



# Societies Act Amendments

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LAW FOR NON PROFITS

November 2, 2021

# Introduction

In 2019, the Ministry of Finance first announced 36 proposed amendments to the *Societies Act*. Many of those amendments are contained in Bill 19 - the [Act to Amend the Societies Act](#) - that received Royal Assent on October 28, 2021. Many of the amendments will take effect by Regulation.

These slides will guide you through key amendments affecting directors, members, members meetings and access to records with an emphasis on those which will be of most importance to the charitable and non-profit sector.



# Directors

**Amendment (s.11(b))**: Clarification of length of term of directors: term ends at close of annual general meeting unless set out in the bylaws.

**Amendment (s.20(1)(e))**: Register of Directors must include date the director started and dated they cease.

**Rationale**: To ensure that a society's bylaws and Register of Directors are clear about when a director will cease to hold office, whether or not there are terms of office.

**Amendment (s. 51(1))**: An individual director will be allowed to make an application directly to the Registrar, upon sufficient proof, to change the Statement of Directors.

**Rationale**: In circumstances where there are disputes this will allow directors to ensure their resignation is acted upon in a timely way.

**Amendment (s.54(b)(iii))**: Director may not vote by proxy at a meeting of directors

**Rationale**: Inconsistent with principles of accountability of individual directors and duties to the society. **Note: Amendments also reiterate that member proxy voting is not allowed unless provided for in bylaws. (s.85(1))**



# Directors

**Amendment (ss.41 and s.230):** The number of directors who may be employed by the society will be subject to regulation or, a majority of the directors.

**Rationale:** The Regulations will allow for a society, or a society in a prescribed class of societies, to employ a majority (or more) of directors. This section will allow those societies where a majority of directors have an employment or contractual relationship with the society to do so.

**Amendment (s.44(3)):** An individual disqualified from becoming a director, due to a certificate of incapability having been issued under the *Adult Guardianship Act*, may be qualified where the certificate is subsequently cancelled under section 37 (4) of that Act.

**Rationale:** Allows an individual disqualified from being a director due to incapacity under the *Adult Guardianship Act* to be subsequently qualified. This may allow those who may be temporarily unable to manage their affairs to subsequently participate as a director of a society.



# Directors

**Amendment (s.54(2)):** Consent resolution will require that all (100%) directors have been provided the resolution unless the bylaws allow for a lower threshold.

**Rationale:** Many societies have allowed consent resolutions to pass without providing clear notice to all directors particularly where there are disputes. This provision ensures that they do so. may not always provide notice to all the directors.

**Amendment (s. 56):** Clarify that a director is not obliged to disclose his or her material interest in a contract or transaction of a society that is being considered by the directors if the director reasonably had no knowledge of the contract or transaction. The disclosure duty will come into effect, however, as soon as the director becomes aware of the conflict.

**Amendment (s. 56(4.1)):** will allow a director to remain in the meeting to answer questions when a conflict of interest is discussed where one or more directors make the request.



# Members

**Amendment (s. 20(1)(h)):** Clarifies that the ONLY information on the register of members should be class of member, name and one piece of contact information.

**Rationale:** Other information collected by society should not be on the Register of Members. This is an important clarification.

**Amendment (s.27(1)):** Limitations have been placed on the purposes for which the members' contact information may be used. The applicant may only use the contact information in connection with matters related to the activities or internal affairs of the society.

**Rationale:** To protect the privacy of members, the register of members must not contain any other information. This provision is important given expansive application of access to records by CRT.



# Members Meetings

**Amendment (s. 78):** Notice of a meeting must be written and include date, time, location and any special resolution submitted at the meeting. If the meeting is at least partially held electronically, notice must include instructions for attending, participation, and voting (if applicable) electronically. The notice must be sent before, or at the same time the notice is published or posted.

**Rationale:** Clarifies what the notice of a General Meeting must include. This is an important clarification.

**Amendment (s. 77):** If a society has more than 100 members it may a notice of general meeting may be sent by email to each member posted to a website and

**Rationale:** Expands the availability of publication to a website to a larger number of societies.

**Amendment (s. 108(1)(b)):** Minutes must be kept for all General Meetings but not other kinds of member meetings

**Rationale:** Meetings held with members such as social events do not have to be minuted.



# Member Requisitions and Proposals

**Amendment (s. 75):** Length of Requisition of Special Meeting has been expanded from 200 to 500 words.

**Rationale:** No doubt this is due to issues that have been raised by requisitionists having observed several non-profits where Boards have rejected requisitions.

**Amendment (s. 81):** Length of member proposals has been expanded to 500 words, requires the member to be present at the meeting, must include special resolution that may be required, does not need to be considered if substantially the same as the previous year

**Rationale/Issue:** Provides more latitude to members. I think there may be an issue with the Special Resolution reference since a proposal could be brought to amend a bylaw, however, that SR will not have been in the original notice.





# Remuneration and Member-funded

**Amendment (s.36(1)(b)):** Societies will be obligated to disclose remuneration of all staff and contractors over the 75,000 designated by regulation not just the top 10.

**Rationale:** Enhance transparency to members. Requiring societies to report the remuneration paid to every contractor and employee greater than \$75,000 will provide a better overall picture of the remuneration paid by a society.

**Amendment (s.190)):** Allow member-funded societies to accept testamentary disposition without affecting their member-funded status.



# Recordkeeper

**Amendment (s. 122(1)):** This new provision will require that a recordkeeper be appointed where a Society is being dissolved pursuant to a voluntary dissolution s. 126. It allows the recordkeeper to be paid for their services.

**126.1 The record keeper of a society must take into the record keeper's custody or control all of the records the society is required to keep under section 20 *[records to be kept]*.**

s. 152 requires that the recordkeeper retain the records for 3 years or a time period as set out by a Court.

**Rationale:** Presumably this provision is a consequence of the scope of Access to Records that have been going to CRT/Registrar.

**Issue:** These are monumentally onerous provisions for non-profits that are in the process of a voluntary dissolution. It is unclear how they will retain the funds to pay this person absent a bank account among other issues such as liability.



# Resources

- [pacificlegaloutreach.com](http://pacificlegaloutreach.com)
- Martha Rans: [mrans@shaw.ca](mailto:mrans@shaw.ca)

