in bylaws
- why? concerns arise re: privacy, sensitive information, solicitor-client privilege
- society can impose reasonable fee and reasonable notice and times for inspection

Constitution and Bylaws

- constitution will have **name**, **purposes** and (if resolved) **statement** for member funded societies
- **everything else must be in bylaws**
 - dissolution, member benefit, location of operations
 - moved on transition
- no more unalterable provisions
 - moved to bylaws and identified as previously unalterable
 - can be altered by special resolution

Questions



Significant Changes

- changes in governance/ management
 - changes in membership rights
 - changes in membership meetings
 - other changes
-
- overall – greater public transparency and clearer rules for governance

Statutory Qualifications for Directors

- 18 years or older
 - unless bylaws permit 16-17 years old
 - majority must always be 18+
- not:
 - found incapable by a court
 - undischarged bankrupt
 - convicted of certain criminal offences in past 5 years without a pardon
- can set out additional qualifications in bylaws
- director who ceases to be qualified must resign
 - non-compliance is an offense
- section does not apply till 2018

Directors Taking Office

- increases governance flexibility
- elected or appointed in accordance with the bylaws
 - bylaws must clearly provide how individuals are elected or appointed to the board
 - > can include ex-officio or third party appointed directors, if bylaws provide
 - director terms and term limits
 - > default if not specified is one year terms (not recommended!)

Consents to Act

- directors must confirm they consent to act as a director
 - standard for corporate legislation
- 2 ways
 - be present at meeting where elected and not refuse the office
 - sign a written Consent to Act form
- section does not apply till 2018

Director Duties

- A director must:
 - 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 these duties or liability for failure by contract

Director Liability

- directors liable for:
 - breach of duty, negligence
 - improper distributions from society
 - > joint and several liability of all directors
 - > 2 year limitation period
- due diligence defence available, and discretionary relief
- indemnification mandatory in certain circumstances, optional in others, prohibited where not acting in good faith

Director Removal

- to date, requires special resolution
- new legislation will allow special resolution and another method provided in the bylaws (if any)
 - board resolution, ordinary resolution, deemed resignation, etc.
 - consider carefully whether you want this ability – could be abused to silence dissent

Conflict of Interest

- expanded rules
- directors with **direct 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 intended to influence the discussion or vote

Senior Manager

- new concept
 - one or more individuals appointed by the directors to exercise the directors' authority to manage the activities or internal affairs of the society as a whole or in respect of a principal unit of the society
- key is appointment by the directors
 - not hired by CEO/management
- could be an employee, contractor or a volunteer
 - CEO, COO, CFO

Senior Manager

- same qualifications as for directors
- appointing a senior manager does not create contract rights or affect existing rights
- fiduciary duties imposed on senior manager
 - overlap with employment duties (if employee)
- disclosure of conflicting interests in contracts or transactions
 - same process as directors
- access to indemnification provisions, due diligence defence, etc.

Director Remuneration and Employment

- a society **must not pay remuneration** to directors for serving as director **unless its bylaws permit**
 - applies to all societies
- subject to bylaws, society can reimburse directors for reasonable expenses incurred in the course of duties
- directors may be employees or provide services under contract, provided that a majority of the board must not be employed or under contract for services
 - member funded exempt
 - NOT a good governance standard to have directors as employees
- section does not apply till 2018

Reporting on Remuneration

- **new requirement**
- note to annual financial statements that sets out:
 - remuneration paid to directors, if any;
 - > listed by position (or name), breaks out director remuneration and other remuneration
 - remuneration paid to employees or contractors for services over \$75,000
 - > listed by position (or name) or nature of services
 - > if more than 10 above \$75,000, report top 10
 - > can list all as one total pooled amount and number of persons.
- member funded societies exempt

Membership Update

- can have members in accordance with bylaws
 - minors, corporations, non-entities
- can have multiple classes so long as rights and obligations are set out
- terms vs. dues vs. indefinite membership
- admission procedure

Register of Members

- members have access to Register of Members
- directors can restrict access by directors' resolution if consider that disclosure may be harmful
- even so members can gain access if they apply for access for legitimate purposes
 - requires requesting member to provide statement
- board can set notice period and inspection times

Member Complaints

- member may apply to court if society operated in manner oppressive or unfairly prejudicial to the member
- court can order or prohibit actions by society, regulate activities, set aside transactions or resolutions, provide information, correct records, appoint receiver, pay compensation, or even to be dissolved

Other Remedies

- derivative action
- court can remedy irregularities and correct records
- minister can appoint an investigator

Public Complaints – removed!

- White Paper had proposed that “any interested person” could bring an application against a society alleging
 - fraud
 - acting unlawfully
 - contrary to public interest
- **section entirely removed in bill 24**
- third party can still sue a society, but requires a more traditional cause of action

AGM Planning Calendar

- starts with fiscal year end
 - preparation of annual financial statements
 - board approval of F/S and preparation for AGM
 - > notice, reports, resolutions, nominations
 - notice to members
 - AGM
 - post-AGM filings
- occurs within first 6 months of fiscal year

Pre-AGM business

- prior to AGM board must conduct certain business
 - **review AND APPROVE annual financial statements**
 - > authorize signing of f/s by two directors
 - determine date, time and place of AGM
 - > make arrangements for facility, if necessary
 - approve or authorize notice of AGM
 - prepare and approve directors' report
 - plan agenda
 - nominations process?
 - special resolutions required?

Timing of AGM

- must hold AGM
 - in each calendar year
 - within 6 months of fiscal year end
- can obtain permission to hold no later than March 31 of next year
- AGM not required in calendar year of incorporation



Resolutions in Lieu of AGM

- NEW process
- can forgo actual meeting if **all voting members sign consent resolutions** providing for all the business required at an AGM
 - including presentation of financial statements
- deemed meeting
- impractical for large membership organizations

Location and Mode of AGM

- AGM can be:
 - physical (all present in person) at a location bylaws provide
 - partially electronic (some participating remotely)
 - wholly electronic (no common physical location – all participants participating remotely via shared technology platform)
- all participants must be able to communicate with each other and any votes must adequately disclose the intentions of the voters

Notice - recipients

- **every member** of a society entitled to notice, regardless of voting or non-voting
 - implies that all members are entitled to attend every general meeting, even if not entitled to vote

Notice of AGM - Timing

- not less than 14 days (default) or, if bylaws specify, as few as 7 days before the AGM
- not more than 60 days before the AGM
- a member can waive notice in any manner
 - > attendance is deemed waiver

Notice of AGM – Method

- notice must be “sent” to every member:
 - in the manner agreed on,
 - in the manner provided in the bylaws, or
 - failing both, by mail, delivery or e-mail (if an address has been provided)

Notice of AGM – Method (cont.)

- if more than 250 members and if bylaws so provide, society can give notice by combination of:
 - > e-mail to each member who has provided an e-mail address and
 - > posting in a specified newspaper once for each of the three weeks prior to AGM; or
 - > posting for at least 21 days on website for members

Notice of AGM - Content

- date, time and location of meeting
- must include the text of any special resolution to be presented at the meeting
 - more restrictive

Quorum for AGM

- 3 voting members, unless less than 3 voting members, in which case all required
- bylaws can provide for automatic quorum at adjourned meeting if required quorum is not present at original and adjourned meeting

Member Meeting Requisition

- **members can requisition a special general meeting for a specific purpose**
 - requires signatures 10% of voting members
 - requisition must state required business in 200 words or less
 - must be sent to each director listed
- **if board receives valid requisition**
 - within 21 days of receipt board must issue call for meeting
 - meeting to be held within 60 days
 - or members can call the meeting themselves
- **society must reimburse requisitionists for costs unless meeting resolves otherwise.**

Member Proposals

- distinct from meeting requisition
- **members can make proposal for consideration at a general meeting**
 - requires signatures of 5% of voting members, and not less than 2 voting members
 - proposal expressed in 200 words or less
 - received at least 7 days before notice of meeting is sent
- if valid proposal received, board must add to agenda
 - unless same proposal was considered in either of previous 2 calendar years before current
 - no liability for publishing a proposal
- query whether proposal binding even if adopted by meeting

Disposal of Undertaking

- current legislation allows for directors to sell/give all assets
- standard corporate practice requires membership approval to dispose of “all or substantially all” of the assets of the corporation
- now **requires a special resolution**
- for societies, a new procedural hurdle on wind down/dissolution

Dissolution

- dissolution by request
 - all liabilities paid or provided for
 - **remaining assets distributed to qualified recipients** set in bylaws or by ordinary resolution
 - > society that is not a member funded society
 - > community service co-op
 - > registered charity
 - > trustees for a charitable purpose trust
 - ordinary resolution to dissolve
- liquidation – more complex and costly

Continuation In to BC

- current legislation does not allow continuation in or out
- **new Act permits organizations incorporated in other jurisdictions to move to BC**
- does not permit BC societies to continue out to another jurisdiction
 - protectionist policy
 - inconsistent with corporate law internationally

Transition

- 2 year period to transition
 - begins November 28, 2016
- transition completed online
 - type or cut-paste and file:
 - > constitution (new form)
 - > bylaws that contain
 - > pre-transition bylaws
 - > other clauses from constitution, incl. unalterable
 - > reporting society provisions
 - > notice of current directors and registered address

Transition (cont.)

- legislation requirements apply immediately as of **November 28, 2016**
 - Exception - application to existing societies of certain sections re: directors delayed until conclusion of transition period
- member approval not required to transition unless:
 - > seeking member funded society status, or
 - > amending bylaws as part of transition
- board approval??
- failure to transition may result in dissolution after the period is over

Transition (cont.)

- **current bylaws “of no effect” if non-compliant**
 - model bylaws to accompany legislation inadequate for many governance models
- review and update of bylaws essential
 - 4 options
 - > current bylaws compliant – no changes required (unlikely)
 - > amend bylaws before act comes into force
 - > 2 stage process
 - > where there are more urgent changes required
 - > amend bylaws at transition
 - > approve before and hold for filing (1stage process)
 - > amend a.s.a.p. after transition (some risk)

Questions



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