

# Changes to the BC Society Act

## FREQUENTLY ASKED QUESTIONS

2015

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## MEMBERS

### 1. Is there a minimum/maximum allowable number of members required for a society to have?

Under the new Act, the minimum number of members in a society is one. There is no prescribed maximum number of members, but for efficient governance, we recommend against enabling a society to have an unascertainable number of members.

### 2. If organizations or corporations can be members, how many votes would they hold?

The new Act provides the same rule as the current legislation, that each voting member of a society is only entitled to one vote. A corporate or organizational member will also hold a single vote.

## VOTING AND SPECIAL RESOLUTIONS

### 3. Do 2/3 of a society's membership have to be present at a meeting in order to pass a special resolution?

This question refers to the fact that under the new Act, the threshold for special resolution will be lowered from the current 3/4 to 2/3.

A special resolution is passed at a duly constituted meeting if approved by at least 2/3 of the votes cast by the members entitled to vote, whether in person, by proxy or by permitted electronic means. The threshold depends on the number of votes cast, not the number of members in total (or even members at the meeting).

For example, if 100 members attend a meeting and only 60 votes are cast on a matter requiring a special resolution, at least 2/3 of the 60 votes cast (i.e. 40 votes = 2/3 of 60 votes) need to have voted in favour of the matter requiring a special resolution.

### 4. How can the members of a society pass a resolution at an electronic meeting under the new Act?

The threshold for passing a resolution at meeting held by electronic means is no different than the passing of the same resolution at a physical meeting. A matter requiring an ordinary resolution may be passed by a simple majority of the votes cast, in accordance with the society's bylaws, on the resolution. Similarly, a matter requiring a special resolution may be passed by at least 2/3 of the votes cast, in accordance with the society's bylaws, on the resolution.

The mechanism for casting votes will differ depending on the type of electronic means chosen by the society. The new Act does not prescribe a certain mechanism of voting, so long as the intentions of the members who vote are evident.

#### **5. Does the new Act allow proxy-voting?**

The new Act clarifies that proxy holders are allowed if expressly permitted by the bylaws. If the bylaws are silent, then proxy votes are not permitted.

The Act also sets out rules for the appointment of proxy holders. Proxies must be in writing and signed, and can be revoked at any time. If the bylaws allow, a proxy may be validly given for more than one meeting. Unless the bylaws provided otherwise, the proxy holder must be a member of the society and can be under 19 years old.

## **ELECTRONIC MEETINGS**

#### **6. If electronic meetings are now allowed, do we need to provide for them under our by-laws?**

No. The default is that electronic meetings (i.e. via telephone or other electronic means of participation) are permissible unless the bylaws of a society provide otherwise.

#### **7. Would a society be required to hold an electronic meeting if requested by members?**

No. The decision to hold a meeting using telephone or electronic means is at the discretion of the board of directors.

While members will still be able to requisition a general meeting, they cannot compel the society to hold such meeting electronically. The new Act provides that the ability to hold an electronic meeting does not obligate the society to do so.

## **DIRECTORS**

#### **8. Who is “qualified” to act as a director?**

The new Act explicitly sets out minimum qualifications for directors and senior managers of all societies. A director or senior manager must:

- a) be at least 18 years of age (or may be 16 or 17 years of age if provided for in the regulations to new Act);
- b) not be found by any court, in Canada or elsewhere, to be incapable of

- managing his or her own affairs;
- c) not be an undischarged bankrupt; and
- d) not be convicted in or outside of British Columbia of an offence in connection with the promotion, formation or management of a corporation or unincorporated entity, or of an offence involving fraud, subject to certain exceptions.

A society may also set out additional director or senior manager qualifications in its bylaws.

### **9. What is the consequence of a director being unqualified?**

A person who is not qualified to act as a director may not be elected or appointed as a director of a society. A director of a society who ceases to be qualified under the Societies Act or a society's bylaws must promptly resign. Unqualified individuals who act as directors or senior managers commit an offence under the new Act and becomes liable to a fine of not more than \$2,000.

## **SENIOR MANAGERS**

### **10. Who is a senior manager?**

Under the new Act, a "senior manager" will be any individual who has been appointed by the directors to exercise the directors' authority to manage the activities or affairs of the society as a whole or in respect of a principal unit of the society. A senior manager may be an employee, contractor or volunteer. In addition, unless a society's bylaws provide otherwise, a director may be a senior manager as well.

The concept of a senior manager is being introduced into the new Societies Act as a means to decrease the potential for mismanagement within societies. Senior managers will also be subject to similar qualifications and duties as directors. The new Act imposes certain duties on all senior managers (including the duty to disclose a conflict of interest) but also provides rules on indemnification, insurance, and limitation of liability for such persons.

### **11. Will senior managers need director/officer insurance?**

As is the case with directors, under the new Societies Act, a society may choose to purchase and maintain insurance against any liability that may be incurred by reason

of a person being or having been a senior manager. Such insurance is not mandatory under the new Act and societies may decide for themselves whether or not insurance for directors and/or senior managers is appropriate.

## CONFLICT OF INTEREST

### **12. What is the meaning of the phrase “material interest” in the new Act’s sections addressing conflicts of interest?**

The new Act does not define for the term “material interest”. The concept of a “material interest” is used in other corporate statutes to set a threshold for a conflict of interest that may be disclosable. The word “material” suggests something that is significant or essential. When associated with an interest, it may be described as being of such a nature that knowledge of the interest would affect a person’s decision-making.

It is important to be aware that a material interest may arise in two possible ways. Firstly, an material interest may relate to a person’s financial involvement in a third party. For example, a director or officer of a society that is doing business with another corporation of which he is a shareholder has a conflict of duty and interest. The second is emotional involvement. A director may have a “material interest” where the society has a transaction with a relative or friend of one of its directors.

## TRANSITION AND MISCELLANEOUS

### **13. When the transition happens, will we still have to pay all the application filing fees?**

Societies formed under the current legislation must file a transition application within two years after the new Act comes into force. It is expected that the new Act’s accompanying regulations will fill in certain details, such as the cost to file the transition application and filing fees associated with annual maintenance. The regulations are being drafted and likely will not be released to the public until 2016.

### **14. Should constitution and by-laws be amended before or after transitioning to the new Act?**

Upon coming into force, the new Act will prohibit all pre-existing societies that have not yet filed a transition application from altering its current constitution or bylaws.

Societies can amend their bylaws before the new Act comes into force, or they may wait to amend bylaws until they transition to the new Act. In order to amend bylaws as part of the

transition (and beyond what is required by the new Act), a society must obtain a special resolution of the members. Completing the transition without changes to bylaws does not require a special resolution.

Whether your society should amend its bylaws before, during or after transition depends on a number of individual circumstances. Societies should obtain legal advice when deciding how and when to amend their bylaws.

#### **15. Will model by-laws be provided?**

It is anticipated that the new Societies Act will provide a set of model bylaws which may be adopted by societies on transition. While these model bylaws may serve as a useful starting point, we recommend that societies take this opportunity to review their particular governance needs and to consider adapting the model bylaws or adopting a custom set of bylaws, as may be appropriate in the circumstances.

#### **16. Will every charity operating in British Columbia be required to transition under the new Societies Act?**

No, a registered charity is not required to transition if it is:

- a) federally incorporated under the Canada Not-for-Profit Corporations Act;
- b) incorporated under the legislation in another province; or
- c) a charitable trust.

The new Act may have some indirect application if your charity is incorporated as a society in a province other than BC, or federally under the Canada Not-for-Profit Corporations Act, and has been extra-provincially registered to operate in BC. However, such organizations are not required to transition.

#### **17. The Gaming Policy and Enforcement Branch requires the dissolution clause of registered societies to be unalterable. Will this change in light of the removal of unalterable provisions within the Societies Act?**

In light of the change to the legislation and the fact that societies will be unable to have unalterable provisions in the constitution, we anticipate that the Gaming Policy and Enforcement Branch will revise its requirements in this respect.

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## FAQs

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