

The New *Societies Act*: Don't Panic. Be Prepared

There are more than 27,000 non-profit societies in BC, providing services and programs that touch virtually every citizen. The *Society Act*, which governs those organizations, was last revised in 1976. Since the British Columbia Law Institute's 2008 'Reform of the *Society Act*' Project, the Ministry of Finance has been considering a new *Act*.

In April 2015, the new *Societies Act* (known as Bill 24), received Royal Assent. The new *Act* comes into force on November 28, 2016. This will give the BC registry time to get new forms and electronic systems up and running. There will be a **two year transition period**, by which time all societies in BC will have to make the switch to the new *Act*.

All organizations that are incorporated under the current *Society Act* should be planning to complete their "transition application," with revised constitution & bylaws, by the time of their 2017 AGM.

Key Changes

The new *Act* provides many positive benefits. We will finally have an electronic filing system (*evergreen*), making it easier to file annual reports and update information. In addition, many sections of the new *Act* provide clarity in key areas. The new *Act* enhances the level of accountability of societies to their members in terms of keeping and providing access to records, as well as the disclosure of material interests (conflicts) and remuneration to directors, employees and contractors.

Administrative Changes

The *Act* includes a number of changes to administrative responsibilities and financial management. For instance, a society's name and purpose will be the only matters allowed in its constitution.

As well, the new *Act* will no longer permit any unalterable constitutional provisions. Many non-profits **such as those that receive Gaming funds** will have to change their constitutions, removing the unalterable provisions and putting these into bylaws instead.

The new "evergreen" system means that all societies will be able to make administrative changes electronically. Any society that doesn't currently have electronic versions of their constitution and bylaws will be able to adopt a **new *Schedule 1 model bylaw set***, or create an

e-version of their customized bylaws.

Enhanced record-keeping

Although switching to an electronic system is a time-saver, each organization must still identify a 'registered office,' and have all records available at that address. These records include:

- (a) the society's certificate of incorporation;
- (b) each certified copy, furnished to the society by the registrar, of the following records:
 - (i) the constitution of the society;
 - (ii) the bylaws of the society;
 - (iii) the statement of directors and registered office of the society;
- (c) Any official documents provided to the organization from the Registrar (approvals, confirmations etc.);
- (d) a copy of any legal order from a court or government;
- (e) the society's official register of members of the Board of Directors, including contact information provided by each director;
- (f) written consent to act as Director and each written resignation of a director;
- (g) a copy of each record evidencing a conflict of interest disclosure by a director or senior manager;
- (h) the society's register of members, organized by different classes of member if different classes exist, including contact information provided by each member;
- (i) the minutes of each meeting of members, including the text of each resolution passed at the meeting;
- (j) a copy of each ordinary resolution or special resolution, other than a resolution included in the minutes of members, and, in the case of a resolution consented to in writing by the voting members, a copy of each of the consents to that resolution;
- (k) financial statements of the society required under section 35 and the auditor's report, if any, on those financial statements.

With the new *Act*, members of the society have enhanced rights to review these records, subject to privacy considerations. Updating your society's privacy policy and reviewing your records is a good first step. It is important to note that there are limits to the access members have to the membership register.

Financial Changes/Disclosure of salaries

There are a few changes to financial record-keeping requirements. **Financial statements will require disclosure of salaries, wages, and any other remuneration that the Society pays out to its directors, employees, and contractors above \$75,000¹.** The statements will only need to list the title, not the recipient's name.

Board of Director Changes

- 1 If more than 10 employees earn more than the set amount, only the top 10 need to be listed.

LAW FOR NON PROFITS

New qualifications will be brought into effect to govern who may and may not serve on a board of directors. Board members:

- **may not be an undischarged bankrupt;**
- **may not be under a court ordered in capacity;**
- **may have no fraud conviction (or related financial offense) within the past 5 years;**
- **will usually be required to be 19 or over, though by-laws can allow 16 and 17 year-olds to serve**

Remuneration of board members will be permitted by the new *Act*: the amount must be included in the Society's by-laws.

The bylaws will have to include the terms of office of directors if they are over one year. **So, if you have two- and three-year terms in a Board policy those terms will have to be added to the bylaws.**

Finally, decision-making by directors by way of consent resolution is now expressly included in the new *Act*.

Membership Changes

There are a few changes to the membership provisions. As before, societies can have a mix of both voting and non-voting members. However, members will have both enhanced access to records and a new right to put a proposal to the membership at the AGM. Member meetings may be held electronically.

If a voting member would like to make a proposal at the AGM, they will now be allowed to, so long as they have 5% of the membership (or min 2 voting members) in favour.

The Senior Manager role

The *Societies Act* creates a new category of person called a Senior Manager. While in many non profits this could be the Executive Director or General Manager, in others, it may be a volunteer or a contractor. Senior Managers will have enhanced liability. They are also included in the list of those whose salaries or remuneration must be disclosed in the financial statements (provided they make over the set amount).

Member Funded Societies:

If the society is created for the private benefit of its members (such as a golf course), and is

almost **entirely** funded by members (less than \$20,000 a year or 10% of the total budget over 2 years from government or other public sources) a society may transition as the new Special Society called a member-funded society. They will not have the same accountability of other societies, however, it will be very difficult to transition IN/OUT of the new category. If the society plans to receive grants or funding from the public above the threshold in the regulations, they should not transition under these provisions. This is one of the areas where specialized legal advice is recommended.

Transition applications

Everyone currently registered as a Society will have to submit a transition application to the new *Societies Act* by 2018. Planning ahead will be crucial to making this a smooth and simple process.

10 steps to compliance:

1. Locate your Constitution and by-laws. If you are unsure of where they are and whether they are current request one from the registry.
2. Establish your team to lead process (ED? Board committee? lawyers? Who will take care of this for your org?).
3. Review key areas and identify what you likely need to change.
4. Redraft constitution with only name and purposes.
5. Draft new Bylaws or adopt the Schedule 1 bylaws. Make sure that anything you took out of the constitution is included in the bylaws.
6. Identify any special issues your group has – unalterable provisions you may want to keep, Board member remuneration?
7. Plan to transition by the AGM in 2017.
8. Pass a Special Resolution at AGM/SGM with new constitution and bylaws.
9. If you are planning to transition to a member-funded society obtain legal advice.
10. Ensure organization has new processes in place to deal with record-keeping and Board qualifications.

How can we help?

Lawfornonprofits.ca