

# Societies Act White Paper: Draft Legislation with Annotations

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BRITISH  
COLUMBIA

Ministry of  
Finance



## **Introductory letter from the Honourable Michael de Jong, Q.C., Minister of Finance**

As you may be aware, the Ministry of Finance is in the process of developing a new *Societies Act*. The review commenced in 2009 with a letter to stakeholders seeking general input on issues under the current Act. This was followed by a 2011 Discussion Paper inviting public comment on specific proposals for reform.

This document represents the next stage of consultation in the development of a new Act. The document is in the form of a “White Paper” – a discussion paper that sets out policy recommendations and includes actual draft legislation. Each provision of the proposed new *Societies Act* appears exactly as it might in a Bill of the Legislature, but is annotated to include important background information, such as the policy intent behind the provision and how it differs from what is in the current Act.

Although the draft legislation in the White Paper is, for the most part, consistent with the proposals contained in the Ministry’s 2011 Discussion Paper, provisions have been refined, and in some cases significantly altered, to address concerns raised during earlier consultations. These changes are also indicated in the annotations.

The draft legislation included in the White Paper does not represent final government policy, but rather is intended to provide another opportunity for stakeholders to see exactly what is being proposed and what a new Act might look like. All of the provisions of this draft legislation are subject to change as a result of this consultation or otherwise.

Throughout earlier consultations, stakeholders repeatedly requested that the new Act be kept simple and straightforward, so that it could be effectively used by all participants in the non-profit sector, including those without legal counsel. The proposed legislation in the White Paper has been drafted with these concerns in mind. The draft adopts a user-friendly drafting style that tries to minimize cross-references and “subject to” clauses. More frequently used provisions have been moved to the beginning of the Act, with the more complicated and rarely used processes (such as corporate re-organizations and legal remedies) placed nearer to the end.

The more legalistic and complex *Business Corporations Act* (BCA) model has not been adopted. Instead, specific provisions of the BCA and other corporate legislation (e.g. administrative restoration, court remedies) have been selected and simplified for use by societies. Largely because of the inclusion of these new corporate procedures, the draft legislation is longer than the current Act. However, most users will need only to refer to the first six Parts (up to section 82) of the Act, which contain the basic rules for the day-to-day operations of most societies.

As you will see, the draft legislation found in this White Paper looks similar to the current *Society Act*, and maintains the basic framework of the current Act. Societies will continue to have constitutions setting out their purposes, bylaws that are filed at the corporate registry, and restrictions on share capital and distribution of assets.

This framework has, however, been updated and supplemented with new provisions that enhance flexibility by providing societies more internal governance options. Each society will have greater ability to use its own bylaws to structure itself in a way that meets its unique needs. At the same time, fundamental accountability provisions (such as the requirement for three directors and the provision of public access to financial statements) have been largely maintained for societies that perform a broader social function and rely on public financial support. The draft legislation attempts to recognize the unique nature and the broad spectrum of societies across our province and to balance societies' needs for flexibility with competing concerns for accountability.

This White Paper does not, however, deal with the rights of persons who choose to donate to societies or with other aspects of charitable fund raising. While these are important issues, they can be seen to fall outside the scope of a corporate framework statute.

There are approximately 27,000 BC societies, and the non-profit sector plays an increasingly important role in the province by helping to provide services that deliver social, cultural and other programs to the public. My objective in publishing this White Paper is to ensure that any legislative obstacles preventing societies from functioning fully and efficiently are identified before legislation is introduced.

Comments on the White Paper may be made until the end of day, **October 15, 2014**, and should be directed, in electronic form, to [fcsp@gov.bc.ca](mailto:fcsp@gov.bc.ca) or mailed to:

Financial and Corporate Sector Policy Branch  
Ministry of Finance  
PO Box 9418 Stn Prov Govt  
Victoria BC V8W 9V1

Please note that the Ministry will be sharing comments it receives with other branches of government, including BC Registry Services, responsible for the administration of the Corporate Registry. Even where confidentiality is requested, freedom of information legislation may require that responses be made available to members of the public who request access.

I look forward to hearing your views on the proposals contained in this White Paper, and thank you in advance for your participation in the development of a new *Societies Act*.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. de Jong', with a stylized flourish at the end.

Michael de Jong, Q.C.  
Minister of Finance



## Summary

The draft legislation found in this White Paper maintains the basic framework of the current *Society Act*, but updates and supplements that law with new corporate rules and procedures from the *Business Corporations Act* and other corporate legislation (such as provisions respecting corporate reorganizations and qualifications of directors, and a broad palette of court remedies). As well, proposed new provisions will enhance flexibility for societies by providing them with more internal governance options (respecting matters such as proxy voting, the holding of general meetings and the creation of classes of members) and by removing current restrictions on the exercise of directors' authority (such as member pre-approval of financial dealings). All of these matters will now be subject to the bylaws, to allow each society to structure itself in a way that meets its particular needs.

The most important policy change is that the new Act distinguishes societies that are "member funded" from the majority of societies that are charities or that otherwise rely on public donations or government funding. Member funded societies (common examples may include professional societies and golf courses) will be subject to fewer accountability measures as set out in Part 12 of the new Act. For example, they need have only one director, need not provide public access to their financial statements, and are not subject to the same asset lock on dissolution as ordinary societies (see sections 187 to 197). This will ease the regulatory burden on privately-funded societies so they can function more efficiently.

Societies that have charitable status or that receive significant public funding will continue to be subject to the current Act's requirements respecting directors, financial statements and distributions on dissolution. As well, in order to improve accountability and protect the public interest, these societies will be required to have a majority of their directors not employed by or under contract to the society (section 40). They will also be required to publicly disclose the remuneration paid to directors and their highest paid employees and contractors (section 35).

Other key proposals in the draft legislation include the following:

- streamlining processes, by providing for incorporation by one person (section 12) and allowing indemnification and restoration without court order (sections 61 and 155);
- clarifying record-keeping and access to records (sections 19 to 27);
- setting out default governance provisions (Part 6);
- rationalizing distribution rules to prevent assets from being improperly disbursed (section 4) and clarifying directors' liability for improper payments (section 59);

- providing greater protections for directors, who are often volunteers, including court-ordered relief in legal proceedings (section 103) and a defence for reasonable reliance on expert reports (section 60);
- clarifying that bylaw authorization is needed if directors are to be paid for their services (section 45);
- enhancing accountability by requiring disclosure of loans or other financial assistance (section 36);
- giving societies more flexibility to meet changing needs by enabling unalterable provisions in a society's bylaws to be altered by special resolution (section 16).

Finally, the draft legislation in this White Paper supports the implementation of a mandatory online filing system for incorporation, bylaw changes and other filings at the corporate registry. Pre-existing societies will be required to “transition” to the new system by inputting their constitution and bylaws into an electronic data base. As a result, every society will have a perennially updated and searchable set of bylaws.



# **SOCIETIES ACT**

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## **SOCIETIES ACT**

The following provisions are sections of the proposed new *Societies Act* as they would actually appear if the legislation were passed without further change. They are set out in this way so that users can see how the total framework holds together, and comment on the specific wording and organization as well as the policy being proposed. The draft legislation is not a statement of the law applicable to societies or any other corporations, and does not constitute legal advice.

The shaded box following each section sets out background information about the provision, including a brief explanation of its meaning, any particularly problematic aspects and possible alternative approaches. The square bracketed references following the title of each section indicate the source of the provision – that is, whether it comes directly from the current *Society Act*, is new, or contains alterations adapted from the *Business Corporations Act* (BCA).

### **PART 1 – DEFINITIONS**

#### **Definitions**

**1** In this Act:

“**alter**” includes create, add to, vary and delete;

“**bylaws**” means the bylaws described in section 10 [*bylaws*];

“**consent resolution of directors**” means a directors’ resolution passed in accordance with section 55 (2) [*proceedings of directors*];

“**constitution**” means the constitution described in section 9 [*constitution*];

“**court**” means the Supreme Court of British Columbia;

“**deliver**” means deliver in accordance with section 29 [*how record is delivered*];

“**delivery address**”, in respect of the registered office of a society, means the delivery address of the registered office set out in the statement of directors and registered office of the society;

“**director**” means an individual who is designated, appointed or elected, in accordance with this Act, as a director of a society, regardless of the title by which the individual is called;

“**extraprovincial non-share corporation**” means a corporation, without share capital, incorporated or otherwise formed by or under the laws of a jurisdiction other than British Columbia;

“**file**”, in respect of a record that must or may be filed with the registrar, means file the record in accordance with section 207 (1) [*filing of records*];

“**furnish**”, in respect of a record that must or may be furnished by the registrar, means furnish the record in accordance with section 208 [*furnishing of records by registrar*];

“**general meeting**” means a general meeting of the members of a society;

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**“home jurisdiction”**, in respect of an extraprovincial non-share corporation, means the jurisdiction in which the extraprovincial non-share corporation was incorporated or otherwise formed;

**“mailing address”**, in respect of the registered office of a society, means the mailing address of the registered office set out in the statement of directors and registered office of the society;

**“member”** means

- (a) an applicant for the incorporation of a society who, in accordance with the bylaws, remains a member of the society, and
- (b) a person who, in accordance with the bylaws, becomes and remains a member of a society;

**“ordinary resolution”** means any of the following:

- (a) a resolution passed at a general meeting by a simple majority of the votes cast by the voting members, whether cast in person or by proxy or another method permitted by the bylaws;
- (b) a resolution consented to in writing, after being sent to all of the voting members, by at least 2/3 of the voting members;
- (c) if the bylaws authorize indirect or delegate voting or voting by mail or another means of communication, including by delivery or by fax, email or other electronic means, a resolution passed by a simple majority of the votes cast, in accordance with the bylaws, on the resolution;

**“pre-existing society”** means a corporation that, immediately before the coming into force of this definition, was a society under the previous Act;

**“previous Act”** means the *Society Act*, R.S.B.C. 1996, c. 433;

**“publish”**, in respect of notice that must or may be published by the registrar, means publish notice in accordance with section 209 [*publication*];

**“qualified recipient”** means

- (a) a society, other than a member funded society as defined in section 187 [*definitions*],
- (b) a community service cooperative as defined in section 1 (1) [*definitions and interpretation*] of the *Cooperative Association Act*,
- (c) a registered charity as defined in section 248 (1) of the *Income Tax Act* (Canada) or another qualified donee as defined in section 149.1 (1) of that Act,
- (d) the trustees of a trust for a charitable purpose, or
- (e) a person or other entity that is designated by the regulations as a qualified recipient for the purposes of this definition;

**“register of societies”** means the register of societies and extraprovincial non-share corporations maintained by the registrar;

**“registrar”** means the individual appointed as the Registrar of Companies under section 400 [*appointment of registrar and staff*] of the *Business Corporations Act*;

**“send”** means send in accordance with section 28 [*how record is sent*];

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**“senior manager”** means an individual appointed, under section 62 [*senior managers*] or otherwise,

- (a) to oversee the activities of a society as a whole or to be in charge of a principal unit of a society, including operations or finance, or
- (b) to perform a policy-making function in respect of a society, with the capacity to influence the direction of the society;

**“society”** means

- (a) a society incorporated or otherwise formed under this Act, or
- (b) a pre-existing society;

**“special resolution”** means any of the following:

- (a) a resolution passed at a general meeting by not less than 2/3 of the votes cast by the voting members, whether cast in person or by proxy or another method permitted by the bylaws;
- (b) a resolution consented to in writing by all of the voting members;
- (c) if the bylaws authorize indirect or delegate voting or voting by mail or another means of communication, including by delivery or by fax, email or other electronic means, a resolution passed by at least 2/3 of the votes cast, in accordance with the bylaws, on the resolution;

**“statement of directors and registered office”** means the statement of directors and registered office described in section 11 [*statement of directors and registered office*];

**“subsidiary”**, in respect of a society, means a corporation that is controlled by the society, and, for the purposes of this definition, a corporation is controlled by a society if the votes that are carried by the shares or memberships in the corporation held directly or indirectly by the society are sufficient, if exercised, to elect or appoint a majority of the directors of the corporation;

**“voting member”** means a member of a society who has the right to vote under section 81 (1) [*right to vote*].

### Section 1: Definitions [based on current Society Act, s. 1]

Most of the defined terms in this section are included only for drafting and reading convenience of later sections. Substantively new or amended definitions include the following:

- “consent resolution of directors” – a directors’ resolution that may be passed without a meeting
- “director” – an individual designated, appointed or elected to the position (see also section 53 which provides for duties and liabilities of an individual who takes on the functions of a director)
- “qualified recipient” – a charity or other asset-locked entity, to which any society, either on its dissolution or as a going concern, may distribute its assets
- “senior manager” – an individual who runs the society or influences its policy, and who is therefore made subject to similar qualifications and liabilities as directors (see section 62).

The most important change contained in the definitions concerns the threshold for passing “special resolutions” under the Act. Currently, a special resolution requires a 3/4 vote. The new Act will lower this threshold to 2/3, consistent with more modern corporate legislation such as the BCA. The lower threshold is intended to provide societies with slightly more flexibility to

adapt to changing times, and was widely supported in earlier consultations. The Discussion Paper proposal to continue to apply the higher threshold to pre-existing societies is not, however, included in these proposals in an attempt to avoid a patchwork of different rules for older versus newer societies.

## **PART 2 – FUNDAMENTAL MATTERS IN RELATION TO SOCIETIES**

### **Division 1 – Nature of Societies**

#### **Purposes**

- 2** (1) Subject to subsection (2), a society may be incorporated or otherwise formed under this Act for any lawful purpose or purposes, including, without limitation, agricultural, artistic, benevolent, charitable, educational, environmental, patriotic, philanthropic, political, professional, recreational, religious, scientific, social or sporting purposes.
- (2) A society must not have, as one of its purposes, the carrying on of a business for profit or gain, but carrying on a business to advance or support the purposes of a society is not prohibited by this section.
- (3) The registrar, in writing and giving reasons, may order a society to alter its purposes if the registrar considers one or more of those purposes to be offensive or to be contrary to this Act or otherwise unlawful.

#### **Section 2: Purposes [Society Act, s. 2]**

Consistent with section 2 of the current Act, a society may be incorporated for any lawful purpose. Societies may carry on a business incidentally, but may not be incorporated with a for-profit business purpose. The registrar's new power to order a change in a society's purposes replaces the pre-vetting of documents by registry staff, which is incompatible with the electronic filing system proposed for the new Act.

#### **No share capital**

- 3** A society must not have capital divided into shares.

#### **Section 3: No share capital [Society Act, s. 8]**

The inability of a society to issue shares to its members is a fundamental feature of a non-profit corporation, and is carried forward unchanged.

#### **Restrictions on distributions**

- 4** A society must not distribute any of its money or other property other than
  - (a) for full and valuable consideration,
  - (b) in furtherance of the purposes of the society,
  - (c) to a qualified recipient,
  - (d) for a distribution required or authorized by this Act including, without limitation, a distribution made in accordance with this Act on the society's

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dissolution or liquidation and dissolution or for a distribution otherwise required by law, or

- (e) for a distribution that is
  - (i) of a type authorized by the regulations, and
  - (ii) made in accordance with the regulations.

### **Section 4: Restrictions on distributions [Society Act, s. 2(2)]**

The inability to pay money or otherwise distribute its property to members is also one of the hallmarks of a non-profit corporation. The current Act clearly states that a society may not distribute assets to members, but this restriction is problematic. In some ways, it is too loose – for example, the provision would allow a society to distribute its assets or money to its own directors or senior managers (distributions that are prohibited under the laws of many other Canadian jurisdictions, including the new federal not-for-profit statute) or to other related persons (such as a former member or member's spouse). On the other hand, the current prohibition on distributions to members is a blanket one and could technically stop a society from making a distribution to members that furthers the very purposes of the society (e.g. the provision of financial assistance to low-income persons).

This section therefore proposes to refine the current Act's policy by prohibiting distributions not only to members, but to any person, subject to the listed exceptions. The exceptions are based on those applicable to Community Contribution Companies under the BCA and would permit distributions made for valuable consideration, in furtherance of the society's purposes or to a qualified recipient (i.e. a charity or similar asset-locked entity). The section also allows distributions that are authorized under other provisions of the Act, such as the payment of remuneration to directors, if allowed by a society's bylaws (see section 45(1)).

### **Liability of members**

- 5** A member of a society is not, in that capacity, liable for a debt or other liability of the society.

### **Section 5: Liability of members [Society Act, s. 5]**

The current provision, which reflects that a society is a separate legal person from its members, is carried forward.

### **Capacity and powers of society**

- 6** A society has the capacity, rights, powers and privileges of an individual of full capacity.

### **Section 6: Capacity and powers of society [Society Act, s. 4; BCA s. 30]**

Under the current Act, a society has the powers of an individual that are "required to pursue its purposes". Giving the society full capacity, without reference to its purposes, is intended to remove the "ultra vires" doctrine – the argument that an act of a society, such as entering into a contract, may be invalid if contrary to its purposes. This clarification, which is consistent with standard corporate law, will help create legal certainty for the benefit of both societies and third parties dealing with them. It does not permit a society to act outside of its purposes.

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### **Restricted activities and powers**

- 7** (1) A society must not
- (a) carry on any activity or exercise any power that the society is restricted by its bylaws from carrying on or exercising or that is contrary to its purposes, or
  - (b) exercise any of the society's powers in a manner inconsistent with those restrictions or purposes.
- (2) No act of a society, including a transfer of property, rights or interests to or by the society, is invalid merely because the act is contrary to subsection (1).

#### **Section 7: Restricted activities and powers [New; BCA s. 33]**

This provision prohibits societies from carrying on activities or exercising powers contrary to its bylaws or purposes. However, it also clarifies that an act of the society, such as a transfer of property, is not invalid merely because it was carried on contrary to its bylaws or purposes. As is the case with section 6, this reflects standard corporate law and is needed for legal certainty and the protection of third party rights.

## **Division 2 – Name and Governing Documents**

### **Name**

- 8** (1) To reserve a name for the purposes of this Act, a person must apply to the registrar.
- (2) After receiving an application to reserve a name under subsection (1), the registrar may reserve the name for a period of 56 days from the date of reservation or for any longer period that the registrar considers appropriate.
- (3) The registrar may, on request, extend a reservation of a name for the period the registrar considers appropriate.
- (4) The registrar
- (a) may not reserve a name under subsection (2) unless that name complies with the prescribed requirements, if any, and
  - (b) may refuse to reserve a name under subsection (2) if the registrar, for good and valid reasons, disapproves of the name.
- (5) The registrar, in writing and giving reasons, may order a society to change its name if
- (a) the name of the society is contrary to the prescribed requirements, if any, or
  - (b) the registrar, for good and valid reasons, disapproves of the name.
- (6) If a society has a seal, the society must have its name in legible characters on the seal.

#### **Section 8: Name [Society Act, ss. 3(3)(c) and (6) (name), 13 (seal); BCA ss. 22, 28(1)]**

This section simply adopts the name reservation requirements of the BCA that are currently incorporated by reference. Name reservations are required as a prerequisite step before submitting any application to create a society. As is the case now, societies will be required to choose an actual name, and will not, like companies, be able to adopt their incorporation number as their name (i.e. there will be no "numbered" societies). As well, the section adopts

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the BCA change of name provision, allowing the registrar to order a change of name of a society, if the name is contrary to the regulations or the registrar disapproves of the name for good and valid reasons.

### **Constitution**

- 9** A society must have a constitution that sets out only
- (a) the name of the society, and
  - (b) the purposes of the society.

#### **Section 9: Constitution [Society Act, s. 22]**

The constitution of a society may only contain its name and purposes. This is a change from the current Act, which allows other provisions (including unalterable provisions) to be included in the constitution, and is intended to facilitate electronic filing.

Many pre-existing societies already have some extra provisions in their constitutions. When these societies transition to the new Act, these extra provisions will have to be moved into the society's bylaws.

### **Bylaws**

- 10** (1) A society must have bylaws that contain provisions respecting the internal affairs of the society, including provisions respecting the following:
- (a) membership in the society, including
    - (i) the admission of members and any rights and obligations arising from membership,
    - (ii) if there is more than one class of members, a description of each class and the rights and obligations of the members of each class, and
    - (iii) if members may cease to be in good standing, the conditions under which that may occur;
  - (b) the society's directors, including
    - (i) the manner in which directors must or may be elected or appointed, and
    - (ii) the expiry of the terms of office of directors, if other than at the close of the next annual general meeting after a director's designation, election or appointment;
  - (c) general meetings, including
    - (i) the quorum for general meetings, if greater than 3 voting members,
    - (ii) whether proxy voting is permitted, and
    - (iii) if the bylaws authorize indirect or delegate voting or voting by mail or another means of communication, including by delivery or by fax, email or other electronic means, the rules respecting how that voting may occur;
  - (d) any restrictions, other than restrictions under this Act, on
    - (i) the activities that the society may carry on, or
    - (ii) the powers that the society may exercise.



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- (2) Without limiting subsection (1), the bylaws of a society may adopt, with or without alteration, all or any of the set of provisions that are, by regulation, prescribed and designated as the “Model Bylaws”.
- (3) The bylaws of a society must not contain a provision that is inconsistent with this Act, the regulations or any other enactment of British Columbia or Canada, and if a provision of a bylaw is inconsistent with such an enactment, the provision has no effect.

### **Section 10: Bylaws [Society Act, s. 6]**

The section carries forward the requirement for societies to maintain bylaws to govern their internal affairs. The Model Bylaws, a standardized set of basic bylaws, may be used (see Appendix A). This section clarifies that a society’s bylaws must comply with the Act and other laws, and that any bylaw provisions that are contrary to law have no effect.

### **Statement of directors and registered office**

- 11** (1) A society must have a statement of directors and registered office that sets out
- (a) the full names and addresses of the directors of the society, and
  - (b) the delivery address and mailing address of the registered office of the society.
- (2) For the purposes of subsection (1) (a), the address of a director may be either of the following:
- (a) the director’s residential address;
  - (b) another address at which the director can usually be served with records between the hours of 9 a.m. and 4 p.m., local time, from Monday to Friday, inclusive.

### **Section 11: Statement of directors and registered office [Society Act, ss. 3, 10; BCA Regulation s. 2]**

The information contained in this statement, which must be filed to incorporate, is the same as that required under the current Act, with two differences. First, the new section clarifies that the location of the registered office, which is used both for receipt of communications (including legal documents) and for the retention of records, must be identified by both a physical address and a mailing address (these could be the same). The second change is that directors will be able to use an address at which they can ordinarily be physically served during business hours, instead of providing their residential address. This option, which comes from the BCA, is intended to enable directors to better protect their privacy.

## **Division 3 – Formation of Societies**

### **Formation of society**

- 12** One or more persons may form a society by filing with the registrar an incorporation application that
- (a) sets out the name reserved under section 8 [*name*] for the society and the reservation number given for that name,
  - (b) contains
    - (i) a constitution,



- (ii) bylaws, and
  - (iii) a statement of directors and registered office, and
- (c) sets out the full name and contact information of each of the applicants for incorporation.

### **Section 12: Formation of society [Society Act, s. 3(1)]**

The provision sets out what must be filed to incorporate a society. Currently, five initial subscribers are required to form a society. Under the proposed new Act, a single incorporator will be able to create a new society.

A number of commentators opposed this approach, arguing that allowing incorporation by only one person is inconsistent with the collective nature of a “society”. However, there has never been any requirement that societies maintain a minimum number of members on an ongoing basis after incorporation, and the laws of many other Canadian jurisdictions, including the new federal not-for-profit statute, now allow for a single incorporator. As well, a requirement for multiple “subscribers” is inconsistent with an electronic filing system, where signatures of individuals are not even submitted. Therefore, even though most societies will, by their nature, have multiple members, the new Act proposes to streamline the incorporation process by requiring only one applicant for incorporation. A minimum of three directors will still be required for most societies.

Another important change relates to electronic filing. Feedback in response to the Ministry’s previous consultations overwhelmingly supported the proposal that the corporate registry continue to be the public repository of society bylaws, and this has been retained in the new Act.

However, public consultations also supported the proposed move toward an electronic database of societies and e-filing of records. Therefore, given computer systems requirements, those wishing to incorporate a new society will now have to enter the bylaws of the proposed society into an electronic incorporation form. For those that already have their proposed bylaws in an electronic format, and this may be the majority, filing could be easily accomplished by copying the record into the space provided. However, for those that do not have an electronic version of their bylaws, this will mean typing the bylaws into the space provided. Applicants will also be able to select, by ticking a box, the option of adopting, in whole or in part, the Model Bylaws (see Appendix A), which would then populate the form.

The move to electronic filing has even greater implications for societies that are already in existence when the new Act comes into force. In order to create a single database of societies, with all of them subject to the same rules, these pre-existing societies will be required (within 2 years) to consolidate their existing bylaws and enter them into the electronic database as part of their “transition” to the new Act. (The full transition process is set out in Part 16.)

It is recognized that, despite the increasing accessibility of technology, electronic filing of documents can itself be problematic for certain segments of the sector, and that consolidating and uploading their complete set of bylaws (that is, the original set, plus any separately filed amendments to those bylaws made over the years) may lead to some inconvenience and expense. However, the proposal to have pre-existing societies electronically enter their bylaws on transition has some distinct advantages on a go-forward basis. The requirement will not only provide societies with the opportunity to re-assess and clean up their current bylaws, but all societies will ultimately benefit from bylaws being in an electronic format – an evergreen

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document will be produced after every amendment, as opposed to the current paper regime where the latest set of bylaws is not a compilation, but rather a set of original bylaws to which is attached any number of filings made over the years.

An alternative approach that would avoid the re-typing or copying of bylaws, would be to eliminate the filing of bylaws at the corporate registry and require instead that societies retain, and provide public access to, their bylaws at the society's registered office. This is the approach taken for companies under the BCA, in which only a notice of articles, indicating where the articles can be found, is filed at the corporate registry. This approach, however, has not been chosen because of the strong public preference to retain the role of the corporate registry as the definitive source of a society's bylaws.

### **Incorporation**

- 13** (1) A society is incorporated when the incorporation application is filed with the registrar under section 12.
- (2) After a society is incorporated, the registrar must
- (a) issue a certificate of incorporation in which is recorded
    - (i) the name and incorporation number of the society, and
    - (ii) the date and time of the incorporation,
  - (b) furnish to the society
    - (i) the certificate of incorporation, and
    - (ii) a certified copy of the following records contained in the incorporation application filed with the registrar under section 12:
      - (A) the constitution of the society;
      - (B) the bylaws of the society;
      - (C) the statement of directors and registered office of the society;
      - (D) the portion of the incorporation application that sets out the full names and contact information of the applicants for incorporation, and
  - (c) publish notice of the society's incorporation.
- (3) Whether or not the requirements precedent and incidental to incorporation have been complied with, a notation in the register of societies that a society has been incorporated is conclusive evidence for the purposes of this Act and for all other purposes that the society has been duly incorporated
- (a) with the name shown in the register of societies, and
  - (b) on the date shown and the time, if any, shown in the register of societies.

### **Section 13: Incorporation [Society Act, s. 3(4); BCA ss. 13, 18]**

This section carries forward and supplements the outputs that the corporate registry must furnish to a society after its incorporation. These include a certificate of incorporation and certified copies of the society's constitution and bylaws.

**Division 4 – Alterations to Constitution and Bylaws**

**Alterations to constitution**

- 14** (1) A society, by filing with the registrar a constitution alteration application, may alter its constitution to
- (a) change its name, or
  - (b) alter its purposes.
- (2) A society must not submit a constitution alteration application to the registrar for filing unless,
- (a) the alteration proposed by the application has been authorized by special resolution, and
  - (b) in the case of a change of the society's name, the new name is reserved under section 8 [name].
- (3) An alteration proposed in a constitution alteration application takes effect when the constitution alteration application is filed with the registrar.
- (4) After a constitution alteration application is filed with the registrar under this section, the registrar
- (a) must furnish to the society a certified copy of the society's altered constitution, and
  - (b) must, if the alteration changes the name of the society,
    - (i) issue a certificate of change of name setting out the particulars of the change of name,
    - (ii) furnish to the society the certificate of change of name, and
    - (iii) publish notice of the change of name.
- (5) Despite subsection (2) (a), authorization by special resolution is not required if the registrar orders the society to alter its constitution under section 2 (3) [purposes] or 8 (5) [name].

**Section 14: Alterations to constitution [Society Act, s. 20]**

This section sets out the procedures for making alterations to a society's constitution. As noted in the commentary to section 9, under the new Act, the constitution will consist only of the society's name and its purposes. (Additional provisions of a pre-existing society's constitution will be migrated to the society's bylaws upon its transition to the new Act – see Part 16.) As provided under the current Act, constitutional changes can only be made if authorized by a special resolution and will take effect at the time of filing with the registrar.

However, the special resolution itself will no longer be filed at the corporate registry. Instead, the applicant for the change will file a "constitution alteration application" on which they indicate that a special resolution has been obtained. (The applicant would have to be authorized by the society and meet the corporate registry's authentication requirements in order to make this filing.) The computer system will then display the society's existing constitution and allow the applicant to make the appropriate changes authorized by that special resolution.

The other major difference is that prior registrar approval for changes to the society's purposes is no longer required. However, the registrar does have the power, under section 2, to order a society to alter its purposes after the fact if they are illegal or offensive.

### **Effect of change of name**

- 15** No change of the name of a society affects any of its rights or obligations, or renders defective any legal proceedings by or against it, and any legal proceedings that may have been continued or commenced by or against it under its former name may be continued or commenced by or against it under its new name.

### **Section 15: Effect of change of name [Society Act, s. 21]**

This section carries forward the current Act provision that states that a change of a society's name does not affect its legal rights and obligations.

### **Alterations to bylaws**

- 16**
- (1) A society may alter its bylaws by filing with the registrar a bylaw alteration application.
  - (2) A society must not submit a bylaw alteration application to the registrar for filing unless the alteration proposed by the application has been authorized by special resolution.
  - (3) An alteration proposed in a bylaw alteration application takes effect when the bylaw alteration application is filed with the registrar.
  - (4) After a bylaw alteration application is filed with the registrar under this section, the registrar must furnish to the society a certified copy of the altered bylaws.
  - (5) Even if the bylaws identify a provision of the bylaws as being an unalterable provision, the provision may be altered in accordance with this section.

### **Section 16: Alterations to bylaws [Society Act, s. 23]**

This section deals with alterations to a society's bylaws. The procedure is the same as for changes to the constitution – the bylaw change must be authorized by a special resolution, but the resolution itself will not be filed. Instead, the applicant (who must be authorized and meet the registry's authentication requirements) will file a "bylaw alteration application" on which they indicate that a special resolution has been obtained. The computer system will then display the society's existing bylaws and allow the applicant to make the appropriate changes authorized by that special resolution. As a result of the electronic filing system proposed for the new Act, every society will have an evergreen set of bylaws – that is, instead of bylaws consisting of an original set to which is attached any number of amendments made over the years, all changes will be automatically consolidated as they are made.

Another important provision in this section deals with "unalterable" provisions, which many pre-existing societies currently have in their constitutions. These provisions will have to be moved from the society's constitution to its bylaws when the society "transitions" to the electronic database contemplated by the new Act. At this time, all "unalterable" provisions will be flagged as such (see section 232). However, even though the bylaws will identify these provisions as having been previously unalterable, the provisions will now be alterable like any other bylaw. In other words, "unalterable" provisions will no longer be permitted under the new Act.

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Unalterable provisions sometimes deal with fundamental principles or tenets of membership, but more often contain more practical matters, such as how a society's assets are to be distributed on its winding up. The use of unalterable provisions has been extremely problematic, however, because under the current Act these provisions are truly unalterable – that is, there is no procedure or remedy for reversing the “unalterable” choice. To some societies, this permanent nature of unalterable provisions is highly desirable, but it is also a trap for the unwary, and societies (whose members and management change over time) that cannot continue to function with such a provision have little choice but to dissolve. Even the simple designation of an appropriate recipient to receive the society's assets on winding up can create difficulties (if, for example, the recipient changes its name, loses its charitable status or ceases to exist).

The treatment of unalterable provisions has been a difficult issue to resolve, and a number of different approaches have been considered. One option would “grandfather” pre-existing unalterable provisions, but not allow any new ones to be included. Another option would allow unalterable provisions to be, in fact, altered but only by court order. A third possible solution would allow societies to designate certain provisions of their bylaws as requiring a higher threshold (i.e. a super-majority) in order to make a change, so that the provisions would become virtually unalterable.

However, none of these approaches is entirely satisfactory. The idea of providing different rules for some types of societies and not others – or of providing different voting thresholds for different matters -- was rejected as adding too much complexity and confusion for stakeholders, as well as increased corporate registry system development costs. On the other hand, requiring a society whose members want a change to obtain a court order seemed inappropriate, and would be costly for the society. Consultations with funders and tax agencies indicated their preference to abolish unalterable provisions altogether, while some societies rejected the very notion that an unalterable provision should, in any circumstances, court order or not, be able to be changed.

In light of the conflicting views on unalterable provisions and the general consensus about the importance of maintaining a simple and clear framework, the new Act proposes that all bylaw provisions will be treated the same. A society can still identify a provision of its bylaws as being fundamental. However, whether or not a provision is stated to be unalterable, it will now be alterable by special resolution of the society's membership.

### **PART 3 – REGISTERED OFFICE AND RECORDS**

#### **Division 1 – Registered Office**

##### **Registered office**

**17** A society must maintain a registered office in British Columbia.

##### **Section 17: Registered office [Society Act, s. 10]**

This section carries forward an existing provision, requiring the registered office (used both for receipt of communications and the retention of records) to be located in British Columbia.

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### Change of registered office

- 18** (1) A society may change one or both of the delivery address and mailing address of its registered office by
- (a) filing with the registrar a notice of change of address of registered office, or
  - (b) including the change of address in an annual report filed with the registrar under section 70 *[society must file annual report]*.
- (2) A change of address of registered office takes effect on the day after the record referred to in subsection (1) (a) or (b), as the case may be, is filed with the registrar.
- (3) After a society changes an address of its registered office under this section, the registrar must
- (a) alter the society's statement of directors and registered office to reflect the change, and
  - (b) furnish to the society a certified copy of the altered statement of directors and registered office.

#### **Section 18: Change of registered office [Society Act, s. 10 (1)(b) and (2)]**

This section carries forward the requirement that any changes to the registered office's addresses be filed with the registrar. The section is new in that it allows societies to make changes as part of their annual report. As well, the section clarifies that a change is not effective until the day after filing, in order to ensure that the location remains the same for a person searching for the address in the morning and serving documents on the society in the afternoon.

## Division 2 – Society Records

### Records to be kept

- 19** (1) A society must keep the following records:
- (a) the society's certificate of incorporation;
  - (b) the certified copy, furnished to the society by the registrar, of each 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) each confirmation, other certificate or certified copy of a record furnished to the society by the registrar, other than in response to a request;
  - (d) a copy of each order made in respect of the society by
    - (i) a court or tribunal, in Canada or elsewhere,
    - (ii) the minister,
    - (iii) the registrar, or
    - (iv) another federal, provincial or municipal government body, agency or official;



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- (e) the society's register of directors, including contact information provided by each director;
  - (f) each written consent to act as director referred to in section 41 (4) (a) [*designation, election and appointment of directors*] and each written resignation of a director;
  - (g) a copy of each record of a disclosure by
    - (i) a director, evidenced in the manner described in section 56 (3) (c) [*disclosure of director's interest*], or
    - (ii) a senior manager, made in accordance with section 63 (3) [*disclosure of senior manager's interest*];
  - (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 resolution consented to in writing by voting members and a copy of each of the consents to that resolution;
  - (k) the financial statements of the society and the auditor's report, if any, prepared in respect of those financial statements.
- (2) In addition to the records described in subsection (1), a society must keep the following records:
- (a) the minutes of each meeting of directors, including
    - (i) a list of all of the directors at the meeting, and
    - (ii) the text of each resolution passed at the meeting;
  - (b) a copy of each consent resolution of directors and a copy of each of the consents to that resolution;
  - (c) adequate accounting records for each of the society's financial years, including a record of each transaction materially affecting the financial position of the society.

**Section 19: Records to be kept [Society Act, ss. 11, 36 (accounting records), 70 (register of members); BCA s. 42]**

This new section, based on the BCA, provides a detailed list of records required to be kept by a society at its registered office. The provision is intended to assist societies by giving them a "checklist" of important documents to retain. It is divided into two subsections in order to separate records into categories for which there are different rights of access (see sections 23-26). The section also carries forward the current requirement to keep adequate accounting records; however, the only accounting records that specifically need be kept are those that describe transactions that materially affect the society's financial position.

**Old records need not be kept**

- 20** For the purposes of this Act, a society is not required to keep a record under section 19 if

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- (a) the record is no longer relevant to the activities or internal affairs of the society, and
- (b) 7 years have passed since the record was created or, if the record has been altered, since the record was last altered.

### **Section 20: Old records need not be kept [New]**

This new section allows records to be destroyed if they are older than 7 years and are no longer relevant to the society. This added flexibility to the record-keeping rules may be especially useful for some smaller societies where records are stored by individuals. The provision only applies for the purposes of this Act, and does not affect retention requirements that may apply under other legislation.

### **Location of records**

- 21**
- (1) The directors of a society must ensure that the records the society is required to keep under section 19 [*records to be kept*],
    - (a) in the case of written records, are kept at the society's registered office, and
    - (b) in the case of records in electronic form, are available for inspection at the society's registered office by means of a computer terminal or other electronic technology.
  - (2) Despite subsection (1), the directors of a society, by directors' resolution, may specify a location in British Columbia, other than the society's registered office, at which the records, or specified records or classes of records, of the society may be kept, or made available for inspection, in accordance with subsection (1), and, in that event, the records, specified records or classes of records may be kept or made available for inspection, as the case may be, at that other location.
  - (3) If, under subsection (2), the directors of a society specify a location, other than the society's registered office, at which records of the society may be kept or made available for inspection, the society must keep at its registered office a written notice
    - (a) identifying the specified location, and
    - (b) listing the records or classes of records that are kept or made available for inspection, as the case may be, at that location.

### **Section 21: Location of records [Society Act, s. 11; BCA ss. 42(1), 43]**

This section carries forward the basic requirement that all paper records be kept at the registered office in BC, but adds flexibility in two respects. First, it allows directors to resolve to keep some paper records elsewhere in BC so long as the location is specified in a notice filed in the registered office. Unlike the current Act, no additional registry filing is required. This option recognizes that it is common in some volunteer-run societies for records to be kept at different places (such as the home of a director or member). The second change is that the section allows electronic records to be kept anywhere so long as they are available for inspection and copying at the registered office (or other location in BC specified in a notice filed at the registered office).



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### Maintenance of records

- 22** (1) A record that a society is required to keep under section 19 [*records to be kept*] may be kept in any form that allows the record to be inspected and copied in accordance with sections 23 [*inspection of records*] to 27 [*copies of financial statements*].
- (2) A society must take reasonable precautions in preparing and keeping the records it is required to keep under section 19 so as to
- keep those records in a complete state,
  - avoid loss or destruction of or damage to those records,
  - avoid falsification of entries made in those records, and
  - facilitate simple, reliable and prompt access to those records.

#### **Section 22: Maintenance of records [New; BCA s. 44]**

This section, based on the BCA, again provides flexibility by allowing societies to keep their records in any form (electronic, microfilm, paper) that allows them to be inspected and copied. A society must take reasonable steps to ensure its records are complete and accurate.

### Inspection of records

- 23** (1) A member of a society, without charge, may inspect a record the society is required to keep under section 19 (1) [*records to be kept*].
- (2) A member of a society, without charge,
- may inspect a record the society is required to keep under section 19 (2) that is the portion of the minutes of a meeting of directors or of a consent resolution of directors that contains a disclosure by a director evidenced in the manner described in section 56 (3) (a) or (b) [*disclosure of director's interest*], and
  - unless the bylaws provide otherwise, may inspect any other record the society is required to keep under section 19 (2).
- (3) A director of a society, without charge, may inspect a record the society is required to keep under section 19.
- (4) A person, other than a member or director, if and to the extent permitted by the bylaws, may inspect a record a society is required to keep under section 19, other than the register of members.
- (5) A society may charge a reasonable fee, not to exceed the fee specified in, or calculated in accordance with, the regulations, if any, for an inspection referred to in subsection (4).
- (6) A society may impose a reasonable period of notice before which, and reasonable restrictions on the times during which, a person, other than a director, may, under this section, inspect a record.

#### **Section 23: Inspection of records [Society Act, ss. 37; BCA s. 46]**

This new section clearly sets out who has the right to inspect various records required to be kept by the society. It is proposed that different people be given different inspection rights. For example, directors may inspect all records, without restriction. In contrast, members may be

restricted, by bylaw, from inspecting certain directors' decision documents and accounting records.

Previous consultations showed that there was a fair amount of confusion over the meaning of the access provisions of the current Act, as well as some disagreement as to what kind of inspection rights members should have. On one hand, some have argued that members should have a generally unrestricted right to see all corporate documents, including minutes of directors' meetings and accounting records. However, others feel that such broad access is unnecessary and inappropriate, could hamper full discussion by the board, and would impair administrative efficiency.

The proposed section is intended to resolve the ambiguities of the current Act, while balancing rights of access and transparency with competing claims to corporate efficiency and personal privacy. The section favours member access over efficiency concerns – that is, members will be given a clear statutory right to view records relating to the directors and the accounting records of the society. However, societies can, by bylaw, narrow these rights of access.

The section also provides that a society, by bylaw, could broaden access rights to make some or all of their records available to persons who are not directors or members. There is one exception: in order to protect the privacy interests of members, the bylaws cannot provide public access to the members' register.

### Inspection of register of members

- 24** (1) Despite section 23 (1) but subject to this section, the directors of a society, by directors' resolution, may restrict the members' rights to inspect the society's register of members referred to in section 19 (1) (h) [*records to be kept*] if the directors are of the opinion that the inspection would be harmful to the society or to the interests of one or more of its members.
- (2) If, under subsection (1), the directors of a society have restricted the members' rights to inspect the register of members, a member may apply to the society to inspect the register.
- (3) An application under subsection (2) must be in writing and must include a statement of the member
- (a) setting out the member's name, and
  - (b) stating that the information from the register of members will not be used except as permitted under subsection (6).
- (4) A member who makes an application in accordance with this section may inspect, without charge, the register of members.
- (5) A society may impose a reasonable period of notice before which, and reasonable restrictions on the times during which, a member may, under this section, inspect the register of members.
- (6) A person who has inspected the register of members under this section must not use information obtained from the inspection except in connection with
- (a) an effort to influence the voting of members,

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- (b) the requisitioning or calling of a general meeting under section 72 [*requisition for general meeting*],
- (c) the submission of a proposal under section 78 [*right to submit proposal*],
- (d) the calling of a general meeting under section 135 [*filling vacancy in office of liquidator*], or
- (e) other matters related to the internal affairs of the society.

### **Section 24: Inspection of register of members [New]**

This new section allows directors to restrict members' access to the register of members where the directors consider that inspection would be harmful to the society or a member. Members may still override this restriction if access is required for corporate purposes, such as requisitioning a meeting or lobbying with respect to a vote. Use of membership information obtained from the register of members for other purposes is prohibited. The section attempts to balance members' desire for privacy with the need to make their contact information available to facilitate the operations of the society.

### **Inspection of register of directors**

- 25** A person must not use contact information obtained by the person from an inspection of the register of directors except in connection with matters related to the activities or internal affairs of the society.

### **Section 25: Inspection of register of directors [New]**

This new section is intended to respond to concerns raised about directors' privacy, given that the register of directors maintained by the society contains personal contact information and is accessible to members (and, if the bylaws allow, the public). The provision prohibits the use of directors' contact information except in connection with the activities or internal affairs of the society. There are no restrictions on the use of directors' information that is filed and publicly available at the corporate registry.

### **Copies of records**

- 26** (1) If a person who is entitled under section 23 [*inspection of records*] or 24 [*inspection of register of members*] to inspect a record requests a copy of the record and pays the fee, if any, charged under subsection (3) of this section for the copy, the society must provide the person with a copy of that record.
- (2) A copy referred to in subsection (1) must be provided to the person seeking to obtain the copy by sending the copy to that person promptly, but in no case later than 14 days, after receipt of the request and payment of the fee, if any.
- (3) A society may charge a reasonable fee, not to exceed the fee specified in, or calculated in accordance with, the regulations, if any, for a copy provided under subsection (1).
- (4) Despite subsection (3),
- (a) a director of a society is entitled, on request and without charge, to a copy of a record that the society is required to keep under section 19 [*records to be kept*], and

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- (b) a member of a society is entitled, on request and without charge, to one copy of
  - (i) the current constitution and bylaws of the society, and
  - (ii) the most recent financial statements, as defined in section 27 (1), of the society.

### Section 26: Copies of records [Society Act, ss. 39(3), 69; BCA s. 48]

This section provides a right to obtain a copy of a record, upon payment of a reasonable fee. It applies to all records to which access is given under sections 23 or 24, and sets out rules about how a copy is to be provided. The section also clarifies that directors have the right to a copy of any record, while carrying forward the current rule that entitles members to receive a copy of the society's constitution and bylaws (now free) and the society's current financial statements.

### Copies of financial statements

- 27** (1) In this section, “**financial statements**”, in respect of a society, means the financial statements of the society required under section 34 [*financial statements*] and the auditor's report, if any, prepared under section 114 [*auditor's report*] in respect of those financial statements.
- (2) If a person, other than a person who is entitled under section 23 [*inspection of records*] to inspect the financial statements of a society, requests a copy of the financial statements and pays the fee, if any, charged under subsection (4) of this section for the copy, the society must provide the person with a copy of those financial statements.
- (3) A copy referred to in subsection (2) must be provided to the person seeking to obtain the copy by sending the copy to that person promptly, but in no case later than 14 days, after receipt of the request and payment of the fee, if any.
- (4) A society may charge a reasonable fee, not to exceed the fee specified in, or calculated in accordance with, the regulations, if any, for a copy provided under subsection (2).

### Section 27: Copies of financial statements [Society Act, s. 95(3)(4)(5)]

This section carries forward the public's right to obtain a copy of a society's financial statements, upon payment of a reasonable fee, and sets out rules about how a copy is to be provided.

## Division 3 – Distribution of Records

### How record is sent

- 28** A record is sent by or to a person for the purposes of this Act if the record is sent as follows:
- (a) in the manner, if any, agreed to by the sender and the intended recipient;
  - (b) in a manner specified by the bylaws, including, without limitation, by making the record available for pick-up at the society's registered office, if
    - (i) there is no agreement under paragraph (a), and
    - (ii) the record is being sent by one of the following to any of the following:

- (A) the society;
  - (B) a member of the society;
  - (C) a director of the society;
  - (D) a senior manager of the society;
- (c) if there is no agreement under paragraph (a) and paragraph (b) does not apply, by any of the following methods:
- (i) by mail to the recipient's most recent mailing address known to the sender;
  - (ii) by delivery to the recipient in accordance with section 29;
  - (iii) if the recipient has provided an email address or fax number for that purpose, by email or fax to that email address or fax number.

**Section 28: How record is sent [New]**

This section clarifies the options available for sending records in relation to societies. The provision allows records to be sent by being mailed or delivered, or by being sent electronically if the recipient has provided an e-mail address.

**How record is delivered**

- 29** A record is delivered to a person for the purposes of this Act if the record is delivered as follows:
- (a) by leaving the record with the person or an agent of the person;
  - (b) in respect of a record that is being delivered to a person other than an individual,
    - (i) if the record is being delivered to a society at the delivery address of the registered office of the society, by leaving the record in a mail box or mail slot for that delivery address, or
    - (ii) in any other case, by leaving the record in a mail box or mail slot for the address at which that person carries on activities or business.

**Section 29: How record is delivered [New]**

This section clarifies that “delivery” means physical delivery to an individual or corporate place of business. Delivery is required for certain communications (such as meeting requisitions and disclosures of conflicts) when it is important to ensure actual physical receipt.

**When society receives record**

- 30** A record is deemed to be received by a society for the purposes of this Act on the first to occur of the following:
- (a) the day on which the record is delivered to a director or senior manager of the society;
  - (b) the 5th day after the record is
    - (i) mailed to the mailing address of the registered office of the society, or
    - (ii) delivered to the delivery address of the registered office of the society;

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- (c) if the society has provided an email address or fax number to which records may be sent to the society, the 3rd day after the record is emailed or faxed to that email address or fax number.

### **Section 30: When society receives record [New]**

This new interpretive provision adds certainty by providing the means to legally determine when a record has been received by a society. This is needed for provisions that specify timing requirements, such as section 49 (resignation of directors).

### **How record is served on society**

- 31** Without limiting any other enactment, a record may be served on a society by
- (a) delivering the record to the delivery address of the registered office of the society or mailing the record by registered mail to the mailing address of that office, or
  - (b) delivering the record to a director, senior manager, receiver, receiver manager or liquidator of the society.

### **Section 31: How record is served on society [Society Act, s. 12]**

This section carries forward the current Act's rules on how societies can be served with legal documents. Terminology has been updated, but the rules are unchanged.

## **PART 4 – FINANCE**

### **Division 1 – Investment and Borrowing**

#### **Investment of society's funds**

- 32** A society may invest its funds only
- (a) in accordance with the bylaws, or
  - (b) in an investment in which a prudent investor might invest, unless the bylaws prohibit that investment.

### **Section 32: Investment of society's funds [Society Act, s. 32]**

This section essentially carries forward the current rules on investments. Directors may invest in any prudent investment (i.e. those allowed for trustees). However, the bylaws can limit, or can expand, the scope of permissible investments. The section removes the current requirement that the society's funds be used only for its purposes, as this rule could conflict with the directors' duty to act in the best interests of the society (see section 54).

#### **Borrowing and issuance of securities**

- 33** (1) Subject to subsection (2), a society may
- (a) borrow money, and
  - (b) issue bonds, debentures, notes or other evidences of debt obligations
    - (i) at any time,
    - (ii) to any person, and

- (iii) for any consideration that the directors may determine.
- (2) The bylaws of a society may restrict or prohibit the society's ability to borrow money or to issue bonds, debentures, notes or other evidences of debt obligations.

**Section 33: Borrowing and issuance of securities [Society Act, s. 35(3)]**

This section provides authority for a society to borrow money and issue debt obligations, for example by mortgaging its property, unless restricted by its bylaws. The section removes the current requirement to obtain a special resolution of members before borrowing or issuing a debt obligation. Instead, these matters are left to the directors (who must act in society's best interests), unless the bylaws contain restrictions.

Similarly, the requirement for member approval before buying or disposing of a subsidiary has been removed, as these are essentially management decisions. Societies can, by bylaw, set out additional restrictions if they see fit.

## **Division 2 – Financial Statements**

### **Financial statements**

- 34** (1) The directors of a society must present the following to the members at each annual general meeting:
- (a) the financial statements required under this section;
  - (b) if the society has an auditor, the auditor's report, if any, prepared under section 114 [*auditor's report*] in respect of those financial statements.
- (2) The financial statements of a society must be prepared in relation to the period
- (a) beginning,
    - (i) if the society has not yet completed a financial year, on the date the society was incorporated or otherwise formed under this Act, or
    - (ii) if the society has completed a financial year, immediately after the end of the preceding financial year, and
  - (b) ending not more than 6 months before the annual general meeting at which the statements are presented.
- (3) The financial statements must be prepared in accordance with the requirements, if any, set out in the regulations.

**Section 34: Financial statements [Society Act, s. 64]**

This section requires directors to place financial statements before the members at the annual general meeting, and sets out the rules about the time frame that must be covered by the financial statements. The section carries forward existing requirements, but leaves specific details, if any, about the financial statements' components (including the option of simplified financial statements for smaller societies) to be set out in the regulations.



### Reporting on remuneration of directors, employees and contractors

- 35** (1) There must be included in the financial statements of a society required under section 34 a note setting out
- (a) the remuneration, if any, paid by the society to each of the directors in the period in relation to which the financial statements are prepared, and
  - (b) the remuneration paid by the society in that period
    - (i) to each of the employees of the society, and to each person under a contract for services with the society, whose remuneration was at least the amount specified in the regulations, or
    - (ii) if there are more than 10 persons described in subparagraph (i) whose remuneration was at least the amount specified in the regulations, to the 10 most highly remunerated persons.
- (2) A note in the financial statements referred to in subsection (1) must identify each director, employee or other person referred to in that subsection by the person's position or by the nature of the services provided under the contract of services, as the case may be, but need not identify the person by name.

### **Section 35: Reporting on remuneration of directors, employees and contractors [New]**

This new provision requires disclosure of the remuneration, if any, paid by the society to its directors and to its 10 highest paid employees and contractors earning over a certain amount (for example, this amount could be set at \$75,000/year as is the case with Community Contribution Companies under the BCA). The disclosure must be made in the society's annual financial statements, which are available to society members and to the public (see sections 23(1) and 27).

It is recognized that many stakeholders will not support the requirement that remuneration be publicly disclosed. Disclosure of what people are paid can be uncomfortable both for the society and for the individuals involved. However, public disclosure of director and executive pay is increasingly seen as an important accountability measure, meant to promote both members' and donors' confidence and trust. The disclosure requirement is consistent both with the treatment of Community Contribution Companies under the BCA and with Canada Revenue Agency requirements respecting Canadian charities.

Because the salaries of only the highest paid employees and contractors earning over a prescribed amount are required to be disclosed, and individuals need not be named, the provision reflects a balance between promoting accountability and transparency and protecting individual privacy.

These disclosure requirements do not apply to member funded societies – i.e. those that do not receive significant public funding.

### Reporting on financial assistance

- 36** (1) In this section, “**financial assistance**” means financial assistance by means of a loan, a guarantee, an indemnity agreement, the provision of security or another transaction prescribed by regulation.



- (2) There must be included in the financial statements of a society required under section 34 a note setting out the details of any financial assistance given by the society to any person in the period in relation to which the financial statements are prepared.
- (3) Subsection (2) does not apply to financial assistance given by a society to a person in the ordinary course of the society's activities if the society has as a purpose the provision of financial assistance.

### **Section 36: Reporting on financial assistance [New]**

This is a new provision that is also intended to promote accountability and transparency by requiring disclosure in annual financial statements of any loans, guarantees or other financial assistance given by the society.

The current Act's silence on the subject of financial assistance has been criticized as providing no direction to society directors as to whether offering this type of benefit is permissible or not. The Discussion Paper's proposal to prohibit financial assistance altogether was criticized as being too restrictive, as it would preclude such things as ordinary employee benefits (e.g. salary advances, training loans) as well as mutually beneficial financing arrangements with similarly-purposed organizations. On the other hand, allowing financial assistance to be provided without limitation could defeat the normal restrictions on a society's ability to distribute its assets (see section 4).

The provision proposed above is intended to provide both balance and certainty by explicitly recognizing that financial assistance may be given, but only if it is disclosed in the society's annual financial statements. (This disclosure obligation is important since financial assistance that does not involve an actual payment may not otherwise show up financial statements.) Requiring disclosure of any financial assistance will ensure that members are aware of any benefits of this nature being provided by their society. As well, since the disclosure is to be made as part of the society's annual financial statements, which are accessible to everyone, the general public – including funders and other supporters – can also stay informed.

### **Issuance of financial statements**

- 37**
- (1) A society must not issue or distribute financial statements of the society, other than to a director, senior manager, auditor or employee of the society, unless the financial statements
    - (a) have been approved by the directors and signed by one or more directors to confirm that the approval was obtained, and
    - (b) have attached to them the auditor's report, if any, prepared in respect of them.
  - (2) A society must not issue or distribute financial statements of the society that purport to be audited financial statements unless the financial statements have, in fact, been audited and an auditor's report has been prepared in respect of them.

### **Section 37: Issuance of financial statements [Society Act, s. 40]**

This section carries forward existing requirements for directors' approval of financial statements before they can be issued. Statements cannot claim to be audited unless they have in fact been

audited, and the auditor's report must be attached. As is the case now, failure to comply with these important standards of financial reporting will be an offence under the Act.

### Society must provide financial statements of subsidiary

- 38** (1) In this section, “**security holder**” means the holder of a bond, debenture, note or other evidence of debt obligation, whether secured or unsecured, of a society.
- (2) If a member or security holder of a society that has a subsidiary requests a copy of the subsidiary's most recent financial statements and pays the fee, if any, charged under subsection (4) for the copy, the society must provide the member or security holder with a copy of those financial statements, if any, along with the auditor's report, if any, prepared in respect of those financial statements.
- (3) A copy referred to in subsection (2) must be provided to the person seeking to obtain the copy by sending the copy to that person promptly, but in no case later than 14 days, after receipt of the request and payment of the fee, if any.
- (4) A society may charge a reasonable fee, not to exceed the fee specified in, or calculated in accordance with, the regulations, if any, for a copy provided under subsection (2).

### **Section 38: Society must provide financial statements of subsidiary [Society Act, s. 39(4)]**

This section requires a society to provide copies of the current financial statements of its subsidiaries to its members or security holders upon request, and sets out default rules for how the copies must be provided. These rules, which are in the current Act, have been retained because financial statements of a society's subsidiaries are not required to be kept at the society's registered office.

## PART 5 – MANAGEMENT

### Division 1 – Election and Appointment of Directors

#### Number and residency of directors

- 39** A society must have at least 3 directors and at least one of those directors must be ordinarily resident in British Columbia.

### **Section 39: Number and residency of directors [Society Act, s. 24(4) and (5)]**

This section requires a society to have at least 3 directors, one of whom must be a BC resident. This is the current rule, and is retained here to enhance accountability.

#### Employment of directors

- 40** A majority of the directors of a society must be individuals who do not receive and are not entitled to receive remuneration from the society under contracts of employment or contracts for services, other than remuneration for being a director that is permitted to be paid by the bylaws referred to in section 45 (1) [*remuneration and reimbursement of directors*].

**Section 40: Employment of directors [New]**

The current Act does not impose any requirements on the composition of a society's board of directors. Some argue that having a person sitting on the board of directors while being employed by the society creates an inherent conflict of interest and should be prohibited. On this basis, the British Columbia Law Institute (BCLI)'s 2008 Report recommended a provision that would have prohibited *any* paid staff person from being a director. However, others have argued that legislation is not needed and that such governance rules should be left to societies – in fact, many societies benefit from having paid staff or professional advisors sit on their boards of directors.

The above provision represents a balance between saying nothing (and leaving it to societies to operate under best practices to avoid conflicts of interest) and the BCLI Report recommendation. The section requires that a majority of the individuals comprising the board of directors be individuals who are financially removed from the society. This is similar to board requirements applied to financial institutions (for example, under section 97 of the *Financial Institutions Act*, 1/3 of directors must be unaffiliated).

The new rule is intended to avoid obvious conflicts of interest by requiring that the majority of the board of directors consist of individuals who are not paid employees or contractors of the society, and recognizes the realities faced by many societies that intentionally or by necessity have employees sitting on the board.

**Designation, election and appointment of directors**

- 41**
- (1) The first directors of a society are the individuals who are designated as the society's directors on the statement of directors and registered office contained in the incorporation application filed with the registrar under section 12 [*formation of society*].
  - (2) To become a director of a society, other than a first director, an individual must be elected or appointed to that office in accordance with the bylaws.
  - (3) The bylaws of a society may provide that an individual who holds a particular office or who has a specified attribute is, by virtue of holding that office or having that attribute, appointed as a director of the society.
  - (4) No designation, election or appointment of an individual as a director is valid unless
    - (a) the individual consents in writing to be a director of the society, or
    - (b) the designation, election or appointment is made at a meeting at which the individual is present and the individual does not refuse, at the meeting, to be a director.

**Section 41: Designation, election and appointment of directors [Society Act, s. 24(1) and (6); BCA ss. 121, 122]**

This section provides that the first directors are those individuals noted in the incorporation application and that subsequent directors must be appointed or elected according to the bylaws. The section essentially maintains the policy of the current Act with two main differences. First, the provision expressly allows the bylaws to provide for "ex officio" directors – that is, directors who become directors because of a particular attribute or position they have or hold, and not as

a result of an election. Although many societies have such directors, there is some doubt about whether they are permissible under the current Act. The second difference is that the section now requires prospective directors to expressly consent to being elected or appointed as directors.

### Directors must be qualified

- 42** (1) An individual must not be a director of a society if the individual is not qualified to be a director under section 43 or the bylaws.
- (2) A director of a society who is not, or who ceases to be, qualified under section 43 or the bylaws to be a director of the society must promptly resign.

### Section 42: Directors must be qualified [New; BCA s. 124(1) and (3)]

This new section requires that directors of societies meet the qualifications set out in section 43 as well as any additional qualifications found in the society's bylaws. An unqualified director must step down.

### Individuals disqualified as directors

- 43** An individual is not qualified to be a director of a society if that individual is
- (a) under the age of 18 years,
  - (b) found by any court, in Canada or elsewhere, to be incapable of managing the individual's own affairs,
  - (c) an undischarged bankrupt, or
  - (d) 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, unless
    - (i) the court orders otherwise,
    - (ii) five years have elapsed since the last to occur of
      - (A) the expiration of the period set for suspension of the passing of sentence without a sentence having been passed,
      - (B) full payment of any fine imposed,
      - (C) the conclusion of the term of any imprisonment, and
      - (D) the conclusion of the term of any probation imposed, or
    - (iii) a pardon was granted or issued or a record suspension was ordered under the *Criminal Records Act* (Canada) and the pardon or record suspension, as the case may be, has not been revoked or ceased to have effect.

### Section 43: Individuals disqualified as directors [New; BCA s. 124(2)]

This new section requires directors of societies to meet certain qualifications equivalent to those found in the BCA and other corporate statutes. Among other things, directors must be at least 18 years of age and have no recent convictions for fraud. Acting as a director when unqualified will be an offence under the Act.

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The requirement that directors be 18 may be problematic for some societies, especially those that have a youthful membership (such as student societies). Apart from practical concerns, some commentators have argued generally that the exclusion of younger persons from boards of directors simply discourages participation in the non-profit sector.

However, there are sound reasons why adult directors are required. In particular, directors of societies take on certain duties under the Act, breach of which can lead to legal liability. It is not desirable that certain directors may be relieved of their obligations simply because of their age.

The age of majority in British Columbia is 19 years. However, consistent with other BC corporate legislation (like the BCA and the Cooperative Association Act, and with federal law dealing with the incorporation of both businesses and non-profits), individuals may become directors of societies at age 18. Individuals younger than this may still participate on boards of directors of societies on an advisory basis, without actually being directors.

Since the current Act is silent about age, some societies may presently be allowing non-adult directors. In order to minimize any negative effects of the new requirements, the rules respecting director qualifications will not apply to pre-existing societies until 2 years after the new Act come into force (see section 238).

### **Additional qualifications of directors**

- 44** Without limiting section 43, the bylaws of a society may set out requirements that an individual must meet in order to be qualified to be a director.

#### **Section 44: Additional qualifications of directors [New]**

This section is added merely for clarity. It expressly allows a society to set out additional qualifications for its directors in its bylaws.

### **Remuneration and reimbursement of directors**

- 45**
- (1) Unless permitted by the bylaws, a society must not pay to a director of the society remuneration for being a director.
  - (2) Subject to subsection (3), a society may reimburse a director for reasonable expenses necessarily incurred by the director in performing his or her duties as a director.
  - (3) The bylaws of a society may do any of the following in relation to the reimbursement of a director under subsection (2):
    - (a) prohibit reimbursement;
    - (b) impose conditions on the payment of reimbursement;
    - (c) limit the amount of reimbursement payable.
  - (4) Despite subsections (1) to (3), payment to a director by a society of remuneration or reimbursement authorized by this section or the bylaws is subject to any prohibition, condition or limitation on the payment provided for in the regulations.

### **Section 45: Remuneration and reimbursement of directors [New]**

The current Act is silent on the question of directors' remuneration, which has led to varying interpretations about when it is payable. Consultations indicated a preference that the Act set out a clear rule about the circumstances in which directors, in their capacity as directors, may be paid, and the role of the bylaws in determining director remuneration. This section sets out a set of such rules.

The section adopts a restrictive approach – remuneration of directors is not payable, unless the bylaws say otherwise. This means that existing societies that want to pay their directors but do not have a bylaw allowing directors to be paid will now be required to pass one. As well, new societies that wish to pay their directors will have to include their own bylaw to deal with this matter.

The other approach – which would allow remuneration unless prohibited by the bylaws – was also considered. However, it was ultimately rejected as providing too little member control. Remuneration for being a director of a society appears to be somewhat outside of the norm and, therefore, it is best if the decision to pay directors is considered by the members and set out in the bylaws. As well, other non-profit statutes (such as the new federal not-for-profit statute) that do allow remuneration (unless restricted by the bylaws) generally require that it be “reasonable”. Providing that remuneration may be paid, but only if it is “reasonable” would simply perpetuate the current uncertainty, and could lead to disputes about how such a subjective term is to be applied in a particular case. Requiring the issue be dealt with by the members themselves, through the bylaws, avoids these difficulties.

The section does not prohibit payment for services provided by a director in another capacity (e.g. accounting or legal services). This matter has been left to societies themselves, but is subject to the general rule (see section 40) that the majority of the board be comprised of individuals unaffiliated (i.e. not employed by or under contract to the society).

With respect to reimbursement for expenses incurred by directors, the section takes a different approach. Most people agree that the costs that a director incurs in performing his or her duties should be repaid by the society unless there are specific reasons for not allowing repayment. The section therefore clarifies that reimbursement for expenses is permitted, but allows a society, in its bylaws, to limit the amount of reimbursement, or to put conditions on reimbursement (such as time limits or the production of receipts).

Finally, the section allows for further regulations to be made that could also restrict remuneration (or reimbursement) that may be paid to directors in certain circumstances. For example, it might be considered appropriate at some point to put a cap on directors' remuneration in relation to societies that obtain significant funding from government.

### **Validity of acts**

- 46** (1) An act of a director is not invalid merely because of an irregularity in the director's designation, election or appointment or a defect in the qualifications of that director.
- (2) An act of a society is not invalid merely because
- (a) fewer than the required number of directors have been designated, elected or appointed,



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- (b) the residency requirements for the directors have not been met, or
- (c) a majority of the directors, contrary to section 40 [*employment of directors*], receive or are entitled to receive remuneration from the society under contracts of employment or contracts for services.

### **Section 46: Validity of acts [New; BCA s. 143]**

This section provides that a director's acts are not invalid merely because the director is unqualified or was improperly elected. Similarly, a society's acts are not invalid merely because the requirements (see sections 39 and 40) for its board of directors are not met. This type of provision, which reflects standard corporate law, is needed to provide legal certainty for transactions involving third parties.

### **Persons may rely on authority of societies and directors, senior managers and agents**

- 47** (1) Subject to subsection (2), a society may not assert against a person dealing with the society that
- (a) the bylaws of the society have not been complied with,
  - (b) the individuals who are shown as directors in the register of societies are not the directors of the society,
  - (c) a person held out by the society as a director, senior manager or agent
    - (i) is not, in fact, a director, senior manager or agent, as the case may be, of the society,
    - (ii) has no authority to exercise the powers and perform the duties that are customary in the activities of the society or usual for such director, senior manager or agent, or
    - (iii) acts contrary to a limitation or restriction on the person's powers or functions,
  - (d) a record issued by a director, senior manager or agent of the society who has actual or usual authority to issue the record is not valid or genuine, or
  - (e) a record kept by the society under section 19 [*records to be kept*] is not accurate or complete.
- (2) Subsection (1) does not apply in respect of a person who has knowledge, or, by virtue of the person's relationship to the society, ought to have knowledge, of a situation described in paragraphs (a) to (e) of that subsection.

### **Section 47: Persons may rely on authority of societies and their directors, senior managers and agents [Society Act, s. 24(3); BCA s. 146]**

This section expands on the current Act and provides societies with an "indoor management" rule that is standard in other corporate law statutes. This rule precludes a society from arguing that a person that the society has held out as a director, senior manager or agent in fact had no authority. Persons dealing with a society through its agents are entitled to rely on their apparent authority, unless they have actual knowledge of some limitation.

**Division 2 – Directors Ceasing to Hold Office**

**When director ceases to hold office**

- 48** (1) A director of a society ceases to hold office when
- (a) the director's term of office expires,
  - (b) the director ceases, in accordance with the bylaws, to hold office,
  - (c) the director resigns or dies, or
  - (d) the director is removed from office in accordance with section 50 (1) [*removal of directors*].
- (2) Unless the bylaws provide otherwise, for the purposes of subsection (1) (a), a director's term of office expires at the close of the next annual general meeting after the director's designation, election or appointment.

**Section 48: When director ceases to hold office [New; BCA s. 128 (1)]**

This section provides a checklist for when a director ceases to hold office, and is included simply to clarify the processes involved. The section also expressly recognizes that in the normal course of events, a director's term of office expires at the end of the next AGM following his or her election. As well, the section clarifies that a director may be removed from office by special resolution or in accordance with a method set out in the bylaws (e.g. a unanimous vote of the other directors).

**Resignation of directors**

- 49** A resignation of a director of a society must be in writing and takes effect on the later to occur of the following:
- (a) at the beginning of the day on the date on which the written resignation is received by the society;
  - (b) if the written resignation specifies that the resignation is to take effect on a specified date, on a specified date and time or on the occurrence of a specified event,
    - (i) if a date is specified, at the beginning of the day on the specified date,
    - (ii) if a date and time are specified, on the date and time specified, or
    - (iii) if an event is specified, on the occurrence of the event.

**Section 49: Resignation of directors [New; BCA s. 128]**

This section, which reflects standard corporate law, requires a director to provide a written resignation to the society for it to be effective. This is needed for certainty. To provide flexibility, the provision expressly allows a resigning director to indicate that the resignation will take effect at a later time.

**Removal of directors**

- 50** (1) A director of a society may be removed from office by
- (a) special resolution, or
  - (b) another method provided for in the bylaws.



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- (2) Unless the bylaws provide otherwise, if a director is removed from office under subsection (1), an individual may be elected or appointed, by ordinary resolution, to serve as director for the balance of the term of the removed director.

### **Section 50: Removal of directors [Society Act, s. 31]**

This section provides that a director can be removed by special resolution, and that a replacement may be appointed by ordinary resolution. The section differs from the current one in only one respect – if the bylaws set out a different procedure for appointing a replacement director, those bylaws will prevail.

## **Division 3 – Registry Filings Respecting Directors**

### **Filings respecting directors**

- 51** (1) Subject to subsection (2), a society, promptly after a change in its directors or in the address of any of its directors, must file with the registrar a notice of change of directors.
- (2) If a change of directors occurs at an annual general meeting, the society, instead of complying with subsection (1), may provide notice of that change in the annual report that the society files with the registrar under section 70 [*society must file annual report*].
- (3) After a society files a notice of change of directors under subsection (1) or an annual report under subsection (2) providing notice of a change of directors, the registrar must
- (a) alter the society's statement of directors and registered office to reflect the change, and
  - (b) furnish to the society a certified copy of the altered statement of directors and registered office.

### **Section 51: Filings respecting directors [Society Act, s. 24(7)]**

This section carries forward the requirement that a society file with the corporate registry any changes to its directors or to their addresses. The public filing of directors' information is a fundamental feature of the incorporation model, and enables societies to be served with legal papers by delivery to a director (as well as allowing the public to see who is running a society). The section expressly sets out the option, allowed under current registry practice, to make changes regarding directors' names and addresses as part of the annual report. This is of significant convenience to societies, as changes in a society's board of directors often occur at the annual general meeting.

## **Division 4 – Directors' Powers and Duties**

### **Responsibilities of directors**

- 52** (1) The directors of a society, subject to this Act, the regulations and the bylaws, must manage or supervise the management of the activities and internal affairs of the society.

- (2) The directors may delegate any, but not all, of their responsibilities under subsection (1) to a committee consisting of one or more directors.

**Section 52: Responsibilities of directors [Society Act, s. 24(2)]**

This section carries forward the current Act's rules respecting the powers and functions of directors, i.e. to manage or supervise the management of the external activities and internal affairs of the society. The new aspect of the provision, consistent with other corporate statutes, is the express ability of directors to delegate some of their responsibilities to committees of directors.

**Application of this Act to persons performing functions of director**

- 53** Unless the regulations provide otherwise, if a person who is not a director of a society manages or supervises the management of the society, the following provisions of this Act apply to that person as if that person were a director of the society:
- (a) section 35 [*reporting on remuneration of directors, employees and contractors*];
  - (b) section 40 [*employment of directors*];
  - (c) section 45 [*remuneration and reimbursement of directors*];
  - (d) section 54 [*duties of directors*];
  - (e) Division 5 [*Conflicts*];
  - (f) Division 6 [*Liability and Indemnity*];
  - (g) section 103 [*relief in legal proceedings*];
  - (h) section 143 [*duty to assist liquidator*];
  - (i) section 153 [*liabilities survive*];
  - (j) section 210 (4) [*investigation of society by minister*];
  - (k) a prescribed provision.

**Section 53: Application of this Act to persons performing functions of director [New; BCA s.138]**

This new section is intended to cover persons who are not elected or appointed as directors but who function as directors and participate in the management of the society. The section is intended to clarify the responsibilities, liabilities and remedies that apply to these persons.

**Duties of directors**

- 54** (1) A director of a society, when exercising the powers and performing the functions of a director of the society,
- (a) must act honestly and in good faith and with a view to the best interests of the society,
  - (b) must exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances,
  - (c) must act in accordance with this Act and the regulations, and
  - (d) subject to paragraphs (a) to (c), must act in accordance with the bylaws of the society.

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- (2) Without limiting subsection (1), a director of a society, when exercising the powers and performing the functions of a director of the society, must act with a view to the purposes of the society.
- (3) This section is in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of directors of a society.
- (4) No provision in a contract or the bylaws of a society relieves a director from
  - (a) the duty to act in accordance with this Act and the regulations, or
  - (b) liability that, by any enactment or rule of law or equity, would otherwise attach to the director in respect of negligence, default, breach of duty or breach of trust of which the director may be guilty in relation to the society.

### **Section 54: Duties of directors [Society Act, ss. 25, 26; BCA s. 142]**

This section expands the duties of directors to make the requirements more similar to the duties of directors of other entities, such as companies. For example, a society's directors are now required to act in accordance with the society's bylaws, but only in a subsidiary way – that is, the director's duty to act in the best interests of the society overrides the duty to follow the bylaws. In recognition of the unique nature of societies, directors are also instructed to act with a view to the society's purposes, similar to the requirements for directors of Community Contribution Companies under the BCA.

### **Proceedings of directors**

- 55**
- (1) Unless the bylaws of a society provide otherwise, the directors may meet at any location, on any notice and in any manner convenient to the directors.
  - (2) A directors' resolution may be passed by the directors without a meeting if all of the directors, or, if provided for in the bylaws, a lesser number of those directors, consent to the resolution
    - (a) in writing, or
    - (b) in any other manner provided for in the bylaws.

### **Section 55: Proceedings of directors [Society Act, s. 25.1; BCA s. 140(3)]**

This section carries forward the current's Act provision respecting participation in directors' meetings with two changes. First, the section clarifies that, unless the bylaws state otherwise, the directors can set the procedure for meetings as they see fit. Second, the section follows the BCA and provides the ability to pass directors' resolutions without meetings (that is, "by consent").

## **Division 5 – Conflicts**

### **Disclosure of director's interest**

- 56**
- (1) This section applies to a director of a society who has a direct or indirect material interest in
    - (a) a contract or transaction, or a proposed contract or transaction, of the society, or

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- (b) a matter that is or is to be the subject of consideration by the directors, if that interest could result in the creation of a duty or interest that materially conflicts with that director's duty or interest as a director of the society.
- (2) A director referred to in subsection (1) must
  - (a) disclose fully and promptly to the other directors the nature and extent of the director's interest,
  - (b) abstain from voting on or consenting to a consent resolution of directors in respect of the contract, transaction or matter,
  - (c) leave the directors' meeting, if any,
    - (i) while the contract, transaction or matter is discussed, unless asked by the other directors to be present to provide information, and
    - (ii) while the other directors vote on the contract, transaction or matter, and
  - (d) refrain from any other action intended to influence the discussion or vote.
- (3) A disclosure under subsection (2) (a) must be evidenced in
  - (a) the minutes of a meeting of directors,
  - (b) a consent resolution of directors, or
  - (c) another record mailed by registered mail to the mailing address of the registered office of the society or delivered to the delivery address of the registered office of the society.
- (4) Despite subsection (1), this section does not apply to a director of a society in respect of a contract, transaction or matter that is
  - (a) a payment, to the director by the society, of remuneration for being a director,
  - (b) an indemnification under section 61 (1) or (2) [*directors' indemnification and insurance*] of the director, or
  - (c) a purchase or the maintenance of insurance, referred to in section 61 (3), for the benefit of the director.

### **Section 56: Disclosure of director's interest [Society Act, s. 27]**

This section requires disclosure of directors' interests in contracts, transactions or other matters that may conflict with their duties to act in the best interests of the society.

The current Act generally requires directors of societies who are interested in a proposed contract to disclose their interests to the other directors. (Alternatively, a conflicted director may seek member approval of a contract after it has been entered into, but only if the contract was fair and reasonable to the society.) Failure to disclose (or obtain approval) can result in a director becoming liable to account for profits made under the contract.

Some have argued that a consistent set of conflict rules should be applied to all corporate directors and senior executives, and therefore recommended adoption of BCA-style provisions for societies. However, others are concerned that the BCA's conflicts rules are too complex and exception-based for most societies, and could allow directors to avoid accountability where a simpler model would not. The provisions presented here are intended to offer a clearer but more robust approach to conflict disclosure than the current Act, while still offering a model that is less complicated than the BCA.

All agree that clear conflict of interest provisions that help directors determine whether they have a conflict, and that tell them exactly how to handle a conflict if one does arise, are necessary to ensure that directors can meet their fiduciary duties. To accomplish this, the new Act proposes to carry forward the current Act's disclosure requirements with two changes. First, the new section clarifies that only interests "material" to a director need be disclosed. This is intended to preclude the need to disclose minor, fleeting or insignificant matters. However, unlike the BCA, the director must disclose all contracts in which the director has a material interest, regardless of whether the contract is material to the society. Second, the section requires disclosure not only of a director's interest in a contract or transaction, but also in any matter that could affect the director's ability to act in the best interests of the society. This latter requirement is found in the BCA, as well as in the *Strata Property Act*, and is intended to ensure that directors reveal any non-commercial concerns that could potentially interfere with their fiduciary duties.

The section also sets out what a director must do to make, and after making, a disclosure. These requirements are essentially the same as under the current Act, with several enhancements. First, in order to provide certainty, the disclosure must be evidenced – either in the minutes of a directors' meeting, in a consent resolution of directors, or in a separate written document. To ensure greater accountability, members will have access to these disclosures. Second, the conflicted directors must leave the meeting during any vote on the contract or matter, and must not do anything to influence the discussion or vote.

Finally, the current Act's rule, that prohibits a conflicted director from being counted for the purposes of quorum, has been removed. Directors can determine their own procedures, and could therefore adopt this approach if they wish, but the existence of a blanket rule disqualifying certain directors for quorum purposes could have the undesirable effect of making it difficult to deal with other business at the meeting.

### Accountability

- 57** A director of a society to whom section 56 applies must pay to the society an amount equal to any profit made by the director as a consequence of the society entering into or performing a contract or transaction, unless
- (a) the director discloses the director's interest in the contract or transaction in accordance with, and otherwise complies with, section 56, and, after the disclosure, the contract or transaction is approved by a directors' resolution, or
  - (b) the contract or transaction is approved by special resolution after the nature and extent of the director's interest in the contract or transaction has been fully disclosed to the members.

#### **Section 57: Accountability [Society Act, s. 28]**

This section carries forward the current Act's provisions that make a director accountable to repay a society any profits made by the director unless the director's interest in the contract was properly disclosed and the contract approved by the directors or the members. The new provision does not carry forward the current requirement that a contract approved by members must also be "fair and reasonable" to the society, as this requirement could lead to uncertainty and may actually require a court application to resolve. Instead, it is proposed that, under the

new Act, proper disclosure to, and approval by, the members will be sufficient to relieve a director from the obligation to repay profits.

**Validity of contracts**

- 58** The fact that a director is in any way, directly or indirectly, interested in a contract or transaction that a society has entered into or proposes to enter into does not make the contract or transaction void, but, if neither of the approvals referred to in section 57 (a) and (b) has occurred, the court, on the application of the society or another person whom the court considers to be an appropriate person to make an application under this section, may do one or more of the following:
- (a) if the society has not yet entered into the contract or transaction, prohibit the society from entering into the proposed contract or transaction;
  - (b) if the society has entered into the contract or transaction and the contract or transaction was not reasonable and fair to the society at the time it was entered into, set aside the contract or transaction;
  - (c) make any other order the court considers appropriate.

**Section 58: Validity of contracts [Society Act, s. 29]**

This section provides that a contract is not invalidated by a director's conflict of interest, but that the court may, on application, set aside the contract (unless it has been approved by either the directors or the members). It is substantively the same as the current provision.

**Division 6 – Liability and Indemnity**

**Directors' liability for money or other property distributed**

- 59** (1) Directors of a society who
- (a) vote for a resolution passed at a meeting of directors, or
  - (b) consent to a consent resolution of directors
- authorizing a distribution of money or other property contrary to this Act or the bylaws are jointly and severally liable to restore to the society any money or other property that is so distributed and not otherwise recovered by the society.
- (2) The liability imposed under subsection (1) is in addition to, and not in derogation of, any liability imposed on a director by any enactment or rule of law or equity.
  - (3) A legal proceeding to enforce a liability imposed by this section may not be commenced more than 2 years after the date of the applicable resolution.
  - (4) Without limiting any other rights a director has at law, a director who has satisfied a liability arising under this section is entitled to contribution from the other directors who voted for or consented to the resolution that gave rise to the liability.
  - (5) In a legal proceeding under this section, the court, on the application of a society or a member or director of a society, may do one or more of the following:
    - (a) order a person to pay or deliver to the society any money or other property the court considers was improperly distributed to that person;
    - (b) join a person as a party to the legal proceeding;



- (c) make any other order the court considers appropriate.

**Section 59: Directors' liability for money or other property distributed [New; BCA ss. 154, 156]**

This new section, adopted from the BCA, makes a director personally liable for payments made contrary to the Act or the bylaws. The provision also allows the court to order disgorgement from the persons who received the payment. The section is an important safeguard to ensure that directors comply with the "asset lock" provisions of the Act (see sections 4 and 121). Compared to the BCA, where directors are deemed to be liable unless they have registered a dissent, here the director must actually vote for (or consent to) the payment in order to be made liable.

**Limitations on liability**

- 60** A director of a society is not liable under section 59 and has complied with his or her duties under section 54 (1) [*duties of directors*] if the director, reasonably and in good faith, relied on any of the following:
- (a) financial statements of the society represented to the director,
    - (i) by a director or senior manager responsible for the preparation of the financial statements, or
    - (ii) in a written report of the auditor of the society, to fairly reflect the financial position of the society;
  - (b) a written report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by that person;
  - (c) a statement of fact represented to the director by another director or a senior manager of the society to be correct;
  - (d) any record, information or representation that the court considers provides reasonable grounds for the actions of the director, whether or not
    - (i) the record was forged, fraudulently made or inaccurate, or
    - (ii) the information or representation was fraudulently made or inaccurate.

**Section 60: Limitations on liability [New; BCA s. 157]**

This section also follows the BCA. It provides a legal defence for a director who, reasonably and in good faith, relies on statements or a report made by other directors, senior managers or professionals (auditors, lawyers).

**Directors' indemnification and insurance**

- 61** (1) A society, except to the extent that it is restricted from doing so under the bylaws, may indemnify a director or former director of the society, or a director or former director of a subsidiary of the society, and his or her heirs and personal representatives against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, actually and reasonably incurred by the director or former director, in a civil, criminal or administrative action or proceeding to which the director or former director is subject because of being or having been a director, including an action brought by the society or subsidiary, if the director or former director

- (a) acted honestly and in good faith with a view to the best interests of the society or subsidiary, as the case may be, of which the director or former director is or was a director, and
  - (b) in the case of a criminal or administrative action or proceeding, had reasonable grounds for believing his or her conduct was lawful.
- (2) A society must indemnify a director or former director of the society, and his or her heirs and personal representatives, against all costs, charges and expenses actually and reasonably incurred by the director or former director in connection with the defence of a civil, criminal or administrative action or proceeding to which the director or former director is subject because of being or having been a director, including an action brought by the society, if the director or former director
- (a) was not judged by a court, in Canada or elsewhere, or by another competent authority to have committed any fault or to have omitted to do anything that the director or former director ought to have done,
  - (b) acted honestly and in good faith with a view to the best interests of the society, and
  - (c) in the case of a criminal or administrative action or proceeding, had reasonable grounds for believing the director's or former director's conduct was lawful.
- (3) A society may purchase and maintain insurance, for the benefit of a director, against personal liability incurred by the director as a director of the society or of a subsidiary of the society.

**Section 61: Directors' indemnification and insurance [Society Act, s. 30; BCA, Division 5, Part 5]**

This section deals with indemnification of and insurance for directors. It is different from the current Act, but consistent with other more modern corporate statutes such as the BCA, in that a society no longer requires court approval to provide indemnity. However, only directors who act honestly and in good faith, and with reasonable grounds for thinking their actions are lawful, can be covered. A society is required to provide indemnification for expenses if the director is ultimately exonerated in the legal proceeding. The section attempts to make the rules fairer to directors and, in so doing, to address concerns that exposure to personal legal liability has led to a shortage of individuals willing to be directors in the volunteer sector.

## **Division 7 – Senior Managers**

### **Senior managers**

- 62**
- (1) Subject to any restrictions in the bylaws and in accordance with any requirements in the bylaws, the directors of a society may appoint and remove senior managers of the society and may specify their duties.
  - (2) The appointment of a senior manager does not of itself create any contractual rights, and the removal of a senior manager is without prejudice to any contractual rights, or rights under law, of the senior manager.
  - (3) An individual who is not qualified under section 43 [*individuals disqualified as directors*] to be a director of a society is not qualified to be a senior manager of the society.



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- (4) Unless the bylaws provide otherwise and subject to section 40 [*employment of directors*], a director may be a senior manager.
- (5) Sections 46 (1) [*validity of acts*], 54 [*duties of directors*], 60 [*limitations on liability*], 61 [*directors' indemnification and insurance*] and 103 [*relief in legal proceedings*] apply in relation to a senior manager as if the senior manager were a director.

### **Section 62: Senior managers [New; BCA ss. 141 - 143]**

This section provides for the appointment of senior managers and sets out the provisions that apply to them. A senior manager is an individual who runs the society or influences its policy (see section 1), and who is therefore made subject to similar qualifications and duties as directors. The provisions respecting senior managers are based on the rules applicable to “officers” under the BCA. Consistent with the BCA, acting as a senior manager when unqualified will be an offence under the Act.

### **Disclosure of senior manager's interest**

- 63** (1) This section applies to a senior manager of a society who has a direct or indirect material interest in
- (a) a contract or transaction, or a proposed contract or transaction, of the society, or
  - (b) a matter that is or is to be the subject of consideration by the directors, if that interest could result in the creation of a duty or interest that materially conflicts with that senior manager's duty or interest as a senior manager of the society.
- (2) A senior manager referred to in subsection (1) must fully and promptly disclose the nature and extent of the senior manager's interest to both the society and a director of the society.
- (3) The disclosure to the society under subsection (2) must be made in a written record that is
- (a) mailed by registered mail to the mailing address of the registered office, or
  - (b) delivered to the delivery address of the registered office.
- (4) Sections 57 [*accountability*] and 58 [*validity of contracts*] apply to a senior manager as if the senior manager were a director except that, in addition to any other necessary changes, references in section 57 to section 56 are to be read as references to subsections (1) to (3) of this section.

### **Section 63: Disclosure of senior manager's interest [New; BCA s.147]**

This section essentially makes the conflict of interest rules in sections 56 to 58 applicable to senior managers. Although senior managers do not have a director's “vote” on transactions or matters, by virtue of their role they may exert significant influence on decision-making, and should therefore be required to disclose any personal interest in a contract or matter that may be considered by the directors.

**PART 6 – MEMBERS AND MEETINGS**

**Division 1 – Membership**

**Membership**

- 64** (1) A person may, in accordance with the bylaws, be admitted as a member of a society.
- (2) Unless the bylaws provide otherwise, an individual under the age of 19 years may be admitted as a member of a society.
- (3) If a person, other than an individual, is admitted as a member of a society, the person must be represented by an individual authorized by that person to act on that person's behalf, in which case the representative is entitled to exercise the same powers on behalf of that person as that person could exercise if that person were an individual member of the society.
- (4) Unless the bylaws provide otherwise, membership in a society is not transferable.

**Section 64: Membership [Society Act, ss. 6(1)(a), 7(5) and (6), and 9]**

This section clarifies that the basis for membership is as set out in a society's bylaws, and that membership is not transferable, unless the bylaws provide that it is. It also carries forward the current Act's rules on minors and corporations – unless the bylaws provide otherwise, they are entitled to be members. However, the concept of corporate members has been broadened to encompass partnerships and other non-corporate members. If admitted to membership, these entities, like corporations, must be represented by an authorized individual.

**Classes of membership**

- 65** If the bylaws of a society provide for more than one class of membership,
- (a) the rights and obligations that apply to each class must be set out in the bylaws, and
- (b) at least one of those classes must consist of voting members.

**Section 65: Classes of membership [New]**

This section expressly allows for the creation of different classes of membership, which is only indirectly alluded to in the current Act. Classes can now be structured, under the bylaws, in whatever way the society chooses, but there must always be one class whose members have the right to vote.

The current Act allows for both voting and non-voting members, but requires registrar approval if a society has a majority of non-voting members. Removal of this restriction reflects the reduced oversight role of the registrar under the new Act and, more importantly, the fact that the registrar is not well placed to determine the fairness or appropriateness of a society's voting structure. Earlier consultations showed overwhelming support for providing societies with the ability to determine, through their bylaws, their own membership structures.

**Termination of membership**

- 66** (1) A member's membership in a society is terminated when

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- (a) the member's term of membership, if any, expires,
  - (b) the membership is terminated in accordance with the bylaws,
  - (c) the member resigns or dies, or
  - (d) the member is expelled in accordance with the bylaws or under section 67 (2).
- (2) Unless the bylaws provide otherwise, the rights of a person as a member of a society, including any rights in the money or other property of the society, cease to exist when the person's membership in the society is terminated.

### **Section 66: Termination of membership [New]**

This section is for clarity. It lists the circumstances in which a member ceases to be a member, and clarifies the legal results of termination. Unless the bylaws provide otherwise, all rights of membership – including any rights in the property of the society – cease upon termination.

### **Discipline and expulsion of member**

- 67**
- (1) The bylaws of a society may provide for the discipline or expulsion, or both, of members.
  - (2) Unless the bylaws provide otherwise, a member of a society may be disciplined or expelled by special resolution.
  - (3) Before a member of a society is disciplined or expelled under subsection (2) or the bylaws, the society must
    - (a) send to the member written notice of the proposed discipline or expulsion, including reasons, and
    - (b) give the member a reasonable opportunity to make representations to the society respecting the proposed discipline or expulsion.

### **Section 67: Discipline and expulsion of member [New]**

The current Act is silent on the discipline and expulsion of members. This new section provides a legislative default rule for expelling members (a special resolution is required) and some procedural rules for any disciplinary action (the member must be given notice and a chance to be heard). Societies will continue to be able to set out their own rules, if so desired, for the discipline and removal of members in their bylaws.

## **Division 2 – General Meetings and Annual Reports**

### **Annual general meetings**

- 68**
- (1) Subject to subsections (2) and (3), the directors of a society must call annual general meetings so that an annual general meeting is held in each calendar year.
  - (2) Subsection (1) does not apply to a society in respect of the calendar year in which the society is incorporated or otherwise formed under this Act.
  - (3) On the application of a society made on or before December 31 of a calendar year in which an annual general meeting of the society must be held under subsection (1), the registrar may authorize the society, on any terms the registrar considers appropriate, to hold the annual general meeting on or before a specified

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date that is not later than March 31 of the calendar year immediately following that calendar year, in which event

- (a) the meeting must be held on or before the date specified by the registrar, and
- (b) if the meeting is held in accordance with paragraph (a), the meeting is deemed, for the purposes of this Act, to have been held in the preceding calendar year and not in the calendar year in which the meeting is actually held.

### **Section 68: Annual general meetings [Society Act, s. 56]**

This section requires that a society hold an annual general meeting (AGM) at some point within each calendar year. The current Act's additional timing requirement – that the society hold the AGM within 15 months of the last AGM – has been removed. As before, a society that cannot hold its AGM as required may apply to the registrar for an extension, but only until March 31 of the year following the required calendar year.

This new regularized approach will facilitate electronic tracking of filings by the corporate registry and also increase flexibility for societies. Subject to the requirement that financial statements placed before the meeting be current, a society will be able to hold its AGM at varying times during the year to accommodate facility scheduling and member availability.

### **Deemed annual general meeting**

- 69** (1) An annual general meeting is deemed, for the purposes of this Act, to have been held in accordance with section 68 (1) if
- (a) the matters that must, under this Act or the bylaws, be dealt with at that meeting, including the presentation under section 34 (1) [*financial statements*] of the financial statements and auditor's report, if any, to the members, are dealt with in a resolution, and
  - (b) all of the voting members consent in writing to the resolution on or before the date by which the annual general meeting must be held under section 68.
- (2) If an annual general meeting is deemed to have been held under subsection (1),
- (a) the meeting is deemed to have been held on the date on which the last voting member consents to the resolution referred to in that subsection or on any later date, specified in the resolution, that falls on or before the date by which the annual general meeting must be held under section 68, and
  - (b) the requirements in relation to annual general meetings under this Act and the bylaws are deemed to have been met.

### **Section 69: Deemed annual general meeting [New; BCA s. 182(2)]**

This new section, based on the BCA, allows a meeting to be held "by consent" – that is, if all voting members consent to the passage of all necessary business by means of a written resolution, the meeting is deemed to have been held as required by the Act. This section will provide an option to holding an "in-person" meeting and may be especially useful for smaller societies or those whose members are geographically spread-out.

### Society must file annual report

- 70** (1) A society, within 30 days after an annual general meeting is held, must file with the registrar an annual report that includes the date on which the meeting was held.
- (2) Unless subsection (3) applies, if a society fails to hold an annual general meeting in a calendar year as required under section 68 [*annual general meetings*], the society must file with the registrar, on or before January 31 of the year following the calendar year in which the meeting was required to be held, an annual report indicating that an annual general meeting was not held.
- (3) If the registrar specifies under section 68 (3) a date on or before which an annual general meeting must be held and if, contrary to section 68 (3) (a), an annual general meeting is not held on or before that date, an annual report indicating that an annual general meeting was not held must be filed within 30 days after that date.
- (4) If each of the annual reports of a society for 2 consecutive calendar years indicates that an annual general meeting was not held, the registrar may send to the society a notice that the society may be dissolved under section 211 [*involuntary dissolution by registrar*], unless the society
- (a) holds an annual general meeting in the following calendar year, and
  - (b) indicates, in an annual report filed with the registrar for that calendar year, that the annual general meeting referred to in paragraph (a) of this subsection was held.

#### **Section 70: Society must file annual report [Society Act, s. 68]**

This section carries forward the current requirement that an annual report must be filed within 30 days after each annual general meeting (AGM). If annual report filings indicate that an AGM has not been held for 2 years running, the registrar may send notice that the society must hold an AGM in the next year, and that failure to do so could result in the society being dissolved by the registrar under section 211.

### Other general meetings

- 71** Subject to section 68 [*annual general meetings*], the directors of a society may at any time call a general meeting.

#### **Section 71: Other general meetings [New]**

This new section, empowering directors to call general meetings other than AGMs at any time, is included for clarity.

### Requisition for general meeting

- 72** (1) In this section:
- “**requisition**” means a requisition mailed or delivered under subsection (3) (d) to a society;
  - “**requisition threshold**” means 10% of the voting members of a society unless the bylaws
    - (a) specify a lower percentage for the requisition threshold, or

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- (b) provide for the calculation of the requisition threshold on another basis, and, based on that calculation, the requisition threshold is less than 10% of the voting members;

“**requisitionists**” means the voting members referred to in subsection (3) (b).

- (2) Voting members of a society may requisition the directors to call a general meeting for the purposes stated in the requisition.
- (3) A requisition
  - (a) may be made in a single record or may consist of several records in similar form,
  - (b) must contain the names and contact information of, and be signed by, not fewer than the number of voting members that constitutes the requisition threshold for the society,
  - (c) must state, in 200 words or less, the business to be considered at the meeting, including any special resolution the requisitionists wish to have considered at the meeting,
  - (d) must be mailed by registered mail to the mailing address of the registered office of the society or delivered to the delivery address of the registered office, and
  - (e) must be sent to each individual listed in the society’s register of directors referred to in section 19 (1) (e) [*records to be kept*].
- (4) Promptly after a society receives a requisition,
  - (a) the directors must call a general meeting, to be held within 60 days after the date of the society’s receipt of the requisition, to consider the business stated in the requisition, and
  - (b) the society must send, with the notice of the meeting, the text of the statement referred to in subsection (3) (c).
- (5) No society, or person acting on behalf of a society, incurs any liability merely because the society or person complies with subsection (4) (b).
- (6) If, within 21 days after the date of the society’s receipt of a requisition, the directors do not call a general meeting, a majority of the requisitionists may call the meeting.
- (7) A general meeting called under subsection (6) must be
  - (a) called within 60 days after the expiry of the 21 day period referred to in subsection (6), and
  - (b) called and held in the same manner, as nearly as possible, as a general meeting called and held by the directors, except that notice of the meeting must be sent to every director as well as to every member.
- (8) Unless otherwise resolved by ordinary resolution at a general meeting called under subsection (6), the society must reimburse the requisitionists for the expenses actually and reasonably incurred by them in requisitioning, calling and holding the meeting.

### **Section 72: Requisition for general meeting [Society Act, s. 58]**

This section carries forward the current Act's provision that allows 10% of the voting members to requisition a general meeting, but allows for a lower threshold to be set out in the bylaws. There are also some technical differences from the current provision. First, there are new limits on the size of the requisition record and accompanying documents. Second, directors must hold the meeting within 60 days (not 4 months) after receipt of the requisition. As is currently the case, if the directors do not call the meeting within 21 days, the members themselves can call the meeting, but must give notice to the directors as well as members. Finally, the requirement that members be reimbursed for the expense of calling the meeting (unless the society membership votes otherwise), which currently applies to only some societies, has been expanded to apply in all cases.

### **Location of general meeting**

- 73** (1) A general meeting must be held in British Columbia at the location provided for in the bylaws or, in the absence of such a provision, at the location in British Columbia that the directors determine.
- (2) Despite subsection (1), a general meeting may be held at a location outside British Columbia if
- (a) the bylaws do not provide for a location in British Columbia at which the meeting must be held, and
  - (b) the meeting is held
    - (i) at a location outside British Columbia that is specified in the bylaws, or
    - (ii) in the absence of such specification, at a location outside British Columbia agreed on by every voting member before the meeting.

### **Section 73: Location of general meeting [Society Act, s. 57]**

This section updates the requirements of the current Act to add considerably more flexibility. The default rule is still that meetings are to be held in BC. However, a society's bylaws may now provide for a meeting location outside the province. In addition, as long as the bylaws do not require that the meeting be held in BC, an out-of-province location can be used if approved by all voting members. Given all of these options, the ability to apply to the registrar for dispensation from the place of meeting rules has been removed. The registrar is not well positioned to determine the fairness issues that may be raised by such applications.

### **Notice of general meeting**

- 74** (1) Written notice of the date, time and location of a general meeting must be sent to every member
- (a) at least
    - (i) 14 days before the meeting, or
    - (ii) the number of days before the meeting specified in the bylaws, which number may be less than 14 days but not less than 7 days, and
  - (b) not more than 60 days before the meeting.
- (2) The accidental omission to send notice of a general meeting to, or the non-receipt of notice by, a person who is entitled to notice does not invalidate any proceedings at that meeting.



### **Section 74: Notice of general meeting [Society Act, s. 60; BCA s. 169]**

This section sets out the notification requirements for general meetings. As is the case now, members are entitled to receive 14 days' written notice. What is new is that a society's bylaws may shorten this period to 7 days' notice. Also new is the requirement that the meeting notice be sent not more than 60 days before the meeting. This provision, adopted from other corporate legislation, confirms that a notice of meeting functions, in part, as a reminder and should, therefore, be timely. The provision also states that proceedings are not invalidated by the accidental omission to give notice, consistent with standard corporate law.

### **Notice of special resolutions**

- 75** Notice of a general meeting must include the text of any special resolution to be submitted to the meeting.

### **Section 75: Notice of special resolutions [Society Act, s. 1 "special resolution"]**

This section requires a society to provide with the notice of meeting the text of any special resolutions to be considered at a general meeting. The requirement for notice is currently found in the definition of "special resolution", and has been moved here and rewritten for clarity. (The current Act's general requirement to file all special resolutions at the corporate registry has been removed.)

### **Waiver of notice**

- 76** (1) A member of a society may waive, in any manner, the member's entitlement to notice of a general meeting or may agree to reduce the period of that notice.
- (2) Attendance of a member at a general meeting is a waiver of the member's entitlement to notice of the meeting, unless the member attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

### **Section 76: Waiver of notice [Society Act, s. 60; BCA s. 170]**

This section reiterates the current rule that allows members to waive notice. The new part of the provision deems a member who attends the meeting to have waived notice, and is a common provision in other corporate statutes.

### **Meeting called by court**

- 77** (1) The court, on the application of a member or director of a society, may order that a general meeting be called, held and conducted on the notice, on the date, at the time, at the location or in the manner that the court directs,
- (a) if it is not feasible to call, hold or conduct the meeting on the notice, on the date, at the time, at the location or in the manner required under this Act or the bylaws, or
- (b) for any other reason that the court considers appropriate.
- (2) The court may order that the quorum under section 79 [*quorum*] be varied or dispensed with at a meeting called, held and conducted under this section.



**Section 77: Meeting called by court [Society Act, s. 59]**

This section carries forward an existing provision which allows the court to call a meeting on application of a member. The provision is broadened to allow for directors as well as members to apply, and to expressly allow the court to regulate the timing, notice and manner of meeting, as well as quorum.

**Right to submit proposal**

**78** (1) In this section:

“**proposal**” means a notice sent under subsection (2) to a society;

“**proposal threshold**” means 5% of the voting members of a society unless the bylaws

- (a) specify a lower percentage for the proposal threshold, or
  - (b) provide for the calculation of the proposal threshold on another basis, and, based on that calculation, the proposal threshold is less than 5% of the voting members.
- (2) Voting members of a society may send to the society a notice of a matter, including a special resolution, that the members wish to have considered at an annual general meeting.
- (3) A proposal must contain the names and contact information of, and be signed by, not fewer than the number of voting members that constitutes the proposal threshold for the society.
- (4) If a society receives a proposal at least 7 days before notice of the annual general meeting is sent, the society must include, with that notice,
- (a) the proposal,
  - (b) the names and contact information of the members submitting the proposal, and
  - (c) one statement in support of the proposal, if the members submitting the proposal request that the statement be included with the notice.
- (5) A proposal, or, if a statement is provided under subsection (4) (c), the proposal and statement together, must not exceed 200 words in length.
- (6) No society, or person acting on behalf of a society, incurs any liability merely because the society or person complies with subsection (4).

**Section 78: Right to submit proposal [New; BCA ss. 189-191]**

This is a new section that allows members to put forward proposals for consideration at the next annual general meeting (AGM). The requirements are similar to those for requisitioning meetings, although a minimum of only 5% of voting members is required to make a proposal. The proposal record must not exceed a certain size. If the society receives the proposal at least 7 days before the notice of the AGM is sent, the proposal must be included in the meeting notice. The proposal provision is intended to enhance democratic participation in societies by ensuring that issues of concern to members can be discussed and voted upon at an AGM.

The appropriate level of member support that should be required to make a proposal is a matter of some debate. Some have argued for a threshold of 10% of members, the same as the

threshold required for requisitioning a general meeting. However, there is considerable expense and inconvenience involved in the calling and holding of a special members' meeting, and it is therefore appropriate that a significant proportion of members should feel that such a meeting is necessary. In contrast, the proposal process only requires that the society include a new item on the agenda of an AGM that is already in the planning.

To others, the 5% threshold proposed may seem high, especially when compared to the thresholds for making proposals found in other corporate statutes (for example, a proposal under the BCA requires the support of shareholders holding only 1% of shares, and the new federal non-profit statute provides that a single member may make a proposal). However, these other statutes also provide a number of potentially broad grounds that allow directors to refuse to include a proposal on the meeting agenda (e.g. if it does not relate significantly to the affairs of the company or society, or appears to be intended to secure publicity or to pursue a personal grievance).

These grounds for refusal may be necessary to balance a very low or one-member threshold for making proposals, in order to prevent the hijacking of meetings by the inappropriate agenda items of single members. However, because the grounds for refusal are inherently subjective and open-ended, society directors could have trouble interpreting them, and ultimately this could defeat the democratic enhancements intended by the new proposal provisions.

The proposed 5% member support requirement makes it less likely that AGM agendas can be hijacked for personal grievances, and therefore, no listed grounds for refusing to process a proposal are included in this draft. This approach is consistent with the current Act's treatment of requisitioned meetings, which also (unlike most other corporate statutes) provides no grounds for refusal. It is recognized that, in some cases, this may allow a small minority of members to take over meeting agendas for inappropriate purposes, but this risk is of less concern than the risk that members could be effectively silenced by providing a high threshold or grounds for refusal.

### Quorum

- 79**
- (1) Subject to subsections (3) and (4), the quorum for the transaction of business at a general meeting is 3 voting members unless the bylaws provide for a quorum that is greater than 3 voting members.
  - (2) The bylaws of a society may, for the purposes of subsection (1), provide for a quorum that is greater than 3 voting members, by doing either of the following:
    - (a) specifying the number of voting members, or
    - (b) requiring that the quorum be calculated
      - (i) as a specified percentage of voting members, or
      - (ii) on another basis.
  - (3) If a society has fewer voting members than the quorum provided for in subsection (1), the quorum for the transaction of business at a general meeting is all of the voting members.
  - (4) The bylaws of a society may provide that if a general meeting is adjourned because a quorum is not present, and if, at the continuation of the adjourned

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meeting, a quorum is not present, the voting members present constitute a quorum for the purposes of that meeting.

### **Section 79: Quorum [Society Act, s. 61]**

This section carries forward the current Act's default quorum of 3 voting members. As is the case now, a society can increase this quorum in its bylaws, but may not decrease it. This rule is based on the assumption that, in a society with sufficient members, a default of at least 3 is desirable to encourage participation and debate. If a society has insufficient numbers of members to make the statutory quorum (or any higher threshold set out in its bylaws), then all of the voting members constitute the quorum.

### **Participation in meeting by telephone or other communications medium**

- 80**
- (1) Unless the bylaws of a society provide otherwise, a person who is entitled to participate in a general meeting may do so by telephone or other communications medium if all persons participating in the meeting, whether by telephone, by other communications medium or in person, are able to communicate with each other.
  - (2) Nothing in subsection (1) obligates a society to take any action to facilitate the use of any communications medium at a general meeting.
  - (3) If one or more members of a society vote at a general meeting in a manner contemplated by this section, the vote must be conducted in a manner that adequately discloses the intentions of the members.

### **Section 80: Participation in meeting by telephone or other communications medium [New; BCA s.174]**

This section adopts, for societies, the standard corporate law rules regarding electronic participation at general meetings. Unless the bylaws provide otherwise, participation by telephone or other electronic means is permitted, but this does not create an obligation on a society to provide or facilitate the communications medium.

## **Division 3 – Voting**

### **Right to vote**

- 81**
- (1) A member of a society has the right to vote unless the member is a member of a class of members who, under the bylaws, do not have the right to vote.
  - (2) A voting member of a society has only one vote and, subject to subsection (4), may exercise, without restriction, the right to vote on every matter.
  - (3) The bylaws of a society may authorize
    - (a) indirect or delegate voting, or
    - (b) voting by mail or another means of communication, including by delivery or by fax, email or other electronic means,and, if the bylaws so authorize, must set out rules respecting how the voting must occur.
  - (4) The bylaws of a society may

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- (a) restrict the voting rights of a voting member who is not in good standing within the meaning of the bylaws, or
- (b) provide that only voting members having a specified attribute have the right to elect or appoint certain directors.

### **Section 81: Right to vote [Society Act, ss. 7, 62]**

This section brings forward into one provision several concepts from the current Act, in particular, the idea that each voting member has one vote and must be “in good standing” under the society’s bylaws in order to cast it. There are a few important differences. First, as noted above in section 65, the current requirement that a society have more voting members than non-voting members has been removed. A society is now free to structure itself to meet the particular needs of its membership, so long as there is one class of membership that carries the right to vote.

Second, the section abrogates somewhat the one-voting member/one-vote rule, by allowing a society’s bylaws to provide that only voting members having a particular attribute can elect certain directors. This flexibility will assist many societies that wish to provide, for example, for more equal representation on their boards from different geographic areas or other constituencies.

Third, the section deals expressly with the possibilities of indirect or delegate voting and voting by mail, and requires the bylaws adopting this type of voting to set out procedures for how it is to occur.

It has been suggested that persons who donate money to a society should have similar rights as members of the society, including the right to vote. Although this could potentially improve public accountability, providing donors with the statutory rights of members would be a major shift in the internal governance of societies that are incorporated by members for the purposes established by members. The provision of special donors’ rights can be seen as inconsistent with the goals of a general corporate framework statute and, therefore, such rights are not included in the proposed new Act. Funders who wish to participate in decision-making are always free to choose to support a society that affords them special rights, or to negotiate these rights as part of any funding contract.

### **Proxies**

- 82**
- (1) If permitted by the bylaws of a society, a voting member may appoint a proxy holder.
  - (2) An appointment of a proxy holder
    - (a) must be in writing and be signed by the voting member appointing the proxy holder,
    - (b) is valid, unless the bylaws provide otherwise, only at the meeting for which the appointment is given or at any adjournment of that meeting, and
    - (c) may be revoked at any time.
  - (3) Unless the bylaws provide otherwise, a proxy holder must be a member of the society and may be an individual under the age of 19 years.

- (4) Unless limited in the appointment, a proxy holder stands in the place of the voting member appointing the proxy holder and can do anything that member can do, including vote, propose and second resolutions, and participate in the discussion.

**Section 82: Proxies [Society Act, s. 63]**

This section clarifies that proxy holders can be appointed if allowed by the bylaws (this is merely implied by current Act) and sets out rules for these appointments – e.g. proxies must be in writing and signed, and can be revoked at any time. The current Act’s restriction on “permanent” proxies has been removed – that is, if the bylaws allow, a proxy may be validly given for more than one meeting. Some new defaults have been added (i.e. the proxy holder must a member and can be under 19 years) but again, these defaults can be overridden by the bylaws.

## **PART 7 – CORPORATE REORGANIZATIONS**

### **Division 1 – Amalgamation**

This Division expands on section 17 of the current Act to provide a new and more complete framework for amalgamations. The new provisions allow a society to amalgamate not only with another society, but also with a similar non-profit from another jurisdiction (an “extraprovincial non-share corporation”), as long as the resulting entity will be a BC society. The provisions are based on Division 3, Part 9 of the BCA, and except as noted below, reflect standard corporate law.

#### **Definitions**

**83** In this Division:

“**amalgamated society**” means the society that results from an amalgamation under this Division;

“**amalgamating corporation**” means

- (a) an amalgamating society, or
- (b) an extraprovincial non-share corporation that is amalgamating under this Division;

“**amalgamating society**” means a society that is amalgamating under this Division.

#### **Section 83: Definitions [New]**

This section contains definitions, intended to simplify drafting, for the purposes of this Division. The definitions distinguish between the amalgamating entities and the entity that results from the amalgamation – the amalgamated society.

#### **Application for amalgamation**

- 84** A society may amalgamate with one or more other societies or extraprovincial non-share corporations and continue as one society by
- (a) filing with the registrar an amalgamation application that
    - (i) sets out

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- (A) the name reserved under section 8 [*name*] for the amalgamated society and the reservation number given for that name or, if the application indicates that the amalgamated society will adopt the name of an amalgamating society, that name,
  - (B) the name of each amalgamating corporation, and
  - (C) the home jurisdiction of any amalgamating corporation that is an extraprovincial non-share corporation, and
- (ii) contains, for the amalgamated society,
- (A) a constitution,
  - (B) bylaws, and
  - (C) a statement of directors and registered office, and
- (b) if any of the amalgamating corporations is an extraprovincial non-share corporation, providing to the registrar any records and information the registrar may require, including, without limitation, an authorization for the amalgamation from the official in that corporation's home jurisdiction whose role in that jurisdiction is similar to the role of the registrar in British Columbia.

### **Section 84: Application for amalgamation [New; BCA ss. 269, 275]**

This section sets out the filing requirements for effecting an amalgamation.

#### **Prerequisites to filing amalgamation application**

- 85** A society must not submit an amalgamation application to the registrar for filing under section 84 unless
- (a) the amalgamating corporations have entered into an amalgamation agreement that sets out
    - (i) the terms and conditions of the amalgamation, and
    - (ii) the details necessary to perfect the amalgamation and provide for the subsequent management and operation of the amalgamated society, including the constitution and bylaws proposed for the amalgamated society,
  - (b) each amalgamating society has adopted the amalgamation agreement by special resolution, and
  - (c) if the amalgamated society is to have a name other than the name of an amalgamating society, that name is reserved under section 8 [*name*].

### **Section 85: Prerequisites to filing amalgamation application [Society Act, s. 17; BCA s. 270]**

This section sets out what must be done prior to the filing of an amalgamation application. As is the case under the current Act, the new Act will require an amalgamation agreement ratified by a special resolution voted on by voting members – that is, it is not proposed that non-voting members be given a special right to vote.

#### **Amalgamation**

- 86** (1) Amalgamating corporations are amalgamated and continue as an amalgamated society under this Division when the amalgamation application is filed with the registrar under section 84 [*application for amalgamation*].

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- (2) After amalgamating corporations are amalgamated as an amalgamated society under subsection (1), the registrar must
- (a) issue a certificate of amalgamation in which is recorded
    - (i) the name and incorporation number of the amalgamated society,
    - (ii) the date and time of the amalgamation,
    - (iii) the name of each amalgamating corporation, and
    - (iv) the home jurisdiction of any amalgamating corporation that was an extraprovincial non-share corporation,
  - (b) furnish to the amalgamated society
    - (i) the certificate of amalgamation, and
    - (ii) a certified copy of the following records contained in the amalgamation application filed with the registrar under section 84:
      - (A) the constitution of the society;
      - (B) the bylaws of the society;
      - (C) the statement of directors and registered office of the society, and
  - (c) publish notice of the amalgamation.
- (3) Whether or not the requirements precedent and incidental to amalgamation have been complied with, a notation in the register of societies that amalgamating corporations have been amalgamated as an amalgamated society is conclusive evidence for the purposes of this Act and for all other purposes that the amalgamating corporations have been duly amalgamated as an amalgamated society
- (a) with the name shown in the register of societies, and
  - (b) on the date shown and the time, if any, shown in the register of societies.

### **Section 86: Amalgamation [New; BCA ss. 279, 281]**

This section clarifies that an amalgamation is effective on the filing of the amalgamation application, and lists the corporate registry outputs after amalgamation.

#### **Effect of amalgamation**

- 87** (1) When amalgamating corporations are amalgamated under this Division as an amalgamated society,
- (a) the amalgamation of the amalgamating corporations and their continuation as one society become irrevocable,
  - (b) this Act applies to the amalgamated society to the same extent as if the amalgamated society had been incorporated under this Act,
  - (c) the amalgamated society has the constitution, bylaws and statement of directors and registered office contained in the amalgamation application filed with the registrar under section 84 [*application for amalgamation*],
  - (d) the property, rights and interests of each amalgamating corporation continue to be the property, rights and interests of the amalgamated society,
  - (e) the amalgamated society continues to be liable for the obligations of each amalgamating corporation,



- (f) an existing cause of action, claim or liability to prosecution is unaffected,
  - (g) a legal proceeding being prosecuted or pending by or against an amalgamating corporation may be prosecuted or its prosecution may be continued, as the case may be, by or against the amalgamated society, and
  - (h) a conviction against, or a ruling, order or judgment in favour of or against, an amalgamating corporation may be enforced by or against the amalgamated society.
- (2) An amalgamation does not constitute an assignment by operation of law, a transfer or any other disposition of the property, rights and interests of an amalgamating corporation to the amalgamated society.

**Section 87: Effect of amalgamation [New; BCA s. 282]**

This section sets out the effect of an amalgamation. On amalgamation, the amalgamating entities continue as one society, which is in all respects equivalent to a society incorporated under the Act. The section clarifies that the legal liabilities of each amalgamating entity still apply to the amalgamated society.

**Restrictions on amalgamation**

- 88** A society must not amalgamate with another corporation to form
- (a) a corporation in a jurisdiction other than British Columbia, or
  - (b) a corporation that is not a society.

**Section 88: Restrictions on amalgamation [New]**

The current Act makes no provision for BC societies to amalgamate with a foreign non-profit corporation as a means to continue out of the province into another jurisdiction. Allowing BC societies to “amalgamate out” is problematic, as it is difficult to ensure that the equivalent public protections, in particular the Act’s restrictions on distributions, apply in every new jurisdiction. The new Act therefore clarifies the law by expressly providing that a society cannot amalgamate with a corporation in another jurisdiction (or with any other entity, unless the end result is a BC society).

**Division 2 – Disposal of Society’s Undertaking**

**Disposal of undertaking**

- 89** (1) A society must not sell, lease or otherwise dispose of all or substantially all of its undertaking unless the society has been authorized to do so by a special resolution.
- (2) If a society contravenes or is about to contravene subsection (1), on the application of a member or director of the society or another person whom the court considers to be an appropriate person to make an application under this section, the court may make any order the court considers appropriate, including an order doing either of the following:
- (a) setting aside part or all of the disposition;
  - (b) prohibiting part or all of the proposed disposition.



**Section 89: Disposal of undertaking [New; BCA s. 301]**

This new section is common in other corporate statutes, and requires that voting members consent, by means of a special resolution, before a society sells off the bulk of its property or otherwise disposes of its undertaking.

**Division 3 – Continuation**

This new Division provides a framework to allow non-profit corporations from other jurisdictions (extraprovincial non-share corporations) to “continue” into the province as BC societies. The provisions are based on the BCA and reflect standard corporate law. The new Division also includes provisions for a corporation without share capital created by another Act of the BC legislature (a “special Act corporation”) to become a society under the new Act.

**Application for continuation into British Columbia**

- 90** An extraprovincial non-share corporation may be continued into British Columbia as a society by
- (a) filing with the registrar a continuation application that
    - (i) sets out
      - (A) the name of that corporation and its home jurisdiction, and
      - (B) the name reserved under section 8 [name] for the proposed society and the reservation number given for that name, and
    - (ii) contains, for the proposed society,
      - (A) a constitution,
      - (B) bylaws, and
      - (C) a statement of directors and registered office, and
  - (b) providing to the registrar any records and information the registrar may require, including, without limitation, an authorization for the continuation from the official in that corporation’s home jurisdiction whose role in that jurisdiction is similar to the role of the registrar in British Columbia.

**Section 90: Application for continuation into British Columbia [New; BCA s.302]**

This section sets out the filing requirements for effecting a continuation into BC of a non-profit corporation from another jurisdiction.

**Application for continuation of special Act corporation**

- 91**
- (1) In this section, “**special Act corporation**” means a corporation without share capital, incorporated by an Act.
  - (2) Unless the Act by which it was incorporated provides otherwise, a special Act corporation may apply to continue as a society, if it has the consent of the minister to do so and if it has been authorized to do so by a special resolution that
    - (a) adopts a constitution and bylaws in substitution for
      - (i) the provisions of the Act by which the corporation was incorporated, and

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- (ii) the regulations under that Act, and
  - (b) authorizes one or more members of the board of directors or other governing body of the special Act corporation to file with the registrar the continuation application referred to in subsection (3).
- (3) A special Act corporation that is authorized to continue under subsection (2) as a society must, in order to apply for continuation under this Division, file with the registrar
- (a) a continuation application that
    - (i) sets out the name reserved under section 8 [*name*] for the society and the reservation number given for that name, and
    - (ii) contains, for the proposed society,
      - (A) a constitution,
      - (B) bylaws, and
      - (C) a statement of directors and registered office, and
  - (b) the consent of the minister to the application and any other records the registrar may require.

### **Section 91: Application for continuation of special Act corporation [New]**

This section sets out the filing and ministerial consent requirements for continuing a special Act corporation as a society. This is a new process – currently, while a special Act corporation may convert to a company (with a share structure) under the BCA, there is no provision for transformation of a special Act corporation into a society.

### **Continuation**

- 92** (1) A corporation is continued under this Division as a society when the continuation application is filed with the registrar under section 90 [*application for continuation into British Columbia*] or 91 (3) [*application for continuation of special Act corporation*], as the case may be.
- (2) After a corporation is continued under subsection (1) as a society, the registrar must
- (a) issue a certificate of continuation in which is recorded
    - (i) the name and incorporation number of the society, and
    - (ii) the date and time of the continuation,
  - (b) furnish to the society
    - (i) the certificate of continuation, and
    - (ii) a certified copy of the following records contained in the continuation application filed with the registrar under section 90 or 91 (3), as the case may be:
      - (A) the constitution of the society;
      - (B) the bylaws of the society;
      - (C) the statement of directors and registered office of the society, and
  - (c) publish notice of the continuation.

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- (3) Whether or not the requirements precedent and incidental to continuation under this Division have been complied with, a notation in the register of societies that a corporation has been continued under this Division as a society is conclusive evidence for the purposes of this Act and for all other purposes that the corporation has been duly continued under this Division as a society
- (a) with the name shown in the register of societies, and
  - (b) on the date shown and the time, if any, shown in the register of societies.

### **Section 92: Continuation [New; BCA s. 303]**

This section clarifies that continuation is effective on the filing of the continuation application, and lists the corporate registry outputs after continuation.

#### **Effect of continuation**

- 93** When a corporation is continued under this Division as a society,
- (a) this Act applies to the society to the same extent as if the society had been incorporated under this Act,
  - (b) the society has the constitution, bylaws and statement of directors and registered office contained in the continuation application filed with the registrar under section 90 [*application for continuation into British Columbia*] or 91 (3) [*application for continuation of special Act corporation*], as the case may be,
  - (c) the property, rights and interests of the corporation continue to be the property, rights and interests of the society,
  - (d) the society continues to be liable for the obligations of the corporation,
  - (e) an existing cause of action, claim or liability to prosecution is unaffected,
  - (f) a legal proceeding being prosecuted or pending by or against the corporation may be prosecuted or its prosecution may be continued, as the case may be, by or against the society, and
  - (g) a conviction against, or a ruling, order or judgment in favour of or against, the corporation may be enforced by or against the society.

### **Section 93: Effect of continuation [New; BCA s. 305]**

This section sets out the effect of continuation. The continued entity is a society, which is in all respects equivalent to a society incorporated under the Act. The section clarifies that the legal liabilities of the corporation that is continuing into the province as a society (or continuing from a special Act corporation) still apply to the continued society.

#### **No continuation out**

- 94** A society must not apply to a jurisdiction other than British Columbia to be continued into that jurisdiction.

### **Section 94: No continuation out [New]**

The current Act makes no provision for societies to continue out of the province into other jurisdictions. Allowing BC societies to continue out is problematic, as it is difficult to ensure that the equivalent public protections, in particular the Act's restrictions on distributions, apply in

every new jurisdiction. The new Act therefore clarifies the law by expressly providing that societies cannot continue out to another jurisdiction.

### **Division 4 – Arrangements**

This new Division provides a framework to allow societies to apply to court for approval of an “arrangement”. An arrangement is a proposal to bring about a reorganization of a society or achieve other corporate outcomes that may not otherwise be clearly provided for in the Act. An arrangement must be approved by the voting members by special resolution, and then must be ratified by the court.

The British Columbia Law Institute’s 2008 Report recommended against inclusion of arrangement provisions, on the grounds they are unnecessary in the non-profit context. It is indeed highly unlikely that a society will ever need to use these provisions. However, the arrangement process is standard in corporate law, and is available to other corporations under both for-profit and non-profit corporate statutes across Canada. The involvement of the court in approving all arrangements both provides a cost deterrent to using the remedy where it is not really needed, and ensures protection of minority interests. Therefore, very limited arrangement provisions are proposed for the new Act.

#### **Arrangement may be proposed**

- 95** (1) Subject to this Act and the regulations, a society may propose any arrangement that it considers appropriate, including, without limitation, a proposal that includes one or more of the following:
- (a) an alteration to the constitution, bylaws or statement of directors and registered office of the society;
  - (b) an amalgamation of the society with one or more societies;
  - (c) an amalgamation of the society with one or more extraprovincial non-share corporations that results in a society;
  - (d) a transfer of all or any part of the property, rights, interests or liabilities of the society to another corporation;
  - (e) a compromise between the society and its creditors or any class of its creditors;
  - (f) a dissolution, or a liquidation and dissolution, of the society.
- (2) Before an arrangement proposed under this section takes effect, the arrangement must be approved by
- (a) special resolution, and
  - (b) a court order under section 96.

#### **Section 95: Arrangement may be proposed [New; BCA s. 288]**

This section provides for a court-approved arrangement to be proposed. An arrangement may include one or more of the alterations and fundamental changes already available under other provisions of the Act, but the arrangement section also contemplates corporate outcomes not

specifically set out elsewhere. The terms of the arrangement must be approved by a special resolution of the voting members and by the court before the arrangement can take effect.

**Role of court in arrangements**

- 96** (1) The court, on the application of a society, may make an order approving an arrangement in respect of the society, on the terms presented in the application or substantially on those terms, or may refuse to approve the arrangement.
- (2) If the court approves an arrangement under subsection (1), the court may make any incidental, consequential and supplemental orders necessary to ensure that the arrangement is fully and effectively carried out.

**Section 96: Role of court in arrangements [New; BCA s. 291]**

This section requires court approval of an arrangement. The court must either approve the arrangement substantially as proposed, or refuse to approve it. The provision does not grant the court the power to re-write an arrangement – that is, it cannot substitute its own proposal for one that the members have approved.

**Registry filings**

- 97** If the provisions of an arrangement that is approved by a court order under section 96, on taking effect, will alter information that was contained in records previously filed with the registrar in respect of a society, the society must
- (a) file with the registrar
    - (i) the records required to give effect to those provisions, and
    - (ii) concurrently with those records, the following:
      - (A) a copy of the entered court order;
      - (B) any other records the registrar may require, and
  - (b) provide to the registrar any other records and information that the registrar may require.

**Section 97: Registry filings [New; BCA ss. 295, 296]**

This section requires that, if an arrangement affects any information filed at the corporate registry, records that set out the new information must be filed.

**PART 8 – REMEDIES**

This Part expands the very few court provisions of the existing Act to provide a broad range of legal remedies for societies. The new provisions are based on various sections of the BCA, and except as noted below, reflect standard corporate law.

In 2012, the legislature passed the *Civil Resolution Tribunal Act* (CRTA). This Act, which provides an alternative to court for the resolution of some small claims matters and disputes in strata corporations, is not yet in force. In the coming months, the development of dispute resolution processes under the CRTA will be monitored closely to determine whether its framework would be appropriate for the resolution of disputes in societies.

**Division 1 – Court Proceedings**

**Complaints by members and other interested persons**

- 98** (1) In this section, “**interested person**”, in relation to a society, means
- (a) a member of the society, or
  - (b) another person the court considers to be an appropriate person to make an application under this section.
- (2) An interested person may apply to the court for an order under this section on the grounds that
- (a) the activities or internal affairs of the society are being or were conducted, or the powers of the directors are being or were exercised, in a manner oppressive to one or more interested persons, including the applicant, or
  - (b) an act of the society was done or is threatened, or a resolution of the members or directors was passed or is proposed, that is unfairly prejudicial to one or more interested persons, including the applicant.
- (3) On an application under this section, the court, with a view to remedying or bringing to an end the matters complained of, may make any interim or final order it considers appropriate, including an order
- (a) directing or prohibiting any act,
  - (b) regulating the conduct of the society’s activities or internal affairs,
  - (c) removing a director or appointing a new director,
  - (d) varying or setting aside a transaction to which the society is a party and directing any party to the transaction to compensate any other party to the transaction,
  - (e) varying or setting aside a resolution,
  - (f) requiring the society, within a period specified by the court, to produce to the court or to a specified person financial statements or an accounting in any form the court may determine,
  - (g) directing the society to compensate an aggrieved person,
  - (h) directing correction of the records of the society,
    - (i) appointing a receiver or receiver manager,
    - (j) directing that the society be liquidated and dissolved and appointing one or more liquidators, or
  - (k) appointing an investigator to conduct an investigation of the society, providing directions in relation to that investigation and setting the investigator’s remuneration.
- (4) If the court makes an order under subsection (3) (k), section 210 (4) and (5) [*investigation of society by minister*] applies.

**Section 98: Complaints by members and other interested persons [New; BCA s. 227]**

This section gives members, usually representing the voice of the minority, the right to go to court if they think they are oppressed or have been treated unfairly by the society, its directors or other members. The court has a wide selection of possible orders to remedy the situation –

everything from directing the society's activities to ordering the society to liquidate and dissolve. It is the same remedy as that provided to shareholders under the BCA, and was recommended by the British Columbia Law Institute in its 2008 Report.

Concerns have been raised that the oppression remedy may not be appropriate in the non-profit context, given that oppression is a remedy designed to protect minority interests which don't arise in a one member/one vote context. Moreover, members of societies, unlike shareholders in companies, usually do not have direct financial interests in society decisions.

Some suggest that even if there is a need for such a remedy, it should not be available where the directors are acting in furtherance of the society's purposes. This type of limitation would recognize that a society, in fulfilling its purposes, may routinely have to prefer some interests over others, or apply the society's funds for one purpose over another. This limitation could severely restrict the usefulness of the remedy, and therefore is not proposed for the new Act.

### Complaints by public

- 99** (1) A person whom the court considers to be an appropriate person to make an application under this section may apply to the court for an order under this section on the grounds that a society
- (a) is conducting its activities or internal affairs with intent to defraud a person or to otherwise act unlawfully, or
  - (b) is carrying on activities that are detrimental to the public interest.
- (2) On an application under this section, the court, with a view to remedying or bringing to an end the matters complained of, may make any order it considers appropriate, including an order referred to in section 98 (3).
- (3) Section 98 (4) applies for the purposes of this section.

### Section 99: Complaints by public [New]

The section provides members of the general public with the right to seek a court remedy if a society is acting in a fraudulent or unlawful manner, or is otherwise not acting in the public interest. The court can remedy the situation by making any order it sees fit, including any of the orders listed in section 98.

This provision is unique in corporate law, and reflects the special role of non-profit corporations in society. There is a general expectation that societies will act in the public interest, especially since so many of them are supported by public funding or monies solicited from the public. The risk that the provision could be used improperly (e.g. for minor matters or to pursue personal grievances) is limited because the court effectively controls the process.

### Derivative actions

- 100** (1) In this section, “**complainant**”, in relation to a society, means a member or director of the society or another person whom the court considers to be an appropriate person to prosecute or defend, under this section, a legal proceeding in relation to the society.
- (2) A complainant in relation to a society may, with leave of the court,
- (a) prosecute a legal proceeding in the name and on behalf of the society



- (i) to enforce a right of, or a duty or obligation owed to, the society that could be enforced by the society itself, or
  - (ii) to obtain damages for any breach of a right, duty or obligation referred to in subparagraph (i), or
  - (b) defend, in the name and on behalf of the society, a legal proceeding brought against the society.
- (3) Section 233 [*powers of court in relation to derivative actions*] of the *Business Corporations Act* applies for the purposes of this Act.

**Section 100: Derivative actions [New; BCA s. 233]**

This section allows a member or director, or other person the court considers appropriate, to pursue, with permission of the court, a legal proceeding on behalf of the society. For example, a derivative action could be used where a current board of directors, for whatever reason, refuses to take legal action against a former director who owes money to the society, or fails to defend a lawsuit brought against the society.

**Compliance or restraining orders**

- 101** (1) This section applies if
- (a) a person contravenes or is about to contravene a provision of this Act, the regulations or the bylaws of a society, or
  - (b) a society is carrying on activities that are inconsistent with or contrary to its purposes.
- (2) A member or director of the society or another person whom the court considers to be an appropriate person to make an application under this section may apply to the court for an order that,
- (a) in a case described in subsection (1) (a), the person who has contravened or is about to contravene a provision referred to in subsection (1) (a) comply with or refrain from contravening the provision, or
  - (b) in a case described in subsection (1) (b), the society refrain from carrying on activities that are inconsistent with or contrary to the society's purposes.
- (3) On an application under this section, the court may make any order it considers appropriate.

**Section 101: Compliance or restraining orders [New; BCA s. 228]**

This section provides “injunctive” relief – that is, if a society or other person is contravening (or about to contravene) a provision of the Act, the regulations or the society's bylaws, or if the society is acting contrary to its purposes, a court may order them to comply with that provision.

**Court may remedy irregularities**

- 102** (1) This section applies if an omission, defect, error or irregularity in the conduct of the activities or internal affairs of a society results in
- (a) a contravention of this Act or the regulations,
  - (b) the society acting inconsistently with or contrary to its purposes,
  - (c) a default in compliance with the bylaws of the society,



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- (d) proceedings at, or in connection with, a meeting of members or directors of the society, or an assembly purporting to be such a meeting, being rendered ineffective, or
  - (e) a resolution consented to by members or directors of the society, or records purporting to be such a resolution, being rendered ineffective.
- (2) Despite any other provision of this Act, if an omission, defect, error or irregularity described in subsection (1) occurs,
- (a) the court, either on its own motion or on the application of a person whom the court considers to be an appropriate person to make an application under this section, may make an order
    - (i) to correct or cause to be corrected, or to negative or modify or cause to be modified, the consequences in law of the omission, defect, error or irregularity, or
    - (ii) to validate an act, matter or thing rendered or alleged to have been rendered invalid by or as a result of the omission, defect, error or irregularity, and
  - (b) the court may make any ancillary or consequential orders it considers necessary.
- (3) Unless the court orders otherwise, an order under subsection (2) does not prejudice the rights of a third party who has acquired those rights for valuable consideration and without notice of the omission, defect, error or irregularity that is the subject of the order.

### **Section 102: Court may remedy irregularities [Society Act, s. 85; BCA s. 229]**

This section carries forward one of the only court remedies available under the current Act. It allows a court to correct oversights (for example, a resolution passed at an improperly called meeting) that would otherwise invalidate proceedings.

### **Relief in legal proceedings**

- 103** If, in a legal proceeding against a director of a society, the court finds that the director is or may be liable in respect of negligence, default, breach of duty or breach of trust, the court
- (a) must take into consideration all of the circumstances of the case, including those circumstances connected with the director's designation, election or appointment, and
  - (b) may relieve the director, either wholly or partly, from liability, on the terms the court considers necessary, if it appears to the court that, despite the finding of liability, the director has acted honestly and reasonably and ought fairly to be excused.

### **Section 103: Relief in legal proceedings [New; BCA s. 234]**

This section provides relief for directors who may otherwise be liable for negligence or another default in relation to a society. The section allows the court to relieve a director from liability if, in the circumstances, they ought fairly to be excused. This type of protection may be very important for smaller societies that rely on inexperienced volunteer boards, and may help

address concerns about personal liability that have led some individuals to refuse to stand for election to the board of directors of a society.

## **Division 2 – Proceedings Respecting Records**

### **Registrar or court may order access or copies**

- 104** (1) A person who claims to be entitled under section 23 [*inspection of records*] or 24 [*inspection of register of members*] to inspect a record of a society, or under section 26 [*copies of records*] or 27 [*copies of financial statements*] to receive a copy of a record of a society, may apply in writing to the registrar for an order under subsection (2) of this section if the society does not provide that person with access to the record or a copy of the record, as the case may be.
- (2) If, on the application of a person referred to in subsection (1), it appears to the registrar that a society has, contrary to section 23, 24, 26 or 27, failed to provide the applicant with access to, or a copy of, a record, the registrar may order the society to provide to the registrar whichever of the following the society chooses to provide:
- (a) a copy of the record;
  - (b) a signed statement of a director or senior manager of the society setting out the reason why access to, or a copy of, the record is not being provided to the applicant.
- (3) The registrar must
- (a) set out in an order under subsection (2) an explanation of the basis on which the applicant claims to be entitled to obtain access to, or a copy of, the record, and
  - (b) furnish a copy of the order to the society and the applicant.
- (4) A society referred to in an order under subsection (2) must comply with that order within 15 days after the date of the order.
- (5) If a society provides to the registrar a copy of a record under subsection (2) (a), the registrar must furnish the copy of the record to the applicant.
- (6) If a society provides to the registrar a signed statement of a director or senior manager under subsection (2) (b), the registrar must furnish the statement to the applicant.
- (7) An applicant under subsection (1), on notice to the society, may apply to the court for an order that the applicant be provided with access to, or a copy of, a record, if
- (a) a signed statement respecting the record is furnished under subsection (6) to the applicant by the registrar, or
  - (b) the society fails to comply with subsection (4).
- (8) The court, on an application under subsection (7), may make any order it considers appropriate, including any of the following orders:
- (a) an order that access to a record of the society be provided to the applicant, or that a certified copy of the record be provided to the applicant, within the time specified by the order;

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- (b) an order requiring the society to change the location of its registered office to a location the court considers appropriate or to change the location at which some or all of its records are kept;
- (c) an order requiring the society to pay to the applicant damages in an amount the court considers appropriate.

### **Section 104: Registrar or court may order access or copies [Society Act, s. 95.1; BCA s. 50]**

This section exists in the current Act, but there it only applies to financial statements. There is currently no process for members and directors to follow to obtain access to society records to which they are entitled. This amended provision follows the BCA, and provides recourse with respect to any record held by a society to which a person has a right of access under the Act or the bylaws. In this provision, the registrar acts as a “go-between” to try to facilitate access to records (or at least to clarify why access is being denied). Ultimately, however, a court order may still be required for a person to obtain access to a society record.

### **Applications to court to correct records**

- 105** (1) In this section, “**basic records**”, in relation to a society, means
- (a) the society’s
    - (i) constitution,
    - (ii) bylaws,
    - (iii) statement of directors and registered office,
    - (iv) register of directors, and
    - (v) register of members,
  - (b) the minutes of any meeting of members or directors, and
  - (c) any resolution passed by the members or directors, if the resolution is not included in the minutes referred to in paragraph (b).
- (2) If information is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, a society’s basic records, the society, a member or director of the society or another person whom the court considers to be an appropriate person to make an application under this section may apply to the court for an order that the basic records be corrected.
- (3) On an application under this section, the court may make any order it considers appropriate, including an order
- (a) requiring the society to correct one or more of its basic records,
  - (b) restraining the society from calling or holding a general meeting or doing any other act before the correction is made,
  - (c) determining the right of a party to the application to have the party’s name entered or retained in, or deleted or omitted from, basic records of the society, and
  - (d) requiring a person to compensate a party who has incurred a loss as a result of a matter referred to in subsection (2).

**Section 105: Applications to court to correct records [New; BCA s. 230]**

This section allows for an application to court to correct records, including the constitution, bylaws, and the registers of directors and members. The remedy would be useful, for example, where a person alleges that, despite the fact that they are not listed on the register of members, they are indeed a member and should have the rights of membership.

**Missing records**

- 106** (1) If the court is satisfied that a record that was or should have been kept under section 19 [*records to be kept*] by a society has been destroyed, is lost, was never created or is otherwise not accessible, the court, on the application of the society, a member or director of the society or another person whom the court considers to be an appropriate person to make an application under this section, may make any order it considers appropriate and, without limitation, may
- (a) declare what was or should have been contained in the record,
  - (b) declare the record to have existed with full legal effect from
    - (i) the date and time that the society was incorporated or otherwise formed, or
    - (ii) any other date and time the court may order, and
  - (c) if a declaration is made under paragraph (a) of this subsection in respect of the contents of a record, order that some or all of those contents
    - (i) apply to a person or to an event, or
    - (ii) do not apply to a person or to an event, whether or not those contents would have applied to the person or the event on or after the date and time the court orders under paragraph (b) of this subsection.
- (2) If an order is made under subsection (1) in respect of a record, the provisions of Division 2 [*Society Records*] of Part 3 [*Registered Office and Records*] that are applicable to that record apply to a copy of the entered order.

**Section 106: Missing records [New; BCA s. 45]**

This section allows a court to reconstruct a record that has been destroyed, or is lost or inaccessible.

**PART 9 – AUDIT**

This Division contains provisions that apply to societies that have their financial statements audited. Some societies voluntarily opt to have their financial statements audited; others may be required (perhaps by a regulator or funding agency) to have an auditor. Although there is the ability to pass regulations requiring auditors in certain circumstances, audits can be very expensive and may be of limited value in ensuring proper management. Generally, societies are not required under the current Act to produce audited statements unless they fall within a very small subclass of “reporting societies” (e.g. hospitals, insurance societies, societies that have subsidiaries) and earlier consultations were firmly against any notion of broadening the current Act’s audit requirements.

Therefore, the new Act itself will not require that financial statements be audited – with one exception. Pre-existing societies that, under the current Act, were considered to be “reporting societies” will be required, on transitioning to the new Act (see Part 16), to carry forward into their bylaws the current requirement that their financial statements be audited. However, once the society has transitioned, these bylaws can be amended by special resolution, and the audit requirement could therefore be removed.

The audit provisions in this Part are substantively almost identical to those found in the current Act. In many cases, however, the wording has been updated to more closely resemble the equivalent provisions of the BCA.

### Appointment of auditor

- 107** (1) A society
- (a) must have an auditor if the society is required to have an auditor by the society’s bylaws or under the regulations, and
  - (b) may have an auditor in any other case.
- (2) The directors of a society must appoint the first auditor, if any, of the society to hold office until the close of the first annual general meeting.
- (3) Each auditor, if any, subsequent to the first auditor must be appointed at each annual general meeting, by ordinary resolution, to hold office until the close of the next annual general meeting.
- (4) If a subsequent auditor is not appointed as required under subsection (3), the auditor in office continues as auditor until a successor is appointed.
- (5) If there is a vacancy in the office of auditor created by resignation, death or otherwise, other than by removal under section 112 [*removal of auditor during term*], the directors may appoint an auditor to hold office until the close of the next annual general meeting.
- (6) If, for any reason, a society that is required under subsection (1) (a) to have an auditor does not have an auditor, the court, on the application of a member of the society or another person whom the court considers to be an appropriate person to make an application under this section, may
- (a) appoint an auditor to hold office until the close of the next annual general meeting, and
  - (b) set the remuneration to be paid by the society for the auditor’s services.

#### **Section 107: Appointment of auditor [Society Act, s. 41; BCA s. 204]**

This section clarifies that auditors are optional for societies. A society must have an auditor if required to do so by its bylaws, but the bylaws can always be amended (by special resolution) to remove the requirement.

The section does, however, allow for further regulations to be made to require societies to produce audited statements in certain circumstances. For example, it might be considered appropriate at some point to require an auditor for societies that receive significant or mandatory public funding (such as student societies) or that perform particular public services (such as housing assistance).

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The procedural rules regarding the appointment and replacement of auditors and their terms of office are based on provisions of the BCA.

### Persons qualified to act as auditor

- 108** A person is qualified to act as an auditor of a society if
- (a) the person is a member, or is a partnership whose partners are members, of
    - (i) a Provincial or Territorial Institute/Ordre of Chartered Accountants within Canada, or
    - (ii) the Certified General Accountants Association of British Columbia, or
  - (b) the person is, under section 222 [*board function and liability*] of the *Business Corporations Act*, certified by the Auditor Certification Board continued under section 221 [*Auditor Certification Board*] of that Act.

### Section 108: Persons qualified to act as auditor [Society Act, s. 42; BCA s. 205]

This section carries forward the current Act's provisions respecting the professional qualifications required for society auditors.

### Independence of auditor

- 109** (1) In this section:
- “**member of the immediate family**”, in respect of a person, means any of the following:
    - (a) the spouse of the person;
    - (b) a parent or child of the person;
    - (c) a relative of the person, or of the person's spouse, who resides in the same home as that person;
  - “**partner**”, in respect of a person, means a person with whom the person carries on, in partnership, the profession of public accounting;
  - “**spouse**” means a person who
    - (a) is married to another person, or
    - (b) is living with another person in a marriage-like relationship.
- (2) A person who is not independent of a society must not act as the auditor of the society.
- (3) For the purposes of this section, independence is a question of fact, but a person is not independent of a society if
- (a) the person is
    - (i) a director or senior manager of the society or a person who holds an equivalent position in a subsidiary of the society,
    - (ii) an employee of the society or of a subsidiary of the society, or
    - (iii) a partner, employer, employee or member of the immediate family of a person referred to in subparagraph (i) or (ii),

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- (b) the person, a member of the immediate family of the person, a partner of the person or a member of the immediate family of a partner of the person beneficially owns or controls, directly or indirectly, an interest in
    - (i) a bond, debenture, note or other evidence of debt obligation of the society, or
    - (ii) a share or a bond, debenture, note or other evidence of debt obligation of a subsidiary of the society,
  - (c) the person is appointed as a trustee of the estate of the society under the *Bankruptcy and Insolvency Act* (Canada) or is a partner, employer, employee or member of the immediate family of that trustee, or
  - (d) the person is a member of the society and has the power, either directly or indirectly, to elect or appoint the majority of directors.
- (4) Except in the circumstances described in subsection (3) (d), membership in a society must not be taken into consideration in determining whether an auditor is independent.

### **Section 109: Independence of auditor [Society Act, s. 43; BCA s. 206]**

This section requires a society auditor to be independent of the society, and sets out the relationships that would compromise that independence. The section has been reorganized to more closely follow the BCA, but is substantively the same as that in the current Act, with one difference – a person who is a member of the society and has the power to elect or appoint a majority of directors of a society is included in the list of persons who are not considered independent of the society.

### **Capacity to act as auditor**

- 110**
- (1) An auditor of a society who is not, or who ceases to be, qualified under section 108 [*persons qualified to act as auditor*], promptly after becoming aware of that fact, must become qualified or resign as auditor.
  - (2) An auditor of a society who is not, or who ceases to be, independent within the meaning of section 109, promptly after becoming aware of that fact, must
    - (a) eliminate the circumstances that resulted in the auditor not being independent, or
    - (b) resign as auditor of the society.
  - (3) On the application of a member of a society or another person whom the court considers to be an appropriate person to make an application under this section, the court may order that an auditor of a society referred to in subsection (1) or (2) be removed on terms and conditions the court considers appropriate.

### **Section 110: Capacity to act as auditor [Society Act, s. 43(4); BCA s. 208]**

This section consolidates and expands the rules requiring auditors to either comply with qualifications and independence requirements or resign upon becoming aware of a disqualification. It is based on the BCA.

### **Remuneration of auditor**

- 111**
- (1) The remuneration of an auditor appointed by a society must be set by



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- (a) ordinary resolution, or
  - (b) the directors, if the society so resolves by ordinary resolution or the bylaws so provide.
- (2) Despite subsection (1), the remuneration of an auditor of a society may be set by the directors if the auditor is appointed
- (a) before the first annual general meeting, or
  - (b) to fill a vacancy under section 107 (5) [*appointment of auditor*].

### **Section 111: Remuneration of auditor [Society Act, s. 44; BCA s. 207]**

This section carries forward the current Act's rules respecting member approval of the auditor's remuneration. The section clarifies that the power to set remuneration can be delegated by the members to the directors either by ordinary resolution, or on a more permanent basis, in the bylaws. However, even as amended, the provision is still potentially problematic – for example, where members of a society that is required to appoint an auditor are unable to pass the necessary resolution to approve (or delegate authority respecting) the auditor's remuneration. A clearer approach may be to simply be silent and leave the matter of the auditor's remuneration to the directors to determine.

### **Removal of auditor during term**

- 112** (1) A society,
- (a) by ordinary resolution passed at a general meeting called for the purpose, may remove its auditor before the expiration of the auditor's term of office, and
  - (b) by ordinary resolution passed at that meeting, must appoint a person as auditor for the remainder of the term of the auditor who was removed.
- (2) Before calling a general meeting for the purpose referred to in subsection (1) (a), a society must send to the auditor who is proposed to be removed
- (a) written notice of the intention to call the meeting, specifying the date on which the notice of the meeting is proposed to be sent, and
  - (b) a copy of all materials proposed to be sent to members in connection with the meeting.
- (3) The society must send to the auditor who is proposed to be removed the records referred to in subsection (2) at least 14 days before the date on which the notice of the meeting is sent.
- (4) An auditor may send to the society written representations respecting the auditor's proposed removal as auditor, and, if those written representations are received by the society at least 7 days before the date on which the notice of the meeting is sent, the society, at its expense, must send a copy of those representations with the notice of the meeting.
- (5) No society, or person acting on behalf of a society, incurs any liability merely because the society or person complies with subsection (4).



**Section 112: Removal of auditor during term [Society Act, s. 46; BCA s. 209]**

This section allows for the mid-term removal of an auditor by ordinary resolution passed at a meeting called for that purpose. The auditor has the right to be notified of the proposed removal and to have their side of the story distributed to members with the notice of meeting. A society that removes an auditor in this manner is required to appoint a replacement for the remainder of the auditor's term. The section is substantively the same as the current Act, but has been updated to more closely resemble the equivalent BCA provision.

**Examination and access**

- 113** (1) The auditor of a society must make the examinations that are, in the auditor's opinion, necessary to enable the auditor to prepare the report required under section 114.
- (2) A person who is or was a member, director or senior manager of a society or holds or held an equivalent position in a subsidiary of the society, or who is or was an employee or agent of the society or of a subsidiary of the society, must comply, to the extent that the person is reasonably able to do so, with any demand of the auditor of the society to do the following:
- (a) provide to the auditor all of the information and explanations that the auditor considers necessary for the purpose of any examination or report that the auditor must or may make or prepare under this Act;
  - (b) allow the auditor access to all of the society's records and all of the records of the society's subsidiaries, if any, that the auditor may require for the purpose of an examination or report referred to in paragraph (a) and provide to the auditor copies of those records, when and as required by the auditor.

**Section 113: Examination and access [Society Act, ss. 47, 52, 53; BCA s. 217]**

This section gives the auditor the right to make the examinations necessary to prepare a report on the society's financial statements. Members, directors, senior managers and agents of the society or its subsidiary are required to cooperate in providing explanations and giving access to records, and failure to do so will be an offence under the Act.

**Auditor's report**

- 114** (1) The auditor of a society must
- (a) prepare for the members of the society a report on the financial statements that are to be presented to the members at an annual general meeting, and
  - (b) state in the report whether, in the auditor's opinion, the financial statements
    - (i) fairly reflect, for the period under review, the financial position of the society and the results of its operations,
    - (ii) were prepared in accordance with generally accepted accounting principles, and
    - (iii) in the case of financial statements other than the first financial statements, were prepared on a basis consistent with the basis on which the financial statements that related to the preceding period were prepared.

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- (2) If an opinion given by an auditor in a report made under subsection (1) is subject to qualification, the auditor must state, in the report, the reasons for the qualification.

### **Section 114: Auditor's report [Society Act, s. 47; BCA ss. 212, 213]**

This section sets out required contents of the auditor's report on the society's annual financial statements. There is no requirement that financial statements be prepared in accordance with generally accepted accounting principles, but the auditor is required to indicate whether or not they were, as well as to state whether they accurately reflect the financial position of the society.

### **Right of auditor to attend meetings**

- 115** The auditor of a society is entitled, in respect of a general meeting,
- (a) to receive each notice and other communication relating to the meeting that a member is entitled to receive,
  - (b) to attend the meeting, and
  - (c) to be heard at the meeting on any part of the business of the meeting that deals with
    - (i) matters with respect to which the auditor has a duty or function, or
    - (ii) the financial statements of the society.

### **Section 115: Right of auditor to attend meetings [Society Act, s. 54; BCA s. 219(1)]**

This section carries forward the existing rules that give an auditor the right to attend a general meeting and address the members on the society's financial statements and auditor's report.

### **Member may require auditor at meeting**

- 116** (1) A member of a society may, by written notice received by the society not less than 7 days before the meeting, require the attendance of the auditor at a general meeting at which
- (a) the financial statements of the society are to be considered, or
  - (b) the auditor is to be appointed or removed.
- (2) If a society receives written notice in accordance with subsection (1), the society must promptly inform the auditor, the auditor must attend the meeting and the society must pay the expenses of that attendance.

### **Section 116: Member may require auditor at meeting [Society Act, s. 48; BCA s. 214]**

This section allows a member to require that the auditor attend a general meeting. The section clarifies the process but is substantively the same as the current provision.

### **Auditor must answer questions if present at meeting**

- 117** If the auditor of a society is present at a general meeting at which the financial statements of the society are to be considered, the auditor must answer questions concerning the financial statements and the auditor's report, if any, prepared in respect of those financial statements.

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### **Section 117: Auditor must answer questions if present at meeting [Society Act, s. 49; BCA s. 215]**

This section carries forward the current Act's provision that requires the auditor attending a general meeting to answer questions on the financial statements and the auditor's report, if any.

#### **Amendment of financial statements and report**

- 118** (1) If, after an annual general meeting at which the financial statements of a society were considered, facts come to the attention of the directors or senior managers of the society
- (a) that could reasonably have been determined before the date of the meeting, and
  - (b) that, if known before that date, would have required a material adjustment to the financial statements presented to that meeting,
- the directors or senior managers must communicate those facts to the auditor who reported to the members, and the directors must promptly amend the financial statements and send the amended financial statements to the auditor.
- (2) If facts described in subsection (1) come to the attention of the auditor, other than as a result of a communication under that subsection, the auditor must inform each director accordingly, and the directors must promptly amend the financial statements and send the amended financial statements to the auditor.
- (3) If amended financial statements are sent to the auditor under subsection (1) or (2),
- (a) the auditor, if necessary in the auditor's opinion, must amend the auditor's report prepared under section 114 [*auditor's report*] in respect of the financial statements presented to the annual general meeting so that the report complies with this Act, and
  - (b) the directors must send to the members a copy of the amended report and a statement explaining the effect of the amendment.

### **Section 118: Amendment of financial statements and report [Society Act, s. 51; BCA s. 216]**

This section carries forward current provisions that set out the requirement to amend financial statements if any material changes come to light after the AGM.

#### **Qualified privilege in defamation proceedings**

- 119** An oral or written statement or report made under this Act
- (a) by the auditor or a former auditor of a society, or
  - (b) to an auditor under section 113 (2) (a) [*examination and access*] or 118 (1) [*amendment of financial statements and report*]
- has qualified privilege for the purpose of defamation proceedings.

### **Section 119: Qualified privilege in defamation proceedings [Society Act, s. 55; BCA ss. 217(2), 220]**

This section carries forward the current Act's legal protection for auditors for defamatory statements made in good faith. Following the BCA, the section also extends the same protection to persons who provide information to auditors. Both prongs are intended to encourage communication and transparency.

## **PART 10 – LIQUIDATION, DISSOLUTION AND RESTORATION**

### **Division 1 – General Rules Respecting Liquidation and Dissolution**

#### **Liquidation and dissolution**

- 120** A society may be dissolved, or liquidated and dissolved, under this Part by
- (a) a dissolution initiated by the members of the society under section 123 [*dissolution by request*],
  - (b) a liquidation and dissolution initiated by the members of the society under Division 3 [*Voluntary Liquidation*], or
  - (c) a court-ordered liquidation and dissolution initiated by an application to the court under Division 4 [*Court-ordered Liquidation and Dissolution*].

#### **Section 120: Liquidation and dissolution [New]**

This new section is intended as a road map to Part 10. The section sets out the various dissolution options that are available to a society.

#### **Distribution of property before dissolution or on liquidation**

- 121** (1) Before the dissolution of a society under section 123 [*dissolution by request*] or on the liquidation of a society under this Part,
- (a) all liabilities of the society must be paid or adequate provision for payment of the liabilities must be made, and
  - (b) subject to subsection (2) of this section, after payment or adequate provision for payment of all liabilities of the society is made, the remaining money or other property of the society may be distributed.
- (2) A distribution of money or other property under subsection (1) (b) must be made only
- (a) to a qualified recipient specified in the bylaws of the society, or
  - (b) if the bylaws do not specify a qualified recipient for such a distribution, to a qualified recipient specified in an ordinary resolution of the society or, if passing an ordinary resolution is not feasible, specified in a director's resolution.

#### **Section 121: Distribution of property before dissolution or on liquidation [Society Act, s. 134(1)]**

This section sets out how a society may distribute its property when it dissolves. As is the case under the current Act, the section effectively prohibits any distributions to members, directors, or other “insiders” on dissolution. The provision requires that any property remaining after the society has paid off all of its debts be transferred to a “qualified recipient” (see section 1). Qualified recipients include charities, community service cooperatives, and most other societies because they are subject to similar restrictions on distributions. The regulations under the Act may identify other types of entities that would also qualify to receive distributions from dissolving societies.

The restriction on distribution of property on dissolution is a fundamental characteristic of the Act, and is one of the major features that distinguishes the non-profit society from other corporate models.

**Stay of proceedings on insolvency**

- 122** Any proceedings taken under this Part to dissolve, or to liquidate and dissolve, a society must be stayed if the society is at any time found in a proceeding under the *Bankruptcy and Insolvency Act* (Canada) to be insolvent within the meaning of that Act.

**Section 122: Stay of proceedings on insolvency [New; BCA s. 313]**

This section merely clarifies the application of federal law – a society that is unable to pay its debts must be wound up in accordance with federal bankruptcy law.

**Division 2 – Dissolution by Request**

**Dissolution by request**

- 123** (1) The registrar may dissolve a society under this section if the society applies for dissolution by filing with the registrar a dissolution by request application.
- (2) A society must not submit a dissolution by request application to the registrar for filing unless the dissolution has been authorized by ordinary resolution.
- (3) Concurrently with the filing of a dissolution by request application, a society must file with the registrar
- (a) a copy of the ordinary resolution referred to in subsection (2), and
  - (b) an affidavit sworn by 2 or more directors of the society, or, if the society has only one director, sworn by that director, declaring that, to the best of the knowledge of the directors or the sole director, as the case may be,
    - (i) the society has no liabilities or has made adequate provision for the payment of all liabilities in accordance with section 121 (1) (a) [*distribution of property before dissolution or on liquidation*], and
    - (ii) the remaining money or other property of the society, if any, has been distributed in accordance with section 121 (1) (b) and (2).

**Section 123: Dissolution by request [Society Act, s. 103; BCA s. 316]**

This section deals with voluntary dissolution by request to the registrar. It can be used only where a society has no liabilities or assets – that is, where liquidation of the society is not required. The process is the same as set out under the current Act, and requires a directors' affidavit stating that the society has no liabilities and that its property has been distributed in accordance with the Act's restrictions on distribution. The section is new in that it recognizes that the society, instead of actually discharging all of its liabilities, may make adequate provision for the payment of them.

The affidavit requirement was criticized by some as adding undue costs and legal complexity for smaller societies with little economic presence (i.e. no property or liabilities). However, dissolution is a very serious process. The affidavit requirement provides an important safeguard even for small societies, and will both protect creditors and help ensure that the all-important restrictions on asset distributions are met. It is consistent with BCA requirements for voluntary dissolution without liquidation.

### **Division 3 – Voluntary Liquidation**

#### **Voluntary liquidation**

- 124** A society may be voluntarily liquidated if the members of the society so resolve by special resolution passed at a general meeting called for that purpose.

**Section 124: Voluntary liquidation [Society Act, s. 105]**

This section carries forward the current requirement for a special resolution in order to commence a voluntary liquidation.

#### **Appointment of liquidator**

- 125** At the general meeting at which a special resolution referred to in section 124 is passed, the society, by ordinary resolution, must appoint one or more liquidators and set the remuneration to be paid by the society for the liquidators' services.

**Section 125: Appointment of liquidator [Society Act, ss. 108, 117]**

Consistent with the current Act, this provision clarifies that a liquidator must be appointed at the same meeting at which voluntary liquidation is approved. This requirement will ensure that a society is not left without someone at the helm to oversee the winding up the society.

The section is different from the current section 117 in that it also requires the liquidator's remuneration be set at the meeting where the special resolution to commence liquidation was passed. The setting of the remuneration is an inherent part of the appointment process, and there can be no firm appointment of a liquidator without it.

#### **Commencement of voluntary liquidation**

- 126** A voluntary liquidation of a society commences when both of the resolutions referred to in sections 124 [*voluntary liquidation*] and 125 [*appointment of liquidator*] have been passed.

**Section 126: Commencement of voluntary liquidation [Society Act, s. 107]**

This section sets out that a voluntary liquidation commences when the resolutions authorizing the liquidation and appointing the liquidator are passed. The "commencement" of the liquidation is an important date, as it not only triggers certain duties of the liquidator (see sections 132 and 137), but also signifies an end to the directors' powers and the society's ability to carry on normal activities (see section 136). To ensure there is seamless transition, the section clarifies that both resolutions must be passed before the liquidation formally commences.

### **Division 4 – Court-Ordered Liquidation and Dissolution**

#### **Court-ordered liquidation and dissolution**

- 127** (1) The court, on the application of any of the following, may order that a society be liquidated and dissolved:
- (a) the society;

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- (b) a member or director of the society;
  - (c) another person whom the court considers to be an appropriate person to make the application.
- (2) Before hearing an application by a person under subsection (1), the court may require the person to give security for the costs of the application.
- (3) The court may order that a society be liquidated and dissolved if
- (a) the court considers this to be just and equitable, or
  - (b) the bylaws provide that the society is to be dissolved on the occurrence of an event and that event occurs.

### **Section 127: Court-ordered liquidation and dissolution [Society Act, s. 109]**

This section provides for liquidation and dissolution by order of the court. It is substantively identical to the current provision.

#### **Court must appoint liquidator**

- 128** If the court orders that a society be liquidated and dissolved, the court
- (a) must appoint one or more liquidators and set the remuneration to be paid by the society for the liquidators' services, and
  - (b) may make any other order the court considers appropriate.

### **Section 128: Court must appoint liquidator [Society Act, ss. 112, 117]**

This section carries forward the current Act's requirements that, in a court-ordered liquidation, the court must appoint one or more liquidators and set their remuneration.

#### **Commencement of court-ordered liquidation and dissolution**

- 129** A court-ordered liquidation of a society commences when both of the orders referred to in sections 127 [*court-ordered liquidation and dissolution*] and 128 (a) [*court must appoint liquidator*] have been made or at a later date and time specified by the court.

### **Section 129: Commencement of court-ordered liquidation and dissolution [Society Act, s. 111]**

This section states that a court-ordered liquidation commences on the date the court orders. The date on which liquidation commences is important, as it both triggers certain duties of the liquidator (see sections 132 and 137) and also signifies an end to the directors' powers and the society's ability to carry on normal activities (see section 136). To ensure there is seamless transition, the section clarifies that the court orders to liquidate the society and to appoint a liquidator must both be made before the liquidation formally commences. The section is new in that it allows the court to set a later date of commencement in the court order.

## **Division 5 – Qualifications, Appointment and Removal of Liquidators**

#### **Qualifications of liquidator**

- 130** (1) A person who is not qualified under section 64 (2) [*appointment and qualifications of receivers*] of the *Personal Property Security Act* to act as a receiver or receiver manager is not qualified to be a liquidator of a society, except that, with the



consent in writing of all of the members of a society, a person referred to in section 64 (2) (e) of that Act who is licensed as a trustee under the *Bankruptcy and Insolvency Act* (Canada) is qualified to be a liquidator of the society.

- (2) A person who is appointed as a liquidator of a society and who is not, or who ceases to be, qualified under subsection (1) to be a liquidator,
  - (a) subject to subsection (3), in a voluntary liquidation, must promptly resign as liquidator, or
  - (b) in a court-ordered liquidation, must seek directions from the court.
- (3) If a person referred to in subsection (2) is the only liquidator of a society in a voluntary liquidation, the person, before resigning as liquidator, must call a general meeting for the purpose of filling the vacancy in accordance with section 135 [*filling vacancy in office of liquidator*].

**Section 130: Qualifications of liquidator [Society Act, s. 113; BCA s. 327]**

This section carries forward the existing rules respecting liquidator qualifications. Following the BCA, if a liquidator in a voluntary liquidation is or becomes unqualified, the liquidator must promptly resign, but must first, if the liquidator is the only liquidator in office, call a general meeting under section 135 to fill the vacancy. In a court-ordered liquidation, the unqualified liquidator must seek directions from the court, and vacancies are filled by the court. Acting as a liquidator when unqualified will be an offence under the Act.

**Validity of acts of liquidator**

- 131** An act of a liquidator of a society is not invalid merely because of a defect in the liquidator's appointment or qualifications.

**Section 131: Validity of acts of liquidator [Society Act, s. 118]**

This section carries forward a provision of the current Act. The section clarifies the legal validity of acts of a liquidator whose appointment is invalid, and is intended to protect third parties.

**Filing and publication of notice of appointment**

- 132**
- (1) Within 10 days after a liquidator of a society is appointed, the liquidator must file with the registrar
    - (a) a notice of appointment of liquidator, including the liquidator's delivery address and mailing address, and
    - (b) concurrently with that notice, the following, if not already filed with the registrar:
      - (i) in a voluntary liquidation, a copy of the special resolution authorizing the liquidation;
      - (ii) in a court-ordered liquidation, a copy of the entered court order.
  - (2) A liquidator of a society, within 7 days after changing one or both of the liquidator's delivery address and mailing address, must file with the registrar a notice of change of address of liquidator.
  - (3) Promptly after the commencement of the liquidation of a society under section 126 [*commencement of voluntary liquidation*] or 129 [*commencement of court-ordered*



*liquidation and dissolution*], as the case may be, the liquidator must publish in the Gazette notice of whichever of the following applies to the society:

- (a) the society has resolved to voluntarily liquidate;
- (b) the court has ordered that the society be liquidated and dissolved.

**Section 132: Filing and publication of notice of appointment [Society Act, s. 119]**

This section requires that certain registry filings be made by a liquidator upon his or her appointment or upon a change of address. As well, a liquidator appointed at the commencement of the liquidation is required to publish notification of the liquidation in the BC Gazette. The section is substantively the same as the current Act.

**Removal of liquidator in voluntary liquidation**

- 133** A liquidator appointed in a voluntary liquidation of a society may be removed as liquidator by a special resolution passed at a general meeting called for that purpose, written notice of which meeting was sent to
- (a) each liquidator of the society, and
  - (b) each creditor of the society whose unpaid claim against the society exceeds the prescribed amount.

**Section 133: Removal of liquidator in voluntary liquidation [Society Act, s. 114(2); BCA s. 322(1)]**

This section provides for removal of a liquidator, in a voluntary liquidation, by special resolution at a general meeting. It adopts from the BCA the requirement that notice of this meeting be sent to creditors as well as to each liquidator, including the one being removed.

**Liquidator ceasing to act must file notice**

- 134** A liquidator of a society who resigns, is removed from office or, for any other reason, ceases to act must, within 7 days after the resignation, removal or cessation, file with the registrar a notice of ceasing to act as liquidator.

**Section 134: Liquidator ceasing to act must file notice [Society Act, s. 115]**

This section carries forward the current Act's requirements that liquidators who cease to act must file a notice to that effect at the corporate registry.

**Filling vacancy in office of liquidator**

- 135** (1) If a vacancy in the office of liquidator of a society occurs by resignation, death, removal or otherwise,
- (a) in a voluntary liquidation,
    - (i) if one or more other liquidators remain in office, the society may, by ordinary resolution, fill the vacancy, and
    - (ii) if no other liquidators remain in office, the society must, by ordinary resolution, fill the vacancy, and
  - (b) in a court-ordered liquidation, the court may fill the vacancy on the application of a person referred to in section 127 (1) [*court-ordered liquidation and dissolution*].

- (2) Subject to section 130 (3) [*qualifications of liquidator*], a general meeting may be called for the purpose of passing an ordinary resolution referred to in subsection (1) (a) of this section by a voting member or liquidator of the society.
- (3) If a general meeting is called under subsection (2), it must be called and held in the same manner, as nearly as possible, as a general meeting called and held by the directors under this Act and the bylaws.

**Section 135: Filling vacancy in office of liquidator [Society Act, s. 116; BCA s. 322]**

This section sets out how a vacancy in the office of liquidator is to be filled. It differs from the current Act in that it expressly requires a society, in a voluntary liquidation, to fill a vacancy in the office of liquidator if no other liquidators remain in office – this will ensure that the society's ongoing liquidation can be completed. As well, the section clarifies that the normal rules for meetings apply to general meetings called to fill vacancies under this section.

## **Division 6 – Conduct of Liquidation**

### **Effect of resolution or order for liquidation**

- 136** If a society is being liquidated,
- (a) subject to paragraph (b), the corporate status, corporate powers and capacity of the society continue until the society is dissolved,
  - (b) the society, from the commencement of the liquidation under section 126 [*commencement of voluntary liquidation*] or 129 [*commencement of court-ordered liquidation and dissolution*], as the case may be, must refrain from carrying on its activities and internal affairs, except to the extent the liquidator considers necessary or advisable for the liquidation, and
  - (c) on the appointment of the liquidator, the powers of the directors and senior managers cease, except so far as the liquidator approves their continuance.

**Section 136: Effect of resolution or order for liquidation [Society Act, s. 120; BCA s. 340]**

This section sets out the legal effect of the liquidation process. On commencement of liquidation, the society must cease to act, except as required by the liquidator for the winding up of its affairs, and the society's directors and senior managers are relieved of their powers and duties except so far as the liquidator approves their continuation. The section differs from the current one in that it adopts, from the BCA, the legal clarification that the corporate powers of the society continue until it is actually dissolved.

### **Meeting of creditors**

- 137** (1) The liquidator of a society, within 14 days after the commencement of the liquidation of the society under section 126 [*commencement of voluntary liquidation*] or 129 [*commencement of court-ordered liquidation and dissolution*], as the case may be, must
- (a) send, to each person who appears to the liquidator to be a creditor of the society, a notice that a meeting of the creditors of the society will be held on the date, being not less than 21 days and not more than 60 days after the commencement of the liquidation, at the time and at the location in British Columbia specified in the notice, and

- (b) advertise notice of the meeting
  - (i) in the Gazette, and
  - (ii) in a newspaper circulating in the place where
    - (A) the registered office of the society is located, or
    - (B) the activities of the society are primarily carried on.
- (2) The liquidator of the society must present to the meeting of the creditors of the society referred to in subsection (1) a full statement of the affairs of the society, including a list of the creditors of the society and the estimated amount of their claims.

**Section 137: Meeting of creditors [Society Act, s. 121]**

This section carries forward the existing Act's requirement that the liquidator call a meeting of the society's creditors.

**Creditor must commence action on claim**

- 138**
- (1) The liquidator of a society may send to a creditor of the society written notice that a claim of the creditor is disputed or rejected.
  - (2) If a liquidator sends to a creditor notice under subsection (1) in respect of a claim, the creditor may commence a legal proceeding in respect of the claim within 90 days after the notice is sent, and, if the creditor fails to commence a legal proceeding within that period, the claim of the creditor is forever barred.

**Section 138: Creditor must commence action on claim [Society Act, s. 122]**

This section carries forward the existing Act's provision requiring creditors whose claims are disputed to commence an action on their claims. The section has been redrafted for clarity without substantive change.

**Duties of liquidator**

- 139**
- (1) The liquidator of a society, subject to any restrictions or directions imposed or given by the court, must
    - (a) take into the liquidator's custody or control all of the society's property, rights and interests,
    - (b) take into the liquidator's custody or control all of the society's records and provide the access to, and copies of, those records that the society is required to provide under sections 23 [*inspection of records*] to 27 [*copies of financial statements*],
    - (c) use the liquidator's own discretion in realizing the assets of the society,
    - (d) distribute the money or other property of the society in accordance with section 121 [*distribution of property before dissolution or on liquidation*] or 196 [*distribution of property before dissolution or on liquidation of member funded society*], as the case may be,
    - (e) keep proper records of all matters relating to the liquidation, including accounts of the money received and paid out by the liquidator,

- (f) keep proper minutes of proceedings at meetings relating to the liquidation, and
  - (g) state on each invoice, order for goods and business letter
    - (i) issued by the liquidator or on the liquidator's behalf, and
    - (ii) on or in which the name of the society appearsthat the society is being liquidated.
- (2) Section 104 [*registrar or court may order access or copies*] applies in relation to the records of a society in the custody or control of the liquidator of the society under subsection (1) (b) of this section as if the liquidator were the society.
- (3) If the liquidation of a society continues for more than one year, the liquidator must
- (a) call a general meeting at the end of the first year, and at the end of each succeeding year, after the commencement of the liquidation under section 126 [*commencement of voluntary liquidation*] or 129 [*commencement of court-ordered liquidation and dissolution*], as the case may be, or as soon after that as may be feasible,
  - (b) present to the general meeting called under paragraph (a) an account of the liquidator's acts and dealings and of the conduct of the liquidation during the preceding year, and
  - (c) without limiting section 70 [*society must file annual report*], file with the registrar, promptly after the date on which the general meeting is held, a summary of the liquidator's receipts and payments during the preceding year.

**Section 139: Duties of liquidator [Society Act, s. 123]**

This section carries forward the existing Act's provisions requiring the liquidator to take control of the society's property (including records), realize the assets, pay the society's debts and distribute the remaining property in accordance with the Act. If the liquidation continues for more than one year, the liquidator is required to call a general meeting and present to the members an account of the liquidation during that period, as well as to update filings with the corporate registry.

**Powers of liquidator**

- 140** (1) Subject to subsection (2), the liquidator of a society, to the extent necessary or advisable for the liquidation,
- (a) has the powers to manage or supervise the management of the activities and internal affairs of the society that were, before the appointment of the liquidator, held by the directors of the society, and
  - (b) may exercise the powers of the society that are not required by this Act to be exercised by the members of the society at a general meeting.
- (2) In a voluntary liquidation of a society, the society, by ordinary resolution, may direct the liquidator to refrain from doing specified things without
- (a) approval by ordinary resolution,
  - (b) the written consent of certain members, or
  - (c) the written consent of a specified number or percentage of members.

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- (3) Until money held by the liquidator of a society is required for distribution, the liquidator must
  - (a) place the money on deposit in an interest bearing account with a savings institution, or
  - (b) invest the money in an investment in which a prudent investor would invest, and any dividends, interest or other income received from those deposits or investments forms part of the property of the society.
- (4) If several liquidators are appointed, every power given to a liquidator may be exercised
  - (a) by the one or more of the liquidators that may be determined at the time of their appointment or subsequently, or
  - (b) in the absence of a determination, by any 2 or more liquidators.

### Section 140: Powers of liquidator [Society Act, s. 124]

This section carries forward the existing Act's provisions that provide the liquidator with the directors' powers to manage the activities and internal affairs of the society in order to liquidate the society. In a voluntary liquidation, the prior consent of the membership or a portion of the membership may be required before the liquidator does certain things.

### Unclaimed or undistributed property

- 141**
- (1) In this section, “**administrator**” has the same meaning as in section 1 of the *Unclaimed Property Act*.
  - (2) If the liquidator of a society has or controls unclaimed or undistributed money or other property of the society that remains unclaimed or undistributed for more than 6 months after the date on which the distribution by the liquidator becomes payable,
    - (a) the liquidator must promptly pay the money or deliver the other property to the administrator with a statement showing the full names and last known addresses of the persons appearing to be entitled to the money or other property and the amounts to which they appear to be respectively entitled, and
    - (b) the administrator must give the liquidator a receipt, which receipt is an effective discharge to the liquidator.
  - (3) The administrator may realize property delivered to the administrator under this section, and any money received or realized by the administrator under this section is deemed to be an unclaimed money deposit under the *Unclaimed Property Act*.

### Section 141: Unclaimed or undistributed property [Society Act, s. 131; BCA s. 337]

This section has been reorganized to more closely follow the BCA, but is substantively the same as the current Act.

### Limitations on liability

- 142** The liquidator of a society is not liable in respect of an act done in the administration of the activities and internal affairs of the society or otherwise done by that person in the person's capacity as liquidator if, in doing the act, the liquidator relies, in good faith, on any of the following:
- (a) financial statements of the society represented to the liquidator,
    - (i) by a director or senior manager of the society responsible for the preparation of the financial statements, or
    - (ii) in a written report of the auditor of the society, to fairly reflect the financial position of the society;
  - (b) a written report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by that person;
  - (c) a statement of fact represented to the liquidator by a director or senior manager of the society to be correct;
  - (d) any record, information or representation that the court considers provides reasonable grounds for the actions of the liquidator, whether or not
    - (i) the record was forged, fraudulently made or inaccurate, or
    - (ii) the information or representation was fraudulently made or inaccurate.

#### **Section 142: Limitations on liability [New; BCA s. 339]**

This section is adopted from the BCA. It provides a legal defence for liquidators who, in good faith, rely on statements or a report made by directors, senior managers or professionals, such as auditors or lawyers.

### Duty to assist liquidator

- 143** A person who is or was a member, director or senior manager of a society that is being liquidated, or holds or held an equivalent position in a subsidiary of the society, or who is or was an employee, auditor, agent, trustee, banker, receiver or receiver manager of the society or of a subsidiary of the society,
- (a) on inquiry by the liquidator, must fully and truly inform the liquidator, to the best of the person's knowledge and belief,
    - (i) of all of the society's liabilities and all of its property, rights and interests, including records, and
    - (ii) how, to whom, for what consideration and when the society disposed of any part of the property, rights and interests, including records, except any part disposed of in the ordinary course of the activities of the society, and
  - (b) on request of the liquidator, must deliver to the liquidator, or as the liquidator directs, all of the society's property, rights and interests, including records, in the person's custody or control.

#### **Section 143: Duty to assist liquidator [Society Act, s. 128]**

This section carries forward the existing Act's provisions requiring members, directors, senior managers and agents of the society or its subsidiary to cooperate in providing explanations and records to the liquidator. Failure to comply will be an offence under the Act.

## **Division 7 – Powers of Court**

### **Powers of court respecting liquidation**

- 144** (1) On the application of a person whom the court considers to be an appropriate person to make the application, the court, in relation to a society that is being liquidated, may make any order it considers appropriate, including any of the following orders:
- (a) an order that a general meeting or a meeting of creditors of the society be called, held and conducted in the manner the court considers appropriate;
  - (b) an order requiring the audit or inspection of those of the records
    - (i) of the liquidator, or
    - (ii) in the custody or control of the liquidator,that the court considers appropriate;
  - (c) an order setting a time within which creditors of the society must prove their claims or be excluded from the benefit of any distribution to be made by the liquidator;
  - (d) an order providing directions to the liquidator respecting a distribution under section 121 [*distribution of property before dissolution or on liquidation*] or 196 [*distribution of property before dissolution or on liquidation of member funded society*] by the liquidator of money or other property of the society;
  - (e) in a voluntary liquidation, an order appointing a liquidator if
    - (i) there is no liquidator acting, and
    - (ii) it is not feasible to hold a general meeting for the purpose of filling the vacancy;
  - (f) an order imposing, either generally or in relation to specified matters, restrictions on the exercise of the powers of the liquidator;
  - (g) an order replacing or removing a liquidator;
  - (h) on terms and conditions the court considers appropriate, an order discharging a liquidator who has resigned or died or has been removed from office;
    - (i) an order confirming, reversing or modifying any act or decision of a liquidator;
    - (j) if it appears to the court that a liquidator has not faithfully performed the liquidator's duties, an order requiring that whatever action the court considers appropriate be taken;
  - (k) an order that there be an examination into the conduct of a person, if it appears that the person
    - (i) has misapplied, retained or become liable or accountable for any property, rights or interests of the society, or
    - (ii) has committed a breach of trust in relation to the society;
  - (l) an order that a person referred to in paragraph (k) do one or both of the following, whether or not the conduct complained of is conduct for which the person may be liable to prosecution:



- (i) repay or restore all or part of the property, rights and interests that the person misapplied or retained, or for which the person is liable or accountable, with interest at the rate the court considers appropriate;
  - (ii) compensate the society for the conduct complained of;
  - (m) an order, on the terms and conditions the court considers appropriate, continuing, staying or discontinuing the liquidation;
  - (n) an order giving directions in relation to any matter arising in the liquidation.
- (2) Promptly after an order is made under subsection (1) (m) to stay or discontinue the liquidation of a society, the liquidator of the society must file with the registrar a copy of the entered order.

**Section 144: Powers of court respecting liquidation [Society Act, s. 127]**

This section carries forward and clarifies the existing Act's provisions setting out the orders a court may make in a liquidation.

## **Division 8 – Dissolution of Society**

### **Final meeting and dissolution**

- 145** (1) As soon as the activities and internal affairs of a society are fully wound up, the liquidator of the society must
- (a) prepare an account of the liquidation, showing how
    - (i) the liabilities of the society were paid or provided for, and
    - (ii) the remaining money and other property of the society were distributed, and
  - (b) call a final general meeting for the purpose of presenting the account and giving an explanation of the account.
- (2) If, within 30 minutes after the time set for holding a final general meeting under subsection (1), a quorum of voting members, as determined under section 79 [*quorum*], is not present, the liquidator must adjourn the meeting to the same day in the next week, at the same time and location, and if, at the continuation of the adjourned meeting, a quorum is not present within 30 minutes from the time set for holding the continuation of the adjourned meeting, the voting members present constitute a quorum for the purposes of that meeting.
- (3) Subject to subsection (4), promptly after the final general meeting, the liquidator must file with the registrar
- (a) an application for dissolution, and
  - (b) concurrently with that application, the following:
    - (i) a copy of the account prepared under subsection (1) (a),
    - (ii) if the liquidator was appointed by the court, a copy of the entered court order referred to in subsection (4), and
    - (iii) any other records the registrar may require.
- (4) A liquidator appointed by the court must not submit for filing an application for dissolution under subsection (3) (a) unless the court, by order on the application of the liquidator, has approved the dissolution.

- (5) In making an order under subsection (4) approving the dissolution of a society, the court may make any other order it considers appropriate, including, without limitation, an order
- (a) respecting the custody or control of records referred to in section 148 [*retention of society's records by liquidator*], and
  - (b) that the liquidator be discharged effective on the dissolution of the society or at any other time the court orders and, if the liquidator is discharged under this paragraph, section 147 (3) and (4) [*discharge of liquidator by court order*] applies.

**Section 145: Final meeting and dissolution [Society Act, s. 129; BCA s. 342]**

This section carries forward the existing Act's provisions requiring the liquidator to prepare a final account of the liquidation, present the account to members at a general meeting called for that purpose, and then promptly apply for dissolution. What is new, taken from the BCA, is the requirement that, if the liquidator was appointed by the court, a court order approving the dissolution must be obtained and filed at the corporate registry along with the dissolution application.

**Dissolution on completion of liquidation**

- 146**
- (1) A society is dissolved at the beginning of the day on the date that is 90 days after the date of filing of the application for dissolution referred to in section 145 (3) (a).
  - (2) On the application of the liquidator of a society or by a person referred to in section 127 (1) [*court-ordered liquidation and dissolution*], the court may make an order deferring the date on which the dissolution of the society is to take effect to a date that the court considers appropriate, and, in that event, subject to subsection (3), the society is dissolved at the beginning of the day on the date specified in the order.
  - (3) No order under subsection (2) is effective unless a copy of the entered order is filed with the registrar before the society is dissolved under subsection (1).

**Section 146: Dissolution on completion of liquidation [Society Act, s. 130]**

This section carries forward the existing Act's provisions regarding the timing of dissolution, which occurs 3 months after the application for dissolution is filed at the corporate registry, unless the court, in an order filed before the society dissolves, defers the timing of the society's dissolution to a later date.

## Division 9 – After Dissolution

**Discharge of liquidator by court order**

- 147**
- (1) After a society has been dissolved under section 146, a liquidator who has not been discharged by court order under section 145 (5) (b) [*final meeting and dissolution*] may apply to the court to be discharged as liquidator.
  - (2) An application under subsection (1) must include the account of the liquidation prepared under section 145 (1) (a).

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- (3) Subject to subsection (4), a court order discharging the liquidator of a society under this section discharges the liquidator from all liability in respect of any act done or default made by the liquidator in the administration of the activities and internal affairs of the society or otherwise done by that person in the person's capacity as liquidator of the society.
- (4) A court order discharging the liquidator of a society under this section
  - (a) does not, except to the extent that the order expressly provides otherwise, relieve the liquidator from an obligation imposed on the liquidator under section 148, and
  - (b) may be revoked on proof that the court order was obtained by fraud or by suppression or concealment of a material fact.

### **Section 147: Discharge of liquidator by court order [Society Act, s. 133, BCA s. 350]**

This section carries forward the existing Act's provision that allows liquidators to apply to the court for a discharge. What is new, taken from the BCA, is the clarification that the discharge does not, in itself, relieve the liquidator from the duty to retain and provide access to the society's records.

### **Retention of society's records by liquidator**

- 148** (1) After a society has been dissolved under section 146 [*dissolution on completion of liquidation*], a liquidator of the society must
- (a) retain custody or control of the society's records for a period of 3 years following the date of the dissolution or until the expiration of any shorter period that the court may order, and
  - (b) comply with the provisions of this Act that relate to maintaining, providing access to and providing copies of those records, and, for that purpose, a reference in those provisions to the society is to be read as a reference to the liquidator.
- (2) A liquidator must ensure that all records the liquidator is required to keep under subsection (1),
- (a) in the case of written records, are kept at an office of the liquidator in British Columbia, and
  - (b) in the case of records in electronic form, are available for inspection at an office of the liquidator in British Columbia by means of a computer terminal or other electronic technology.

### **Section 148: Retention of society's records by liquidator [Society Act, s. 132]**

This section carries forward the existing Act's provisions requiring the liquidator to retain the society's records. The period of retention has been increased from 2 years to 3 years to complement new provisions that continue the liability of a dissolved society for 2 years after its dissolution (sections 151). The ability of the liquidator to seek a court order to shorten this period is also new.

### **Certificate of dissolution and publication**

- 149** (1) After a society is dissolved under this Part, the registrar must

- (a) issue a certificate of dissolution showing the date and time on which the society is dissolved, and
  - (b) furnish a copy of the certificate of dissolution to each liquidator of the society or, if there is no liquidator of the society, to the person who submitted the application for dissolution on behalf of the society.
- (2) After a society is dissolved under this Part, the registrar must publish notice of the dissolution.

**Section 149: Certificate of dissolution and publication [Society Act s.136; BCA s. 345]**

This section lists the corporate registry's outputs after a society's dissolution.

### **Division 10 – Effect of Dissolution**

#### **Effect of dissolution**

- 150** (1) Subject to sections 151 [*dissolved societies deemed to continue for litigation purposes*] and 153 [*liabilities survive*], when a society is dissolved under this Part, the society ceases to exist for any purpose.
- (2) Despite section 31 (3) [*joint tenancy in property*] of the *Business Corporations Act*, if a society is dissolved, any property held, immediately before the dissolution, by the society as a joint tenant
- (a) vests on dissolution in the other joint tenants, as joint tenants, only if all of the other joint tenants are qualified recipients, and
  - (b) in any other case, is deemed to be held, immediately before the dissolution, by the society and the other joint tenants, as tenants in common, but the joint tenancy among the other joint tenants, if there is more than one, is not affected.
- (3) Subject to subsection (2), if, when a society is dissolved, the society has property that has not been distributed, the property vests in the government unless the property is land located in British Columbia, in which case the property is deemed to escheat to the government under section 4 [*escheat of land on dissolution of corporation*] of the *Escheat Act*.

**Section 150: Effect of dissolution [New; BCA s. 344]**

This section is a new provision that sets out the legal ramifications of dissolution – i.e. the society ceases to exist. The section also provides that property held by the society as a joint tenant does not automatically become the property of the other tenant, unless other joint tenants are qualified recipients (in which case the property vests in the other joint tenants).

This section is needed to ensure that the restrictions on distribution that apply to ordinary societies cannot be sidestepped by having property held in joint tenancy. Consistent with the current Act, property of the society that has not been distributed at the time of its dissolution vests in the government.

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### **Dissolved societies deemed to continue for litigation purposes**

- 151** (1) Despite the dissolution of a society under this Part,
- (a) a legal proceeding commenced by or against the society before its dissolution may be continued as if the society had not been dissolved, and
  - (b) a legal proceeding may be brought against the society within 2 years after its dissolution as if the society had not been dissolved.
- (2) If a society has not provided an address for service in a legal proceeding referred to in subsection (1), records related to the proceeding may be served on the society
- (a) by delivering the records to an individual who was a director or senior manager of the society immediately before the society was dissolved, or
  - (b) in the manner the court orders.

### **Section 151: Dissolved societies deemed to continue for litigation purposes [New; BCA s. 346]**

This section is taken from the BCA and provides that a legal proceeding may be brought or continued against a society within 2 years of its dissolution. The intent is to allow for current disputes to be resolved without requiring the society's corporate status to be restored.

### **Liability of persons who receive distributions**

- 152** (1) If it appears to the court in a legal proceeding referred to in section 151 (1) that some or all of a society's money or other property was distributed to one or more persons in anticipation of, during or as a result of the society's liquidation or dissolution, the court, subject to subsections (2) and (4) of this section, may
- (a) add those persons as parties to the legal proceeding,
  - (b) determine, for each of those parties, the amount for which that party is liable and the amount that party must contribute towards satisfaction of the plaintiff's claim, and
  - (c) direct payment of the amounts so determined.
- (2) A person is not liable under subsection (1) unless the person is added as a party within 2 years after the date on which the society is dissolved.
- (3) If a judgment is obtained in a legal proceeding against a dissolved society before or after its dissolution and it appears that some or all of the society's money or other property was distributed to a person in anticipation of, during or as a result of the society's liquidation or dissolution,
- (a) the judgment creditor, within 2 years after the date on which the society is dissolved, may bring a legal proceeding against the person to enforce the liability referred to in paragraph (b) of this subsection, and
  - (b) the person is liable to the judgment creditor if the court is satisfied that
    - (i) some or all of the society's money or other property was distributed to the person in anticipation of, during or as a result of the society's liquidation or dissolution,
    - (ii) the person has had an opportunity to raise any reasonable defences to the judgment creditor's claim against the society that were not

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- considered in a trial or summary trial in the legal proceeding in which judgment against the society was obtained, and
- (iii) the amount is justly due and owing by the society to the judgment creditor.
- (4) The liability of a person under subsection (1) or (3) continues despite the dissolution of the society but is limited to the value that the money or other property received by the person on that distribution had on the date of that distribution.

### **Section 152: Liability of persons who receive distributions [New; BCA s. 348]**

This section is also taken from the BCA and allows the court to order that persons who received property on the society's dissolution be added as parties (and made liable to the plaintiff) in a legal proceeding brought under section 151. It also allows judgment creditors with a judgment against the society to pursue persons who received property on the society's dissolution. Proceedings under this section must be brought within 2 years of the society's dissolution.

### **Liabilities survive**

- 153** Subject to sections 147 (3) [*discharge of liquidator by court order*] and 152 (2) and (4) [*liability of persons who receive distributions*], the liability of each member, director, senior manager or liquidator of a society that is dissolved continues and may be enforced as if the society had not been dissolved.

### **Section 153: Liabilities survive [Society Act, s. 135; BCA s. 347]**

This section carries forward a provision of the current Act, and continues the liability of members, directors, senior managers and liquidators despite the dissolution of the society itself. What is new is the clarification, taken from the BCA, that the Act's limitations on these liabilities (found in sections 147 and 152) also apply.

## **Division 11 – Restoration of Dissolved Society**

Under the current Act (Part 12, Division 9) restorations of dissolved societies can only occur within 10 years of dissolution and require a court order. The current provisions have been completely replaced by this new Division, which will enable restorations to be effected "administratively" by filing certain records with the registrar as an alternative to obtaining a court order. A court order is still an option, and may be necessary if the restoration is being sought by an unrelated party or in relation to a society that has been dissolved for a longer period (an application to the registrar cannot be made if the society has been dissolved for more than 10 years), or if special terms or conditions or an immediate restoration are required.

### **Definition**

- 154** In this Division, "**applicant**", in relation to an application under section 156 [*application to registrar for restoration*] or 158 [*application to court for restoration*] respecting a society that is dissolved, means
- (a) a person who, at the time of the dissolution, was a member, director or senior manager of the society,

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- (b) a person who is the heir or personal or other legal representative of a person who was, at the time of the dissolution, a member of the society, or
- (c) in the case of an application to the court under section 158, another person whom the court considers to be an appropriate person to make the application.

### **Section 154: Definition [New; BCA s. 354]**

This section defines who may apply for restoration of a dissolved society.

### **Pre-requisites to application for restoration by registrar or court**

- 155** (1) If a society is dissolved, an application for restoration under this Division may be
- (a) filed with the registrar under section 156 [*application to registrar for restoration*], or
  - (b) made to the court under section 158 [*application to court for restoration*].
- (2) Before filing or making an application under subsection (1) (a) or (b), a person must
- (a) publish in the Gazette notice of the application,
  - (b) mail notice of the application to the last address shown in the register of societies
    - (i) as the mailing address of the registered office of the society, and
    - (ii) for the individuals who were the directors of the society at the time of the dissolution, and
  - (c) reserve a name under section 8 [*name*] for the society to be restored.

### **Section 155: Pre-requisites to application for restoration by registrar or court [New; BCA s. 355]**

This section sets out the prerequisite steps that a person must comply with before making an application for restoration to the registrar or the court, including notification to the public and reservation of the name proposed for the restored society.

### **Application to registrar for restoration**

- 156** (1) To apply to the registrar for the restoration of a society, an applicant must file with the registrar a restoration application and any other records the registrar may require.
- (2) A restoration application must contain the following:
- (a) the date on which the notice under section 155 (2) (a) was published in the Gazette;
  - (b) the date on which the notice under section 155 (2) (b) was mailed in accordance with that provision;
  - (c) the name reserved under section 8 [*name*] for the society and the reservation number given for that name;
  - (d) the delivery address and mailing address of the registered office proposed for the society;



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- (e) if the restoration is for a limited period, a statement specifying the proposed limited period of the restoration, subject to any limitations established by the registrar on the length of that limited period.
- (3) A restoration application may not be submitted for filing with the registrar in respect of a dissolved society more than 10 years after the date on which the society was dissolved.

### **Section 156: Application to registrar for restoration [New; BCA ss. 356, 357]**

This section provides for a new administrative application for restoration to be made to the registrar, and sets out the required contents of the application. An application for administrative restoration may not be made if a society has been dissolved for longer than 10 years – restorations after this length of time are more likely to involve legal complexities, and therefore should be dealt with by the courts.

### **Restoration by registrar**

- 157**
- (1) Unless the court orders otherwise in an entered order of which a copy has been filed with the registrar, after a restoration application is filed with the registrar under section 156, the registrar, on any terms and conditions the registrar considers appropriate, must restore the society or restore the society for the limited period set out in the application, as the case may be.
  - (2) Despite subsection (1), the registrar must not restore a society under that subsection until 21 days after the later of
    - (a) the date shown in the restoration application as the date on which notice of the application was published in the Gazette in accordance with section 155 (2) (a) [*pre-requisites to application for restoration by registrar or court*], and
    - (b) the date shown in the restoration application as the date on which the applicant mailed the notice of the application in accordance with section 155 (2) (b).
  - (3) Despite subsection (1), the registrar must not restore a society under that subsection unless the reservation of a name under section 8 [*name*] for the society remains in effect on the date of the restoration.
  - (4) Subject to section 161 [*corporate property to be returned to restored society*], a restoration under subsection (1) of this section is without prejudice to the rights acquired by persons before the restoration.

### **Section 157: Restoration by registrar [New; BCA ss. 358, 363]**

This section provides that, on the filing of a restoration application, the registrar must restore the society unless the court orders otherwise and the order is filed before the restoration occurs. The registrar may not restore unless at least 21 days' public notice of the proposed restoration has been given. A restoration by the registrar under this section may be made subject to terms that the registrar considers appropriate and does not affect rights acquired by persons prior to the restoration.

### Application to court for restoration

- 158** (1) Before making an application to the court under this section for the restoration of a society, an applicant must
- (a) provide to the registrar notice of the application and a copy of any record proposed to be filed in the court registry in support of the application, and
  - (b) obtain the registrar's written consent to the restoration.
- (2) An applicant may apply to the court for the restoration of a society and, on making an application, must provide to the court
- (a) the information required under section 156 (2) (a) to (e) [*application to registrar for restoration*],
  - (b) the registrar's written consent to the restoration, including any terms and conditions the registrar considers appropriate, and
  - (c) any other information and records the court requires.
- (3) If, on an application under subsection (2), the court is satisfied that it is appropriate to restore the society, the court may make an order that the society be restored and, in that order, may
- (a) set out any terms and conditions that the court considers appropriate, and
  - (b) give directions and make provisions it considers appropriate for placing the society and every other person in the same position, as nearly as may be, as if the society had not been dissolved.
- (4) Subject to section 161 [*corporate property to be returned to restored society*], unless the court orders otherwise, an order under subsection (3) of this section is without prejudice to the rights acquired by persons before the restoration.
- (5) An order under subsection (3) must reflect any terms and conditions referred to in subsection (2) (b).

#### **Section 158: Application to court for restoration [Society Act, ss. 137, 138; BCA s. 360]**

This section sets out the requirements for making an application to the court for restoration of a society, including obtaining the consent of the registrar. A restoration by the court under this section may be made subject to terms that the court considers appropriate, including any imposed by the registrar. Unlike administrative restorations, the court may order that the society and every other affected person be placed in the same position as if the society had not been dissolved.

### Filing of restoration application with registrar in court-ordered restoration

- 159** (1) Promptly after a court order is made under section 158 (3), the applicant must file with the registrar
- (a) a restoration application that complies with section 156 (2) [*application to registrar for restoration*], and
  - (b) concurrently with that application, the following:
    - (i) a copy of the entered court order, and
    - (ii) any other records the registrar may require.

- (2) Subject to subsection (3), when a restoration application in relation to a society is filed with the registrar under this section, the registrar must restore the society or restore the society for the limited period set out in the order, as the case may be.
- (3) The registrar must not restore a society under subsection (2) unless the reservation of a name under section 8 [*name*] for the society remains in effect on the date of the restoration.

**Section 159: Filing of restoration application with registrar in court-ordered restoration [New; BCA s. 362]**

This section sets out the final step in the court-ordered restoration process. When the registrar accepts the restoration application and the court order, the society is restored. A court-ordered restoration may be effective immediately, without the delay applicable to administrative restorations (see section 157).

**Effect of restoration**

- 160** (1) A society that is restored under this Division is restored with
- (a) the name referred to in section 156 (2) (c) [*application to registrar for restoration*],
  - (b) subject to paragraph (a) of this subsection, the constitution and bylaws it had immediately before its dissolution, and
  - (c) the statement of directors and registered office that it had immediately before its dissolution, except that the delivery address and mailing address of the registered office for the society are the addresses shown for that office on the restoration application,
- unless, in the case of a restoration under section 159, the court orders otherwise.
- (2) A society that is restored is deemed to have continued in existence as if it had not been dissolved, and proceedings may be taken as might have been taken if the society had not been dissolved.
  - (3) If a restoration is for a limited period, the society is dissolved on the expiration of the limited period.
  - (4) Section 149 (1) [*certificate of dissolution and publication*] does not apply in respect of the dissolution of a society under subsection (3) of this section.

**Section 160: Effect of restoration [Society Act , s. 137(2); BCA s. 364]**

This section sets out the legal effect of restoration. A restored society is deemed to have continued in existence as if it had not been dissolved. Unless the court orders otherwise in a court-ordered restoration, the society has the constitution and bylaws it had immediately before dissolution. The society will have the name set out in the application for restoration.

**Corporate property to be returned to restored society**

- 161** (1) If money or other property of a society, other than property described in subsection (4) or (5), vested in the government under section 150 (3) [*effect of dissolution*] as a result of the society's dissolution, on the restoration of the society,

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- (a) any of that property that has not been disposed of by the government vests in the society without any deed, bill of sale or other record from the government or any action by the government, and
- (b) subject to subsection (3) of this section, the government,
  - (i) in the case of property that remains in the government's custody, must return all of that property to the society,
  - (ii) in the case of property that was disposed of by the government, must pay to the society, out of the consolidated revenue fund, the amount of money realized by the government from the disposal of that property, and
  - (iii) in the case of money that was received by the government, must pay to the society, out of the consolidated revenue fund, the amount of that money.
- (2) A payment under subsection (1) (b) may be made without an appropriation other than that subsection.
- (3) The government need not comply with subsection (1) (b) in relation to money or other property of a restored society unless and until the government has been reimbursed, out of the money or other property, or otherwise, for the government's costs of
  - (a) obtaining, retaining, maintaining and disposing of the money or other property, and
  - (b) paying the money, and returning the other property, in accordance with that subsection.
- (4) Subject to subsection (5), title to, or an interest in, land of a society that has escheated to the government under section 4 [*escheat of land on dissolution of corporation*] of the *Escheat Act* is not, except as provided in that section, affected by a restoration of the society.
- (5) Title to, or an interest in, water system property of a society that
  - (a) has escheated to the government under section 4 of the *Escheat Act*, or
  - (b) has vested in the government under this Actis not, except as provided in section 4.1 [*disposal of escheated water system property*] of the *Escheat Act*, affected by a restoration of the society.

**Section 161: Corporate property to be returned to restored society [Society Act, s.141; BCA s. 368]**  
This section sets out the rules for the return of money or other property, other than land, that vested in the government on a society's dissolution. The *Escheat Act*, and not the *Societies Act*, applies to land that escheated to the government on a society's dissolution.

### Registrar's duties after restoration

- 162** (1) After a society is restored under this Division, the registrar must
- (a) issue a certificate of restoration in which is recorded
    - (i) the name of the society,
    - (ii) the date and time of the restoration, and

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- (iii) in the case of a restoration for a limited period, the date on which the limited period of restoration expires,
- (b) furnish to the society
  - (i) the certificate of restoration,
  - (ii) a certified copy of the statement of directors and registered office modified in accordance with section 160 (1) (c) [*effect of restoration*], and
  - (iii) a certified copy of the restoration application filed with the registrar under section 156 [*application to registrar for restoration*] or 159 [*filing of restoration application with registrar in court-ordered restoration*], as the case may be,
- (c) furnish to the applicant who filed the restoration application a copy of the certificate of restoration, and
- (d) publish notice of
  - (i) the restoration, and
  - (ii) the date on which any limited period of restoration expires.
- (2) Whether or not the requirements precedent and incidental to restoration have been complied with, a notation in the register of societies that a society has been restored is conclusive evidence for the purposes of this Act and for all other purposes that the society has been duly restored
  - (a) with the name shown in the register of societies, and
  - (b) on the date shown and the time, if any, shown in the register of societies.

### **Section 162: Registrar's duties after restoration [Society Act, s. 140(3); BCA s. 367]**

This section lists the corporate registry's outputs after restoration.

## **PART 11 – EXTRAPROVINCIAL NON-SHARE CORPORATIONS**

This Division completely replaces Part 8 (sections 75 to 82) of the current Act. The current Act mandates registration of an extraprovincial society carrying on activities in the province only if required by the registrar. This approach has resulted in a confusing and incomplete record of incorporated entities active in the province. The new provisions will require registration of all non-share corporations from other jurisdictions that carry on activities in BC.

The provisions are generally based on Part 11 of the BCA, which requires similar registration of all business corporations active in the province. Requiring registration of extraprovincial non-share corporations will ensure that the corporate registry is able to provide a one-stop source of fundamental information about all corporate entities operating in the province, regardless of their for-profit or non-profit nature.

**Division 1 – Definitions and Interpretation**

**Definitions**

**163** (1) In this Part:

“**attorney**” means an attorney referred to in section 170 *[attorneys]*;

“**delivery address**”, in respect of the head office of an extraprovincial non-share corporation, or an attorney for an extraprovincial non-share corporation, means the delivery address for that office or person, as the case may be, shown in the register of societies;

“**federal corporation**” means an extraprovincial non-share corporation that is incorporated or otherwise formed under federal legislation;

“**mailing address**”, in respect of the head office of an extraprovincial non-share corporation, or an attorney for an extraprovincial non-share corporation, means the mailing address for that office or person, as the case may be, shown in the register of societies.

(2) In sections 170 *[attorneys]* to 175 *[cancellation or change of assumed name]*, “**extraprovincial non-share corporation**” means an extraprovincial non-share corporation that is registered under Division 2.

**Section 163: Definitions [New; BCA s. 1 definitions of “charter”, “federal corporation”]**

This section contains definitions, intended to simplify drafting, for the purposes of registration of extraprovincial societies.

**When extraprovincial non-share corporation deemed to carry on activities in British Columbia**

**164** For the purposes of this Act, an extraprovincial non-share corporation is deemed to carry on activities in British Columbia if

- (a) its name, or a name under which it carries on activities, is listed in a telephone directory for any part of British Columbia, or on a website, in or on which an address or telephone number in British Columbia is given for that corporation,
- (b) its name, or a name under which it carries on activities, appears or is announced in an advertisement in which an address or telephone number in British Columbia is given for that corporation, or
- (c) it has, in British Columbia,
  - (i) a resident agent or employee, or
  - (ii) an office or similar place from which it carries on activities.

**Section 164: When extraprovincial non-share corporation deemed to carry on activities in British Columbia [New; BCA s. 375(2)]**

The section contains a description of the kinds of activities, such as having a resident agent or office in the province, that trigger the registration requirements.

## **Division 2 – Registration**

### **Extrajurisdictional non-share corporations required to be registered**

- 165** An extrajurisdictional non-share corporation must register in accordance with this Division within 60 days after that corporation begins to carry on activities in British Columbia.

#### **Section 165: Extrajurisdictional non-share corporations required to be registered [New; BCA s. 375]**

This section requires extrajurisdictional non-share corporations to register within 60 days of their starting to carry on activities in the province. Because this is a new requirement, it will not apply for 2 years to any extrajurisdictional entities that are currently not required to be registered (see section 241). This will give these entities time to make any necessary arrangements to meet the new registration requirements.

### **Procedure for registration**

- 166** To register, an extrajurisdictional non-share corporation must
- (a) file with the registrar a registration statement that sets out the following:
    - (i) if that corporation is a federal corporation, the name of that corporation or, in any other case,
      - (A) the name reserved under section 8 *[name]* for that corporation and the reservation number given for that name, unless section 167 applies to that corporation, or
      - (B) if section 167 applies to that corporation, the name of that corporation, the assumed name reserved for it under that section and the reservation number given for that assumed name;
    - (ii) that corporation's home jurisdiction;
    - (iii) any incorporation or other identifying number given to that corporation by its home jurisdiction and the date of its incorporation or formation in that jurisdiction;
    - (iv) the delivery address and mailing address proposed for the head office of that corporation;
    - (v) for each person, if any, that corporation proposes to have as an attorney, the full name of the person and the delivery address and mailing address proposed for that person, and
  - (b) provide to the registrar any other records and information the registrar may require, including proof satisfactory to the registrar of that corporation's status in its home jurisdiction.

#### **Section 166: Procedure for registration [Society Act, ss. 75(4), 76(1); BCA s. 376]**

This section sets out the information that must be provided to the corporate registry in a registration application. In addition to providing standard information, such as the corporation's home jurisdiction and head office address, the extrajurisdictional non-share corporation, like all other corporate entities, must reserve its name (or an adopted assumed name) with the corporate registry. This will ensure that the extrajurisdictional non-share corporation can be distinguished, by its name, from other corporations operating in the province.



**Assumed name**

- 167** (1) If, under section 8 [*name*], the name of an extraprovincial non-share corporation cannot be reserved, that corporation must, if it wishes to be registered under this Division, reserve an assumed name that meets the requirements of that section.
- (2) If an extraprovincial non-share corporation reserves an assumed name, the registrar may register that corporation with its own name, if that corporation provides an undertaking to the registrar, in form and content satisfactory to the registrar, that it will carry on all of its activities in British Columbia under that assumed name, and, on such registration, that corporation is deemed to have adopted the assumed name.
- (3) An extraprovincial non-share corporation that has adopted an assumed name under this section
- (a) must acquire all property, rights and interests in British Columbia under its assumed name,
  - (b) is entitled to all property, rights and interests acquired, and is subject to all liabilities incurred, under its assumed name as if the property, rights and interests and the liabilities had been acquired and incurred under its own name, and
  - (c) may sue or be sued in its own name, its assumed name or both.
- (4) No act of an extraprovincial non-share corporation that has adopted an assumed name under this Act, including a transfer of property, rights or interests to or by it, is invalid merely because the act contravenes subsection (3) (a).
- (5) This section does not apply to a federal corporation.

**Section 167: Assumed name [New; BCA s. 26]**

This section allows an extraprovincial non-share corporation that has an unacceptable name to adopt, for the purposes of conducting its activities in BC, an assumed name. This provision will prevent forcing the extraprovincial non-share corporation to change its name in its home jurisdiction simply in order to operate in BC.

**Registration**

- 168** (1) After an extraprovincial non-share corporation complies with section 166 [*procedure for registration*] to the satisfaction of the registrar, the registrar,
- (a) if that corporation is a federal corporation, must register that corporation, and
  - (b) in any other case, may register that corporation.
- (2) After an extraprovincial non-share corporation is registered, the registrar must
- (a) issue a certificate of registration for that corporation in which is recorded
    - (i) that corporation's name, assumed name, if any, and registration number, and
    - (ii) the date and time of its registration,
  - (b) furnish to that corporation
    - (i) the certificate of registration, and

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- (ii) a certified copy of the registration statement filed with the registrar under section 166 (a) by that corporation, and
  - (c) publish notice of that corporation's registration.
- (3) Whether or not the requirements precedent and incidental to registration under this Division of an extraprovincial non-share corporation have been complied with, a notation in the register of societies that an extraprovincial non-share corporation has been registered under this Division is conclusive evidence for the purposes of this Act and for all other purposes that that corporation has been duly registered under this Division
- (a) with the name and any assumed name shown in the register of societies, and
  - (b) on the date shown and the time, if any, shown in the register of societies.

### **Section 168: Registration [Society Act, s. 76(3); BCA s. 377]**

This section sets out the registrar's obligations in terms of outputs following registration of an extraprovincial non-share corporation.

#### **Effect of registration**

- 169** (1) In this section, “**charter**” includes
- (a) the records of an extraprovincial non-share corporation that are similar to the constitution and bylaws of a society, and
  - (b) the statute or other provision of law of that corporation's home jurisdiction by or under which that corporation was incorporated or otherwise formed.
- (2) Subject to this Act, to the other laws of British Columbia and to the laws of any other jurisdiction that are or may be applicable to it, an extraprovincial non-share corporation that is registered under this Division may, for the purpose of carrying on activities in British Columbia, exercise in British Columbia the powers contained in or permitted by its charter.
- (3) Registration of an extraprovincial non-share corporation does not entitle it to do either of the following:
- (a) carry on an activity or exercise a power that its charter restricts it from carrying on or exercising;
  - (b) exercise any of its powers in a manner inconsistent with those restrictions.
- (4) No act of an extraprovincial non-share corporation that carries on activities in British Columbia, including a transfer of property, rights or interests to it or by it, is invalid merely because
- (a) the act is contrary to subsection (3), section 179 [*effect of cancellation of registration*] or section 185 (3) [*effect of reinstatement*], or
  - (b) it was not, at the time of that act, registered under this Division.

### **Section 169: Effect of registration [New; BCA s. 378]**

This section deals with the legal effect of registration as an extraprovincial non-share corporation. The section is particularly important in that it clarifies that the acts of a corporation are not invalid simply because the corporation is not registered as required. This is in contrast to the current Act's section 81, which imposes “legal disabilities” (specifically the inability to sue

or own land) for failure to register. The new approach is in keeping with modern corporate law which, instead of disabilities, provides for daily fines for the failure to register.

**Attorneys**

- 170** (1) An extraprovincial non-share corporation
- (a) that has its head office in British Columbia may have one or more attorneys, and
  - (b) in any other case, must have one or more attorneys.
- (2) Each attorney for an extraprovincial non-share corporation must be
- (a) an individual who is resident in British Columbia,
  - (b) a society, or
  - (c) a company as defined in section 1 (1) [definitions] of the *Business Corporations Act*.
- (3) Each attorney for an extraprovincial non-share corporation is deemed to be authorized by that corporation to
- (a) accept service in British Columbia on behalf of that corporation, and
  - (b) receive each notice to that corporation.

**Section 170: Attorneys [Society Act, s. 77; BCA s. 386]**

This section requires an extraprovincial non-share corporation to appoint a BC attorney. The attorney is deemed to be authorized by the extraprovincial non-share corporation to accept service of legal documents. An attorney is not required to be appointed if the extraprovincial non-share corporation's head office is in BC.

**Service of records on extraprovincial non-share corporation**

- 171** Without limiting any other enactment, a record may be served on an extraprovincial non-share corporation
- (a) by delivering the record, if the head office of that corporation is in British Columbia, to the delivery address of the head office or by mailing it by registered mail to the mailing address of that head office, or
  - (b) by delivering the record to an attorney of that corporation, which delivery may be made, without limiting section 29 [how record is delivered], by leaving it at the delivery address of the attorney.

**Section 171: Service of records on extraprovincial non-share corporation [New; BCA s. 9(2)]**

This section sets out the two main options for serving documents on an extraprovincial non-share corporation: delivering or mailing the record by registered mail to the BC head office, or delivering it to the BC resident attorney.

### **Division 3 – Required Filings**

#### **Extrajurisdictional non-share corporation must file annual report**

- 172** An extrajurisdictional non-share corporation, in each calendar year, must file with the registrar an annual report.

**Section 172: Extrajurisdictional non-share corporation must file annual report [Society Act, ss. 68, 78; BCA s. 380]**

This section requires extrajurisdictional non-share corporations to file annual reports with the corporate registry. Failure to file can result in the corporation having its registration cancelled (see section 176). Consistent with new timing requirements applicable to local societies, extrajurisdictional non-share corporations will be required to file an annual report once per calendar year.

#### **Extrajurisdictional non-share corporation must notify registrar of changes**

- 173** (1) An extrajurisdictional non-share corporation must file with the registrar a notice of change respecting an extrajurisdictional non-share corporation in respect of any change that renders incorrect or incomplete any of the information shown in the register of societies with respect to that corporation.
- (2) A notice of change respecting an extrajurisdictional non-share corporation required under subsection (1) must
- (a) set out
    - (i) the information required by the registrar, and
    - (ii) if the change reflected in the filing is a change of name of that corporation and that corporation does not have an assumed name, the new name reserved under section 8 [name] for that corporation or, if that name cannot be reserved, the assumed name reserved under section 167 [assumed name] for that corporation, and the reservation number given for that name or assumed name, as the case may be, and
  - (b) be submitted to the registrar for filing promptly after the occurrence of the change.
- (3) Subsection (2) (a) (ii) does not apply to a federal corporation.
- (4) After a notice of change respecting a change of name of an extrajurisdictional non-share corporation is filed with the registrar under subsection (1), the registrar must
- (a) issue a certificate showing the change of name,
  - (b) furnish to that corporation the certificate, and
  - (c) publish notice of that change of name.

**Section 173: Extrajurisdictional non-share corporation must notify registrar of changes [Society Act, s. 78; BCA ss. 381, 382, 391]**

This section requires an extrajurisdictional non-share corporation to promptly inform the corporate registry of any changes to the information on file with the registry, such as a change of its name, change of attorney, or a change of head office or attorney address.

**Registrar may order change of name**

- 174** (1) If, for any reason, the name or assumed name of an extraprovincial non-share corporation is contrary to the prescribed requirements, if any, or if the registrar, for good and valid reasons, disapproves of the name or assumed name of an extraprovincial non-share corporation, the registrar, in writing and giving reasons, may order that corporation to change its name or assumed name, as the case may be, or to adopt an assumed name.
- (2) This section does not apply to a federal corporation.

**Section 174: Registrar may order change of name [New; BCA s. 28(2)]**

This section allows the registrar to order a change of a name, or assumed name, of an extraprovincial non-share corporation. It complements the requirement that the registrar approve a name before registration, and is intended to provide extraordinary remedial powers should a name become problematic post-registration. The registrar has a similar “after-the-fact” power to order that a local society change its name under section 8 (5).

**Cancellation or change of assumed name**

- 175** (1) An extraprovincial non-share corporation that has adopted an assumed name under this Act may, by filing with the registrar a notice of change of assumed name and providing to the registrar any other records or information the registrar may require,
- (a) if the corporation reserves its own name under section 8 [*name*], cancel its assumed name and carry on activities in British Columbia under its own name, or
  - (b) if the corporation reserves a new assumed name under section 167 [*assumed name*], change its assumed name and carry on activities in British Columbia under the new assumed name.
- (2) A notice of change of assumed name in respect of an extraprovincial non-share corporation must set out
- (a) the information required by the registrar, and
  - (b) the name or assumed name referred to in subsection (1) (a) or (b), as the case may be, reserved for that corporation and the reservation number given for that name or assumed name.
- (3) After an extraprovincial non-share corporation cancels or changes its assumed name in accordance with this section, the registrar must
- (a) issue a certificate showing the cancellation or change of assumed name,
  - (b) furnish to that corporation that certificate, and
  - (c) publish notice of that cancellation or change of assumed name.

**Section 175: Cancellation or change of assumed name [New; BCA s. 383]**

This section allows an extraprovincial non-share corporation that has adopted an assumed name to either change that assumed name or, if its own name can now be reserved, to drop the assumed name and continue operating in the province using its own name.

**Division 4 – Cancellation of Registration**

**Cancellation of registration by registrar**

- 176** (1) If an extraprovincial non-share corporation
- (a) fails, for 2 consecutive calendar years, to file with the registrar an annual report required under this Act to be filed,
  - (b) fails, for a period of at least 2 years, to file with the registrar a record, other than an annual report, required under this Act to be filed,
  - (c) fails to pay a fee required under this Act to be paid to the registrar, or
  - (d) fails to comply with
    - (i) an order of the registrar, or
    - (ii) section 170 *[attorneys]*,
- the registrar may furnish to that corporation a letter notifying that corporation of its default and of the powers of the registrar under this section.
- (2) The registrar may furnish the letter referred to in subsection (1) to the extraprovincial non-share corporation's head office, if the head office is in British Columbia, or to an attorney of that corporation.
- (3) Unless, within one month after the registrar furnishes the letter referred to in subsection (1),
- (a) the default identified in the letter is remedied, or
  - (b) the registrar receives a response that
    - (i) satisfies the registrar that reasonable steps are being taken to remedy the default, or
    - (ii) is otherwise satisfactory to the registrar,
- the registrar may publish notice that, at any time after the expiration of one month after the date of the publication of notice, the registration of the extraprovincial non-share corporation may be cancelled unless cause to the contrary is shown to the registrar.
- (4) At any time after one month after the date of the publication of notice referred to in subsection (3) or, if an application for extension was filed with the registrar under subsection (5), at any time after the expiry of the extended period that results from that filing, the registrar may cancel the registration of the extraprovincial non-share corporation unless cause to the contrary is shown to the registrar.
- (5) An extraprovincial non-share corporation referred to in subsection (4) may file with the registrar an application for extension and, with that filing, the period after which the registrar may cancel the registration of that corporation is extended
- (a) for a period of 6 months, or
  - (b) if the registrar furnishes written notice to that corporation indicating that a period longer than 6 months has been allowed, for the longer period referred to in the notice.
- (6) Unless the registrar otherwise permits, an extraprovincial non-share corporation must not submit for filing more than one application for extension in relation to any one notice published under subsection (3) in relation to that corporation.

### **Section 176: Cancellation of registration by registrar [Society Act, s. 79; BCA s. 422]**

This section allows for cancellation of an extraprovincial non-share corporation's registration by the registrar for repeatedly failing to file an annual report or other required record. This power helps ensure the currency of the corporate registry database. The detailed procedures that must be followed to effect a cancellation are new, and derive from the BCA. They are intended to ensure that the extraprovincial non-share corporation is given ample opportunity to remedy the defect before cancellation occurs.

### **Cancellation of registration of inactive or defunct extraprovincial non-share corporation**

- 177** The registrar must cancel the registration of an extraprovincial non-share corporation if
- (a) a person files with the registrar a notice, from the official in that corporation's home jurisdiction whose role in that jurisdiction is similar to the role of the registrar in British Columbia, that that corporation has ceased to exist, or
  - (b) that corporation files with the registrar a notice that it has ceased to carry on activities in British Columbia.

### **Section 177: Cancellation of registration of inactive or defunct extraprovincial non-share corporation [Society Act, s. 104; BCA s. 397]**

This section provides for cancellation of registration, either on request of the extraprovincial non-share corporation or on notice from its home jurisdiction that it no longer exists. It complements the voluntary dissolution procedures for local societies, and will help keep the register of societies up-to-date.

### **Cancellation of registration by Lieutenant Governor in Council**

- 178** (1) The Lieutenant Governor in Council may cancel the registration of an extraprovincial non-share corporation.
- (2) Subsection (1) does not apply to a federal corporation.

### **Section 178: Cancellation of registration by Lieutenant Governor in Council [New; BCA s. 398]**

This section, which is new to the Act, allows for cancellation of an extraprovincial non-share corporation's registration by order of Cabinet. It is consistent with Cabinet's power to dissolve a BC society, and with the BCA.

### **Effect of cancellation of registration**

- 179** If the registration of an extraprovincial non-share corporation is cancelled under this Division, that corporation must cease carrying on activities in British Columbia.

### **Section 179: Effect of cancellation of registration [New; BCA s. 422(7)]**

This section clarifies that an extraprovincial non-share corporation that has its registration cancelled must cease its activities in the province.

### **Publication of notice of cancellation**

- 180** After the registration of an extraprovincial non-share corporation is cancelled under this Division, the registrar must publish notice of the cancellation.



**Section 180: Publication of notice of cancellation [New; BCA s. 399]**

This section requires the registrar to publish notice of the cancellation of a registration of an extraprovincial non-share corporation.

**Division 5 – Reinstatement of Registration**

This Division is new, and provides a procedure for an extraprovincial non-share corporation that has had its registration cancelled to apply to the registrar for reinstatement of its registration. Currently, there is no process for administrative reinstatement by the registrar, and a cancelled extraprovincial non-share corporation would have to go to court for reinstatement. Since extraprovincial registration is not a “life and death” issue (i.e. the corporation continues to exist in its home jurisdiction), court involvement is unnecessary.

The process included here is based on the reinstatement provisions of the BCA, simplified to reflect that the process proposed for the new Societies Act is a purely administrative one that is available only to the extraprovincial non-share corporation itself or to a member of its board of directors.

**Definition**

- 181** In this Division, “**applicant**”, in relation to an application under section 182 respecting an extraprovincial non-share corporation whose registration has been cancelled, means
- (a) that corporation, or
  - (b) an individual who, when the application is made, is a member of the board of directors or other governing body of that corporation.

**Section 181: Definition [New; BCA s. 354(2)]**

This section sets out who may apply to the registrar for reinstatement of an extraprovincial non-share corporation’s registration. Reinstatement can only be initiated by the extraprovincial non-share corporation itself or one of its current directors – unlike the BCA, there is no provision for reinstatement by an unrelated party. This approach makes the reinstatement process more streamlined than that applicable to extraprovincial companies under the BCA.

**Reinstatement of registration of extraprovincial non-share corporation**

- 182**
- (1) If the registration of an extraprovincial non-share corporation has been cancelled under Division 4 [*Cancellation of Registration*] or under the previous Act, an applicant may file with the registrar a reinstatement application.
  - (2) Before filing an application under subsection (3), an applicant must reserve a name under section 8 [*name*] or an assumed name under section 167 [*assumed name*] for the extraprovincial non-share corporation whose registration is to be reinstated, unless that corporation is a federal corporation.
  - (3) To reinstate the registration of an extraprovincial non-share corporation under this section, an applicant must

- (a) file with the registrar a reinstatement application and any other records the registrar may require, and
  - (b) provide to the registrar any other records and information the registrar may require.
- (4) A reinstatement application must contain the following:
- (a) the name or assumed name, as the case may be, reserved for the extraprovincial non-share corporation and the reservation number given for that name or assumed name or, in the case of a federal corporation, the name of that corporation;
  - (b) the delivery address and mailing address proposed for the head office of that corporation;
  - (c) for each person, if any, that corporation proposes to have as an attorney, the full name of the person and the delivery address and mailing address proposed for that person;
  - (d) if the reinstatement is for a limited period, a statement specifying the proposed limited period of the reinstatement, subject to any limitations established by the registrar on the length of that limited period.

**Section 182: Reinstatement of registration of extraprovincial non-share corporation [New; BCA s. 364.1]**

This section sets out the procedure for applying to reinstate the registration of an extraprovincial non-share corporation, as well as the prerequisites to filing and what has to be included in the application. The provisions are simpler than the BCA reinstatement provisions or the provisions that apply to the restoration of a local society. Reinstatement of an extraprovincial non-share corporation can only be sought by a related party and the process is entirely administrative (that is, there is no provision for court involvement). Therefore, there is no need to require that the public be notified of a reinstatement application.

**Registrar must reinstate**

- 183** Subject to section 184, after a reinstatement application is filed with the registrar under section 182, the registrar, on any terms and conditions the registrar considers appropriate, must reinstate the registration of the extraprovincial non-share corporation or reinstate the registration for the limited period set out in the application, as the case may be, with the same registration number that corporation had before its registration was cancelled.

**Section 183: Registrar must reinstate [New; BCA s. 364.2]**

This section requires the registrar to reinstate the registration of the extraprovincial non-share corporation with the same registration number it had before cancellation of registration. This eliminates the need for the corporation to update its contracts and internal records.

**Restriction on reinstatement**

- 184** The registrar must not reinstate under section 183 the registration of an extraprovincial non-share corporation, other than a federal corporation, unless the reservation of a name under section 8 [*name*] or an assumed name under section 167 [*assumed name*] for that corporation remains in effect on the date of the reinstatement.

**Section 184: Restriction on reinstatement [New; BCA s. 364.4]**

This section states that the registrar cannot reinstate unless, at the time of the reinstatement, a name reservation is in effect.

**Effect of reinstatement**

- 185** (1) When the registration of an extraprovincial non-share corporation is reinstated under this Division,
- (a) the name or assumed name of that corporation is the name or assumed name, as the case may be, shown for that corporation on the reinstatement application,
  - (b) the delivery address and mailing address of the head office of that corporation are the addresses shown for that office on the reinstatement application,
  - (c) the delivery address and mailing address of the attorneys, if any, for that corporation are the addresses shown for those attorneys on the reinstatement application, and
  - (d) the registration is deemed not to have been cancelled, and, without limiting this, proceedings may be taken as if that registration had not been cancelled.
- (2) If the registration of an extraprovincial non-share corporation is reinstated for a limited period, the registration of that corporation is cancelled on the expiration of the limited period of reinstatement.
- (3) If the registration of an extraprovincial non-share corporation is cancelled under subsection (2), that corporation must cease carrying on activities in British Columbia.
- (4) After the registration of an extraprovincial non-share corporation is cancelled under subsection (2), the registrar must publish notice of the cancellation.

**Section 185: Effect of reinstatement [New; BCA s. 365]**

This section sets out the legal effect of reinstatement, including reinstatement for a limited period, and identifies the addresses and other information applicable to the reinstated extraprovincial non-share corporation.

**Registrar's duties after reinstatement**

- 186** (1) After the registration of an extraprovincial non-share corporation is reinstated under this Division, the registrar must
- (a) issue a certificate of reinstatement in which is recorded
    - (i) that corporation's name, assumed name, if any, and registration number,
    - (ii) the date and time of the reinstatement, and
    - (iii) in the case of a reinstatement for a limited period, the date on which the limited period of reinstatement expires,
  - (b) furnish to that corporation
    - (i) the certificate of reinstatement, and

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- (ii) a certified copy of the reinstatement application filed with the registrar under section 182 [*reinstatement of registration of extraprovincial non-share corporation*],
  - (c) furnish to the applicant who filed the reinstatement application, a copy of the certificate of reinstatement, and
  - (d) publish notice of
    - (i) the reinstatement, and
    - (ii) the date on which any limited period of reinstatement expires.
- (2) Whether or not the requirements precedent and incidental to reinstatement have been complied with, a notation in the register of societies that the registration of an extraprovincial non-share corporation has been reinstated is conclusive evidence for the purposes of this Act and for all other purposes that the registration of the extraprovincial non-share corporation has been duly reinstated
- (a) with the name and any assumed name shown in the register of societies, and
  - (b) on the date shown and the time, if any, shown in the register of societies.

### **Section 186: Registrar's duties after reinstatement [Society Act, s.140(3); BCA s. 367]**

This section sets out the registrar's obligations in terms of outputs following the reinstatement of registration of an extraprovincial non-share corporation.

## **PART 12 – SPECIAL SOCIETIES**

### **Division 1 – Member Funded Societies**

This new Division sets out special rules for “member funded societies”. Member funded societies (sometimes called privately funded societies or membership societies) generally exist solely for the benefit of their members and do not receive any significant public funding. Common examples are sports clubs and professional organizations. Because they are not funded by public donations or government grants, fewer “regulatory” rules will apply to them under the new Act. For example, they need only have one director, and are not subject to provisions that require public access to financial statements and restrict distributions on the society's dissolution.

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Member funded societies are essentially equivalent to societies without any “charitable purpose” under the the current Act. However, there is considerable confusion about what constitutes a “charitable purpose”. This Division is intended to help clarify the distinction between these and ordinary societies, and to inform the public of their nature, by providing a “bright line” test – a society is a member funded society if, and only if, its constitution declares it to be one.

### Definitions

**187** In this Division:

“**member funded society**” means a society whose constitution contains a statement referred to in section 188 (1);

“**public donations or gifts**” means donations or gifts made by members of the public other than donations or gifts that a society solicits or receives from its voting members, directors, senior managers or employees;

“**public funding**”, subject to the regulations, means funding, by way of grant, loan or otherwise, provided by

- (a) the government of Canada, British Columbia or another province of Canada,
- (b) a municipality in British Columbia or in another province of Canada,
- (c) the governing body of a first nation in Canada, including the governing body of a band as defined in section 2 (1) of the *Indian Act* (Canada),
- (d) an organization that is owned or controlled by, or is an agent of, any of the governments or bodies referred to in paragraphs (a) to (c), or
- (e) a prescribed government, body or other organization.

### Section 187: Definitions [New]

This new section contains definitions, intended to simplify drafting, for the purposes of this Division. A member funded society is defined as a society whose constitution contains a statement to that effect.

### Statement in constitution that member funded society exists primarily for members

**188** (1) Despite section 9 [*constitution*] but subject to subsection (2) of this section, the constitution of a society may contain, in addition to its name and purposes, the following statement:

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.

(2) A society must not have a constitution that contains a statement referred to in subsection (1) if

(a) any of the following circumstances apply:

- (i) the society is a registered charity as defined in section 248 (1) of the *Income Tax Act* (Canada) or another qualified donee as defined in section 149.1 (1) of that Act;
- (ii) the society

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- (A) solicits public donations or gifts, or
  - (B) receives, in any financial year of the society, public donations or gifts having a total value greater than the amount specified in, or calculated in accordance with, the regulations, if any;
  - (iii) the society receives, in any financial year of the society, public funding in a total amount greater than the amount specified in, or calculated in accordance with, the regulations, if any;
  - (iv) the society has a charitable purpose;
  - (v) the society is a student society as defined in section 1 [definitions] of the *College and Institute Act* or section 1 [definitions] of the *University Act*, or
- (b) the society is prohibited under the regulations from having the statement in its constitution.

### **Section 188: Statement in constitution that member funded society exists primarily for members [New]**

A society, if qualified, may designate itself as a member funded society by including a statement to that effect in its constitution. This section sets out the circumstances which preclude a society from becoming, or being, a member funded society. For example, a society may not be a member funded society if it is a registered charity, if it solicits donations, or if it receives public funding above the threshold set out in the regulations (for example, this amount could be set at \$10,000/year). As well, certain types of societies – e.g. student societies and societies that have a charitable purpose – cannot be member funded societies.

### **Ceasing to be a member funded society**

- 189** (1) A member funded society
- (a) must immediately alter its constitution to remove the statement referred to in section 188 (1) if
    - (i) a circumstance referred to in section 188 (2) (a) arises, or
    - (ii) the society is prohibited under the regulations referred to in section 188 (2) (b) from having the statement in its constitution, and
  - (b) may, in any other case, alter its constitution to remove the statement.
- (2) Section 14 [alterations to constitution] applies to an alteration referred to in subsection (1) of this section, except that an alteration required by subsection (1) (a) of this section may be made without the authorization of a special resolution referred to in section 14 (2) (a).

### **Section 189: Ceasing to be a member funded society [New]**

This section sets out how a member funded society ceases to be one. A member funded society may at any time, by special resolution, amend its constitution to remove the member funded designation. However, if any of the circumstances listed in the previous section arise during the life of a member funded society (for example, if the society starts to solicit public donations), the society must immediately alter its constitution to remove the statement that it is a member funded society.

### Altering constitution to become member funded society

- 190** (1) Subject to subsection (2), a society may alter its constitution to include the statement referred to in section 188 (1) [*statement in constitution that member funded society exists primarily for members*], and section 14 [*alterations to constitution*] applies in relation to that alteration.
- (2) A society must not alter its constitution to include the statement referred to in section 188 (1) unless the alteration has been approved by court order.

### **Section 190: Altering constitution to become member funded society [New]**

This section describes how a society that is not originally formed as a member funded society may become one. The process requires both a special resolution and approval of the court. Court oversight will help ensure that societies that do not qualify (for example, because of the amount of public funding they have previously received) continue to be subject to restrictions on distributions and other “regulatory” rules.

### Other restrictions on becoming member funded society

- 191** (1) Despite section 84 (a) [*application for amalgamation*], the constitution contained in an amalgamation application filed with the registrar under that section must not contain the statement referred to in section 188 (1) [*statement in constitution that member funded society exists primarily for members*] unless
- (a) all of the amalgamating corporations are member funded societies, or
  - (b) the court orders otherwise.
- (2) Despite sections 90 (a) [*application for continuation into British Columbia*] and 91 (3) [*application for continuation of special Act corporation*], the constitution contained in a continuation application filed with the registrar under either of those sections must not contain the statement referred to in section 188 (1) unless the court orders otherwise.

### **Section 191: Other restrictions on becoming member funded society [New]**

This section clarifies that a society may not become a member funded society by means of a one-step process as part of an amalgamation or continuation without court approval unless, in the case of an amalgamation, all of the amalgamating societies are already member funded societies. The court approval requirement is intended to ensure that only qualified societies become member funded societies.

### No public right to copies of financial statements of member funded society

- 192** Section 27 [*copies of financial statements*] does not apply in relation to a member funded society.

### **Section 192: No public right to financial statements of member funded society [New]**

This section sets out the first of several “regulatory” exemptions applicable to member funded societies. Generally, member funded societies are subject to fewer accountability requirements because they are funded only by their own members. In this case, section 27, which gives the public the right to a copy of a society’s financial statements, is disapplied for member funded societies.



### No mandatory reporting on remuneration for member funded society

- 193** Section 35 [*reporting on remuneration of directors, employees and contractors*] does not apply in relation to a member funded society.

#### **Section 193: No mandatory reporting on remuneration for member funded society [New]**

This section sets out another “regulatory” exemption for member funded societies. Other societies must, in their financial statements, report on the remuneration paid to directors and the highest paid employees and contractors.

Disclosure of executive pay is an important accountability measure for publicly supported societies, but may not be necessary for societies that rely only on their own members for funding. Therefore, the section 35 legislative requirement to report on remuneration is, by this section, disapplied for member funded societies. A member funded society could, however, by its own bylaws, impose a disclosure requirement.

### Directors of member funded society

- 194** (1) Despite section 39 [*number and residency of directors*], a member funded society need have only one director and that director need not be ordinarily resident in British Columbia.
- (2) Section 40 [*employment of directors*] does not apply in relation to a member funded society.

#### **Section 194: Directors of member funded society [New]**

This section relaxes the rules for boards of directors of member funded societies. Unlike most societies, which must have at least 3 directors, a member funded society need only have one. There is no residency requirement for directors, and section 40, which requires that a majority of the board be independent (i.e. not remunerated as employees or contractors) does not apply. Again, because of the private source of their funding, there is less need to regulate board size and composition in member funded societies.

### Member funded society may convert to company

- 195** A member funded society may, under the *Business Corporations Act*, be converted to a company as defined in section 1 (1) [*definitions*] of that Act.

#### **Section 195: Member funded society may convert to company [Society Act, s. 74; BCA s. 266]**

This section carries forward the current Act’s provisions allowing certain societies to convert into companies. Currently, only societies that do not have a charitable purpose may convert. This new section updates this approach by making the conversion process available only to member funded societies.

### Distribution of property before dissolution or on liquidation of member funded society

- 196** (1) Section 121 (2) [*distribution of property before dissolution or on liquidation*] does not apply in relation to a member funded society, and a distribution of property under section 121 (1) (b) in respect of a member funded society may be made to any person
- (a) specified in the bylaws of the society, or

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- (b) if the bylaws do not specify a recipient for such a distribution, specified in an ordinary resolution of the society or, if passing an ordinary resolution is not feasible, specified in a director's resolution.
- (2) Despite section 123 [*dissolution by request*], in the case of a dissolution under that section of a member funded society, the affidavit referred to in section 123 (3) (b) must set out that
  - (a) the society has no liabilities, or has made adequate provision for the payment of all liabilities, in accordance with section 121 (1) (a), and
  - (b) the remaining money or other property of the society, if any, has been distributed in accordance with section 121 (1) (b) and subsection (1) of this section.

### **Section 196: Distribution of property before dissolution or on liquidation of member funded society [Society Act, s. 134(2)]**

This section carries forward the current Act's provisions allowing certain societies that are dissolving to distribute their property to any person without restriction. Currently, only societies that do not have a charitable purpose may utilize this unrestricted approach – all other societies may distribute their property only to charities and similar entities. This new section updates the current Act's approach, while maintaining its substance, by making the unrestricted distribution option available to member funded societies. That is, a member funded society may, on dissolution, distribute to any person, and not only to a "qualified recipient", as is the case with other societies.

### **Effect on joint tenancy of dissolution of member funded society**

- 197** Despite section 150 (2) [*effect of dissolution*], if a member funded society is dissolved, any property held, immediately before the dissolution, by the society as a joint tenant vests on dissolution in the other joint tenants, as joint tenants.

### **Section 197: Effect on joint tenancy of dissolution of member funded society [New]**

This section disapplies section 150, a new provision that sets out the legal ramifications of dissolution where property is held by a society as a joint tenant. Section 150 provides that the property does not automatically become the property of the other tenant on dissolution. It is needed to ensure that the restrictions on distribution that apply to ordinary societies cannot be sidestepped by having property held in joint tenancy. Since there are no restrictions on distributions on the dissolution of a member funded society, this rule is not needed, and property held in joint tenancy may vest in the other joint tenants on dissolution.

## **Division 2 – Occupational Title Societies**

Under Part 10 of the current Act, the registrar is permitted to grant special status to a society that represents members of an occupation or profession so long as the society meets certain self-regulatory criteria and the registrar considers it in the public interest. Once registered, members of that society have the exclusive right to use registered words or initials that identify their occupation, effectively providing a "brand" for the registered group.

Although the 2011 Discussion Paper recommended retention of these provisions, it is now proposed that occupational title protection be eliminated on a go-forward basis – that is, those

societies that are currently registered as occupational title societies would continue to enjoy the privileges associated with their designated status, but no new occupational title protection registrations would be allowed.

There are several reasons for this change in policy. First, registration can lead to public confusion, as it inevitably carries the incorrect implication that the society meets certain regulatory standards or has the blessing of government. Second, the corporate registry is not well situated to determine whether registration as an occupational title society is indeed in the public interest, given its lack of expertise in the licensing frameworks of often technical occupations. Finally, there is less need now than when the provisions were introduced in 1985 for this type of registration, given the avenues that currently exist for many occupations seeking regulated or professional status under other statutes or programs.

This Division therefore removes the ability to apply to the registrar for occupational title protection status, and simply carries forward sections of the current Act that will continue to have application to pre-existing occupational title societies.

### Definitions and Interpretation

**198** (1) In this Division:

“**designated words or initials**”, in relation to an occupational title society that is registered under this Division, means the word or combination of words, or the initials, designated by the registrar on registration of the society under section 88 (3) of the previous Act;

“**occupational title society**” means a society that has as one of its purposes the representation of the interests of an occupation or profession.

(2) An occupational title society is registered under this Division if

- (a) the society, immediately before the coming into force of this section, was registered under Part 10 of the previous Act, and
- (b) the registration of the society has not been cancelled under this Act.

### **Section 198: Definitions and Interpretation [New]**

This definition provision is transitional. It recognizes, as occupational title societies, societies that are already registered under Part 10 of the current *Society Act*.

### Effect of registration

- 199** (1) A person who is not a member of an occupational title society that is registered under this Division must not use, in connection with an occupation or profession the person practises that is similar to the occupation or profession represented by the society, the name of that society or the designated words or initials of that society in a way that identifies the person as a member of that society.
- (2) Registration under this Division of an occupational title society does not mean that the society, its qualifications for admission to membership or its members are in any way endorsed by the government.

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- (3) Registration under this Division of an occupational title society does not affect any remedy that a person would have if that society had not been registered under this Division.

### **Section 199: Effect of registration [Society Act, ss. 89, 92]**

This section carries forward the current Act's protection for societies that are registered as occupation title societies under the current Act. Their members will continue to have the exclusive right to use designated initials or words to identify themselves as members of the society. The section also provides, as did its predecessor, that registration does not mean that the society is endorsed by government.

### **Injunction**

- 200**
- (1) An occupational title society that is registered under this Division may apply to the court for an injunction restraining a person from contravening section 199 (1) in relation to that society.
  - (2) The court may grant an injunction sought under subsection (1) if satisfied that there is reason to believe that there has been or will be a contravention of section 199 (1) in relation to the occupational title society.
  - (3) The court may grant an interim injunction until the outcome of an action commenced under subsection (1).

### **Section 200: Injunction [Society Act, s. 90]**

This section carries forward a provision of the current Act that allows an occupational title society to seek an injunction to prevent the use of its designated initials or words by a non-member.

### **Bylaw changes**

- 201**
- An occupational title society that is registered under this Division must not submit a bylaw alteration application to the registrar for filing under section 16 [*alterations to bylaws*] of this Act in respect of the alteration to any of the bylaws of that society referred to in section 88 (1) (a) of the previous Act unless that society has obtained the written consent of the registrar to the alteration.

### **Section 201: Bylaw changes [Society Act, s. 91(d)]**

This section carries forward the current Act's requirement for registrar consent before an occupational title society repeals bylaws dealing with self-regulatory matters, such as qualifications for admission and discipline of members. The section is expanded to require consent to any alteration of these bylaws.

### **Cancellation by registrar**

- 202**
- The registrar may cancel the registration under this Division of an occupational title society if
- (a) the registrar considers that continued registration is no longer in the public interest,
  - (b) the society does not have at least 50 members in good standing,

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- (c) the society alters its purposes to remove the purpose of representing the interests of an occupation or profession, or to change the occupation or profession whose interests are being represented,
- (d) the society submits a bylaw alteration application under section 16 [*alterations to bylaws*] without obtaining the written consent required under section 201, or
- (e) the society requests that the registration be cancelled.

### **Section 202: Cancellation by registrar [Society Act, s. 91]**

This section carries forward a provision of the current Act that allows the registrar to cancel the registration of a society as an occupational title society under specified circumstances or if it is no longer in the public interest. The section has been amended to allow for cancellation on request of the society.

**Note on insurance and health care societies:** The only special societies covered in these proposals for a new *Societies Act* are member funded societies and occupational title societies, as set out above. However, the current Act also deals with other special types of societies. These are discussed below.

### **Insurance societies**

Historically, societies were sometimes incorporated in order to provide life and/or accident and sickness insurance for their members and families, especially in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries when the insurance market was not very mature. Legislative changes have been adopted over the last 70 years to progressively limit and regulate insurance being offered by societies and, the law now generally requires insurance to be provided by fully regulated business corporations.

In 1990, legislation was adopted to prohibit any new societies from offering insurance or from obtaining a business authorization under the *Financial Institutions Act* (FIA). However, a few existing societies were deemed to have business authorizations and are now regulated as licensed insurers. As well, some other existing societies offering limited types of insurance were “grandfathered” and fall outside many of the regulatory provisions of the FIA.

Several discrete provisions of the current *Society Act*, including a requirement to invest funds prudently, restrictions on certain amalgamations and the obligation to have an auditor and audited financial statements, continue to apply to these insurance societies. These provisions are not proposed to be included in the new *Societies Act*. Instead, they will be considered in the context of the modern regulatory framework for insurance, and will be carried forward in insurance statutes, such as the FIA, where appropriate.

The government plans to begin a comprehensive review of the FIA this year, as mandated by legislation. A broader review of the insurance society provisions will likely be undertaken as part of the FIA review.

### **Health care societies**

Another common purpose for societies is to operate hospitals, boarding homes and similar facilities. The current Act requires that certain relevant government consents be obtained before these societies can incorporate or amend their constitutions. These requirements are not

entirely compatible with the electronic filing system proposed for societies under the new Act, where it will not be possible for the registrar to vet filings to ensure that necessary consents have been obtained. Under the new electronic registration system, societies themselves will have to ensure consents are obtained before incorporating or making alterations to their constitution or bylaws.

In some areas, there may already be adequate regulation of these entities and, therefore, the policy of including consent requirements in the new Act is under review. However, at this stage, it is proposed that the current Act's requirements for consent to own, manage or operate a hospital under the *Hospital Act* be carried forward into the new *Societies Act*, and perhaps expanded to cover other healthcare facilities.

## **PART 13 – GENERAL**

### **Division 1 – Application of *Business Corporations Act***

#### **References in applicable provisions of the *Business Corporations Act* and regulations**

- 203** In applying a provision of the *Business Corporations Act*, or of a regulation under that Act, for the purposes of this Act, unless a contrary intention appears in this Act or the regulations, that provision must be read as follows:
- (a) a reference to a company is to be read as a reference to a society;
  - (b) a reference to a director is to be read as a reference to a director within the meaning of this Act;
  - (c) a reference to an officer is to be read as a reference to a senior manager;
  - (d) a reference to a shareholder is to be read as a reference to a member;
  - (e) a reference to articles is to be read as a reference to bylaws.

#### **Section 203: References in applicable provisions of the *Business Corporations Act* and regulations [New]**

The new Act applies several provisions of the BCA directly (see, for example, section 204 below). This section provides that the definitions in the new *Societies Act*, and not the BCA definitions, apply when reading the provisions of the BCA that are made applicable to societies.

#### **Pre-incorporation contracts**

- 204** Section 20 [*pre-incorporation contracts*] of the *Business Corporations Act* applies for the purposes of this Act.

#### **Section 204: Pre-incorporation contracts [New; BCA s. 20]**

This section provides rules regarding the effect of contracts entered into in anticipation of the incorporation of a new society. As the use of pre-incorporation contracts in the non-profit context is likely to be rare, the BCA provisions are simply applied by reference.

#### **Trust indentures, debentures, receivers and receiver managers**

- 205** (1) Division 9 [*Debentures*] of Part 3 [*Finance*] of the *Business Corporations Act* applies for the purposes of this Act.



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- (2) Without otherwise limiting the application to societies of Divisions 8 [*Trust Indentures*] and 10 [*Receivers and Receiver Managers*] of Part 3 of the *Business Corporations Act*, for the purposes of section 92 [*eligibility of trustee*] of that Act, membership in a society must not be taken into consideration in determining whether a material conflict of interest exists between a person's role as trustee and the person's role in any other capacity.

### **Section 205: Trust indentures, debentures, receivers and receiver managers [Society Act, s. 35(1) and (2)]**

This section carries forward provisions of the current Act that apply the debenture provisions of the BCA. As well, the section reflects the fact that the trust indenture and appointment of receiver sections of the BCA already apply to societies (because they are "corporations"). Finally, the section carries forward and clarifies a current Act rule that society membership is not to be taken into account when determining whether a person has a material conflict of interest as a trustee under the applicable trust indenture provisions of the BCA.

### **Part 10 of the *Business Corporations Act* does not apply**

- 206** Part 10 [*Liquidation, Dissolution, Restoration and Reinstatement*] of the *Business Corporations Act* does not apply to the dissolution of a society.

### **Section 206: Part 10 of the *Business Corporations Act* does not apply [New]**

This section clarifies that the liquidation and dissolution provisions of the BCA (which sets out a default set of winding up rules) do not apply to societies, which have their own procedures set out in Part 10 of the new Act.

## Division 2 – Filing, Furnishing and Publication

### **Filing of records**

- 207** (1) For the purposes of this Act, a record is filed with the registrar when the registrar accepts the record and includes, in the register of societies, the information contained in the record.
- (2) A record that, under this Act, must or may be filed with the registrar, submitted to the registrar for filing or provided to the registrar must be filed, submitted or provided, as the case may be, in the manner required by the registrar.
- (3) Sections 407 (a) [*means of filing*] and 408 (1) (b) [*filing of records*] of the *Business Corporations Act* do not apply in relation to the filing of records with the registrar under this Act.
- (4) Despite sections 409 [*future dated filing of records*] and 410 [*limitation on future dated filings*] of the *Business Corporations Act*, a record submitted for filing to the registrar under this Act may not specify a date on which the filing of the record is to take effect that is later than the date on which the record is filed with the registrar.

### **Section 207: Filing of records [New; BCA ss. 407, 408]**

This new section establishes how a record is "filed" with the registrar. Consistent with the language used in other corporate statutes, a record is not, as one might think, filed when it is



given to, or otherwise submitted to, the corporate registry. Instead, the record is only filed when the registrar accepts the record and updates the register of societies. The section also allows the registrar to set the form and manner (e.g. electronic or paper) in which filings may be made. Finally, the section clarifies that future dated filings are not contemplated for society filings, as the need for these is not sufficient to justify the additional computer system costs.

### Furnishing of records by registrar

- 208** For the purposes of this Act, a record is furnished to a person by the registrar if the registrar provides the record to the person
- (a) by mail to the mailing address for the person shown in the registrar's records,
  - (b) if the person has provided an email address or fax number for that purpose, by email or fax to that email address or fax number,
  - (c) by another method agreed upon by the registrar and the person, or
  - (d) by a prescribed method.

#### **Section 208: Furnishing of records by registrar [New; BCA s. 8, BCA Regulation s. 5]**

This section sets out the methods by which the registrar may provide records to the public. In keeping with modern forms of communication, records may be sent by e-mail, or by another method agreed upon by the recipient.

### Publication

- 209** For the purposes of this Act, notice of a matter is published by the registrar if the registrar publishes notice of the matter
- (a) on a website maintained by or on behalf of the government, or
  - (b) in another prescribed manner.

#### **Section 209: Publication [New; BCA Regulation s. 6]**

This section sets out the methods by which the registrar may publish notices required or permitted to be published under the Act.

## Division 3 – Government Powers of Investigation and Dissolution

### Investigation of society by minister

- 210**
- (1) In this section, “**minister**” means the prescribed minister.
  - (2) If it appears to the registrar that a society
    - (a) is conducting its activities with intent to defraud a person or to otherwise act unlawfully, or
    - (b) is carrying on activities that are detrimental to the public interest,the registrar must report the facts to the minister.
  - (3) On receipt of a report from the registrar under subsection (2), or on his or her own initiative, the minister may appoint a person to conduct an investigation of a society and to make a written report to the minister of the investigator's findings.

- (4) An investigator appointed under subsection (3) may, in relation to the activities, internal affairs, accounts and records of or relating to the society being investigated, examine under oath a person who is or was a member, director or senior manager of the society or holds or held an equivalent position in a subsidiary of the society, or who is an employee, auditor, agent, trustee, banker, receiver, receiver manager or liquidator of the society or of a subsidiary of the society.
- (5) A person must, on examination under subsection (4), answer any question relating to the society and must produce any records in that person's custody or control relating to the society.
- (6) After receiving a report from the registrar or after an investigation under this section, and subject to the conditions the minister considers advisable and to any order of the court, the minister may do one or more of the following:
  - (a) order the society to conduct all or specified activities or internal affairs of the society in the manner specified in the order;
  - (b) order the society to cease, for a specified period or permanently, all or specified activities of the society or the exercise of all or specified powers of the society;
  - (c) apply to the court for an order under section 99 [*complaints by public*];
  - (d) recommend to the Lieutenant Governor in Council that the society be dissolved under section 212 [*dissolution by Lieutenant Governor in Council*].

**Section 210: Investigation of society by minister [Society Act, s. 84]**

This section carries forward the current Act's provision that allows the responsible minister to investigate a society that is acting unlawfully or against the public interest. The section clarifies the process, and ministerial powers, but is essentially unchanged except that the minister is explicitly empowered to apply to the court for an appropriate order, or to recommend that the errant society be dissolved by order of the Lieutenant Governor in Council (under section 212 below). As is the case now, failure to answer questions and provide records to the investigator, or to comply with an order of the minister, will be offences under the new Act.

**Involuntary dissolution by registrar**

- 211** (1) If a society
- (a) fails, for 2 consecutive calendar years, to file with the registrar an annual report required under this Act to be filed,
  - (b) fails, for a period of at least 2 years, to file with the registrar a record, other than an annual report, required under this Act to be filed,
  - (c) fails to hold the annual general meeting referred to in a notice sent by the registrar under section 70 (4) [*society must file annual report*],
  - (d) fails to pay a fee required under this Act to be paid to the registrar,
  - (e) fails to comply with an order of the registrar, or
  - (f) fails to comply with an order of the minister under section 210 (6) (a) or (b),
- the registrar may furnish to the society a letter notifying the society of its default and of the powers of the registrar under this section.

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- (2) The registrar may furnish the letter referred to in subsection (1) to the registered office of the society.
- (3) Unless, within one month after the registrar furnishes the letter referred to in subsection (1),
  - (a) the default identified in the letter is remedied, or
  - (b) the registrar receives a response that
    - (i) satisfies the registrar that reasonable steps are being taken to remedy the default, or
    - (ii) is otherwise satisfactory to the registrar,the registrar may publish notice that, at any time after the expiration of one month after the date of the publication of notice, the society may be dissolved unless cause to the contrary is shown to the registrar.
- (4) At any time after one month after the date of the publication of notice referred to in subsection (3) or, if an application for extension was filed with the registrar under subsection (5), at any time after the expiry of the extended period that results from that filing, the registrar may dissolve the society unless cause to the contrary is shown to the registrar.
- (5) A society referred to in subsection (4) may file with the registrar an application for extension and, with that filing, the period after which the registrar may dissolve the society is extended
  - (a) for a period of 6 months, or
  - (b) if the registrar furnishes written notice to the society indicating that a period longer than 6 months has been allowed, for the longer period referred to in the notice.
- (6) Unless the registrar otherwise permits, a society must not submit for filing more than one application for extension in relation to any one notice published under subsection (3) in relation to the society.

### **Section 211: Involuntary dissolution by registrar [Society Act, s. 102; BCA s. 422]**

This section carries forward and updates the registrar's power to dissolve a society that fails, for 2 consecutive years, to file an annual report, or that fails to file other records or comply with an order of the registrar or minister. A society that fails to hold an AGM for 2 years can also be dissolved. The process is the same as currently, except that the new section expressly allows a society to apply for a 6 month extension. This new process, which follows recent amendments to the BCA, will give societies that are off-side in their filings an additional opportunity to comply with the Act to avoid dissolution.

### **Dissolution by Lieutenant Governor in Council**

**212** The Lieutenant Governor in Council may declare a society to be dissolved.

### **Section 212: Dissolution by Lieutenant Governor in Council [Society Act, s. 101; BCA s. 423]**

This section carries forward the current Act provision allowing for dissolution of a society by Cabinet order. Although this type of provision is rarely, if ever, used, it preserves government's power to intervene in extraordinary circumstances.

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### Application of Part 10

- 213** Section 149 (2) [*certificate of dissolution and publication*] and Divisions 10 [*Effect of Dissolution*] and 11 [*Restoration of Dissolved Society*] of Part 10 [*Liquidation, Dissolution and Restoration*] apply in relation to a society that has been dissolved under this Division.

#### **Section 213: Application of Part 10 [Society Act, Part 12]**

This section clarifies that certain rules applicable to voluntary dissolutions under Part 10, including provisions respecting the ongoing liability of the society, also apply when a society is dissolved by the registrar or Cabinet. This is consistent with the approach found in the current Act.

## Division 4 – Fees

### Fees

- 214** There must be paid to the registrar, in respect of each matter set out in Column 1 of the Schedule to this Act, the fee set out opposite that matter in Column 2 of that Schedule.

#### **Section 214: Fees [Society Act, s. 98]**

This section requires that the established fee be paid to the registrar for filing records under the Act. The fees themselves will be set out in a Schedule at the end of the Act. (The fees payable to the registrar are currently under review, and are therefore not included in the Act at this time.)

## PART 14 – OFFENCES AND FINES

### Offence Act

- 215** Section 5 [*general offence*] of the *Offence Act* does not apply to this Act or the regulations.

#### **Section 215: Offence Act [Society Act, s. 142; BCA s. 425]**

Section 5 of the *Offence Act* makes it an offence to contravene any provision of a statute or regulation. Disapplying this section clears the way for a more modern approach to be used – that is, the identification of specific provisions, as set out below, breach of which constitutes an offence.

### General offences

- 216** (1) A person who contravenes any of the following provisions commits an offence:
- (a) section 37 (1) or (2) [*issuance of financial statements*];
  - (b) section 98 (4) [*complaints by members and other interested persons*] as it applies section 210 (5) [*investigation of society by minister*];
  - (c) section 113 (2) [*examination and access*];
  - (d) section 130 (2) [*qualifications of liquidator*];
  - (e) section 143 [*duty to assist liquidator*];

- (f) section 210 (5) [*investigation of society by minister*].
- (2) An individual who becomes or acts as a director of a society and who, under section 43 [*individuals disqualified as directors*], is not qualified to be a director commits an offence.
- (3) An individual who becomes or acts as a senior manager of a society and who, under section 62 (3) [*senior managers*], is not qualified to be a senior manager commits an offence.
- (4) A society that contravenes an order of the minister under section 210 (6) (a) or (b) [*investigation of society by minister*] commits an offence.
- (5) If a society commits an offence under subsection (4), a director or senior manager of the society who knowingly authorizes, permits or acquiesces in the commission of the offence also commits an offence, whether or not the society is prosecuted or convicted.
- (6) An extraprovincial non-share corporation that contravenes any of the following provisions commits an offence:
- (a) section 165 [*extraprovincial non-share corporations required to be registered*];
  - (b) section 179 [*effect of cancellation of registration*];
  - (c) section 185 (3) [*effect of reinstatement*].

**Section 216: General offences [Society Act, ss. 40(3), 53(3), 84(3) and (5), etc. and s.142; BCA s. 426]**

This section makes failure to comply with specific sections an offence. The selected sections are, for the most part, the same as those in the current Act. However, in keeping with modern drafting practice, they have been consolidated into one Part along with all other offences. New offences have been added only for new requirements – for example, acting as a director or senior manager when not qualified to do so is an offence. Any new offences are generally consistent with the offence provisions of the BCA.

**Offences in relation to records**

- 217** A society, or a liquidator who has custody or control under section 139 (1) (b) [*duties of liquidator*] or 148 (1) (a) [*retention of society's records by liquidator*] of a society's records, commits an offence if the society or liquidator, as the case may be, refuses, without reasonable excuse,
- (a) to permit a person to inspect a record, in relation to the society, that the person is entitled to inspect under section 23 [*inspection of records*], 24 [*inspection of register of members*], 139 (1) (b) or 148 (1) (b), as the case may be, and for which the appropriate fee, if any, was tendered, or
  - (b) to provide to a person under section 26 (2) [*copies of records*], 27 [*copies of financial statements*], 139 (1) (b) or 148 (1) (b), as the case may be, a copy of a record, in relation to the society, which the person is entitled to receive and for which the appropriate fee, if any, was tendered.

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### **Section 217: Offences in relation to records [New; BCA s. 426(5)]**

This new section makes it an offence for a society (or a liquidator) to refuse, without justification, to give access to, and copies of, the society's records. It is based on a similar BCA provision, and reflects the importance of the record access provisions.

### **Misleading statements an offence**

- 218**
- (1) Subject to subsection (4), a person who makes or assists in making a statement that is included in a record that is required or permitted to be made by or for the purposes of this Act or the regulations commits an offence if the statement
    - (a) is, at the time and in the light of the circumstances under which it is made, false or misleading in respect of a material fact, or
    - (b) omits a material fact, the omission of which makes the statement false or misleading.
  - (2) If a society commits an offence under subsection (1), a director or senior manager of the society who authorizes, permits or acquiesces in the commission of the offence also commits an offence, whether or not the society is prosecuted or convicted.
  - (3) If an extraprovincial non-share corporation commits an offence under subsection (1), a member of the board of directors or other governing body of that corporation, or an officer of that corporation, who authorizes, permits or acquiesces in the commission of the offence also commits an offence, whether or not that corporation is prosecuted or convicted.
  - (4) A person does not commit an offence under this section in relation to a statement if the person
    - (a) did not know that the statement was false or misleading, and
    - (b) could not have known, with the exercise of reasonable diligence, that the statement was false or misleading.

### **Section 218: Misleading statements an offence [Society Act, s. 142; BCA s. 427]**

This section carries forward the current offence of making a false or misleading statement in a record filed with the registrar, or in any other record made under the Act. The reduced role of the registrar in vetting filings makes the provision of full and accurate information more important than ever. As is the case now, a defence of reasonable diligence is available. The same provision is found in the BCA.

### **Fines**

- 219**
- (1) A person who commits an offence under section 216 (1) to (5) [*general offences*] or 217 [*offences in relation to records*] is liable,
    - (a) in the case of a person other than an individual, to a fine of not more than \$5 000, or
    - (b) in the case of an individual, to a fine of not more than \$2 000.
  - (2) A person who commits an offence under section 218 is liable,

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- (a) in the case of a person other than an individual, to a fine of not more than \$25 000, or
  - (b) in the case of an individual, to a fine of not more than \$10 000.
- (3) An extraprovincial non-share corporation that commits an offence under section 216 (6) is liable to a fine of not more than the prescribed amount for each day that the offence continues.

### **Section 219: Fines [Society Act, s. 142(5); BCA s. 428]**

This section contains the fines that could be imposed on a society or other person who is convicted of an offence under the Act. The fines for most offences are the same as they are now. However, the misleading statement offence now carries a higher penalty, consistent with the penalty found in the BCA. This reflects the serious nature of the offence.

### **Remedies preserved**

- 220**
- (1) A legal proceeding, conviction or fine for an offence under this Act does not relieve a person from any other liability.
  - (2) Without limiting subsection (1), if a person is convicted of an offence under this Act, the court in which proceedings in respect of the offence are taken, in addition to any fine the court may impose for the offence, may order the person to comply with the provisions of this Act.
  - (3) A person who contravenes an order under subsection (2) commits an offence and is liable on conviction to the fines provided for the offence in relation to which the order was made.

### **Section 220: Remedies preserved [New; BCA s. 429]**

This section adopts a BCA provision setting out the legal effect of a prosecution under the new Act, and clarifying the court's powers to order compliance with the Act.

### **Limitation period**

- 221**
- (1) The time limit for laying an information to commence a prosecution for an offence under this Act is 3 years after the date on which the act or omission that is alleged to constitute the offence occurred.
  - (2) An information must not be laid in respect of an offence if
    - (a) the offence is committed by the failure to file, or to file within a required period, a record with the registrar, and
    - (b) before the laying of the information, the appropriate record is filed with the registrar.

### **Section 221: Limitation period [New; BCA s. 430]**

This section establishes a limitation period of 3 years in which a prosecution for an offence under the Act may be brought.



**PART 15 – REGULATIONS**

**General regulation-making authority**

- 222** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 [*powers to make regulations*] of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations in relation to any matter for which regulations are contemplated by this Act.
- (3) The authority to make regulations under another provision of this Act does not limit subsection (1) or (2).
- (4) In making a regulation under this Act, the Lieutenant Governor in Council may do one or more of the following:
- (a) delegate a matter to a person;
  - (b) confer a discretion on a person;
  - (c) make different regulations for different persons, places, things, records, information, matters or circumstances, or for different classes of persons, places, things, records, information, matters or circumstances;
  - (d) establish or define classes of persons, places, things, records, information, matters or circumstances.

**Section 222: General regulation-making authority [Society Act, s. 99]**

This section, which is standard in most statutes, gives Cabinet the power to pass regulations needed for the effective implementation and operation of the Act.

**Regulations applying the *Business Corporations Act* and regulations**

- 223** (1) Despite section 206 [*Part 10 of the Business Corporations Act does not apply*], the Lieutenant Governor in Council may make regulations providing that a provision of the *Business Corporations Act* or the regulations under that Act apply for the purposes of this Act.
- (2) The Lieutenant Governor in Council may make regulations in respect of a provision of the *Business Corporations Act*, or the regulations under that Act, that is made applicable for the purposes of this Act, including, without limitation, regulations doing one or more of the following:
- (a) providing that, in applying a provision, in addition to any necessary changes, or changes provided for in this Act, that provision is to be read with specified changes;
  - (b) specifying circumstances in which a provision applies;
  - (c) setting conditions of, or limitations on, the application of a provision.

**Section 223: Regulations applying the *Business Corporations Act* and regulations [New]**

This section allows regulations to adopt, with appropriate changes, existing corporate law provisions of the BCA. Many of the features of the new *Societies Act* are already based on those found in the BCA but, over time, it may be decided that some additional processes from the BCA are appropriate for societies.

### Regulations in relation to exclusions from provisions

**224** The Lieutenant Governor in Council may make regulations as follows:

- (a) providing that all or any of the provisions referred to in section 53 (a) to (k) [*application of this Act to persons performing functions of director*] do not apply to a person in a specified class of persons;
- (b) providing that funding in a specified class of funding is excluded from the definition of “public funding” in section 187 [*definitions*];
- (c) establishing circumstances in which a regulation under paragraph (a) or (b) of this section applies;
- (d) setting conditions of, or limitations on, the application of a regulation under paragraph (a) or (b) of this section.

### **Section 224: Regulations in relation to exclusions from provisions [New]**

This section allows for regulations to be crafted exempting certain classes of people or situations from various provisions of the Act. A regulation-making power such as this is standard for completely revised Acts, due to the risk that new provisions may have broad unintended consequences.

### Other regulations

**225** The Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing entities or classes of entities for the purposes of paragraph (e) of the definition of “qualified recipient” in section 1 [*definitions*];
- (b) respecting distributions contemplated by section 4 (e) [*restrictions on distributions*];
- (c) respecting names and assumed names and prescribing the requirements names or assumed names must meet before being available for reservation or use under this Act;
- (d) for the purposes of section 34 (3) [*financial statements*], prescribing requirements respecting the preparation of financial statements under this Act, including, without limitation, the form and manner in which financial statements must be produced;
- (e) for the purposes of section 45 (4) [*remuneration and reimbursement of directors*],
  - (i) prohibiting, in specified circumstances, the payment of remuneration or reimbursement to directors, or
  - (ii) specifying conditions or limitations on the payment of remuneration or reimbursement to directors;
- (f) specifying information that, in addition to the information provided for in this Act, must or may be included in annual reports filed with the registrar under section 70 [*society must file annual report*] or 172 [*extraprovincial non-share corporation must file annual report*];
- (g) for the purposes of section 107 (1) (a) [*appointment of auditor*], requiring a society in a specified class of societies to have an auditor, subject to any conditions or limitations specified in the regulation;

- (h) for the purposes of section 188 (2) (b) [*statement in constitution that member funded society exists primarily for members*], providing that a constitution of a society must not contain a statement referred to in section 188 (1) in the circumstances and subject to any conditions or limitations specified in the regulation;
- (i) respecting any matter the registrar considers necessary for carrying out the purposes of this Act, including matters in respect of which no express or only partial or imperfect provision has been made;
- (j) defining any word or expression used but not defined in this Act;
- (k) prescribing, for the contravention of a regulation made under this Act, a fine not exceeding the maximum fine set out in section 219 (1) [*finest*].

**Section 225: Other regulations [New]**

This section also contains standard regulation-making powers to permit regulations required for various sections of the Act, including regulations dealing with society names and financial statements.

## **PART 16 – TRANSITIONAL PROVISIONS AND REPEAL**

### **Transitional Provisions**

#### **Division 1 – Definitions**

##### **Definitions**

**226** In this Part:

- “**pre-existing reporting society**” means a pre-existing society that, immediately before the coming into force of this section, was a reporting society under the previous Act;
- “**pre-transition bylaws**” means the bylaws of a pre-existing society as those bylaws read immediately before the coming into force of this section;
- “**pre-transition constitution**” means the constitution of a pre-existing society, or a document recognized as a constitution of a society under the previous Act, as that constitution or document read immediately before the coming into force of this section;
- “**pre-transition society**” means a pre-existing society that has not filed with the registrar a transition application under section 231 [*pre-existing society must file transition application*];
- “**reporting society provisions**” means the provisions that are prescribed under section 242 [*regulations establishing reporting society provisions*] and designated under that section as the “Reporting Society Provisions”;
- “**unalterable provision**” means a provision of the pre-transition constitution of a pre-existing society that is stated in the pre-transition constitution to be unalterable.

### **Section 226: Definitions [New]**

This section contains definitions, intended to simplify drafting, for the purposes of transitioning pre-existing societies to the new Act.

## **Division 2 – Pre-Transition Societies**

This Division is intended to allow societies formed under the current Act to continue to operate before their transition to the new electronic system proposed for corporate registry filings.

### **Bylaws and constitution of pre-transition society**

**227** A reference in this Act to the bylaws of a society, when used in relation to a pre-transition society, includes every provision of the society's pre-transition constitution other than

- (a) the statement of the name of the society, and
- (b) the statement of the purposes of the society.

### **Section 227: Bylaws and constitution of pre-transition society [New]**

This section provides that the term “bylaws”, when used in the new Act, will include some matters that are currently found in the constitutions of pre-existing societies. Under the new Act, constitutions may only contain the name and purposes of a society – in contrast, constitutions of existing societies may, and often do, contain other provisions. These provisions will continue to apply to the society as “bylaws” until they are actually moved to the pre-existing society's bylaws on transition.

### **Pre-existing reporting societies**

**228** The reporting society provisions apply to a pre-existing reporting society until the alteration to the bylaws of that society referred to in section 231 (2) (b) (iv) [*pre-existing society must file transition application*] takes effect to incorporate into the bylaws the reporting society provisions.

### **Section 228: Pre-existing reporting societies [New]**

This section continues the application of certain provisions of the current Act -- called the “reporting society provisions” or RSPs (see Appendix B) – to pre-existing reporting societies. Pre-existing reporting societies include hospitals, insurance societies and other societies that require government consent to incorporate, as well as any society that has a subsidiary.

The reporting society provisions contain requirements from the current Act – in particular, the requirement that the society's financial statements be audited – that currently apply to this type of society. Although the “reporting society” concept has not been carried forward into the new Act (i.e. there will be no new ones), the rules applicable to reporting societies will continue to apply to pre-existing reporting societies until they transition to the new Act.

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When a pre-existing reporting society files a transition application under section 231, the society will include the RSPs in its bylaws. After that, the society can alter its bylaws to amend or remove these provisions (subject to other enactments, contracts or funding arrangements that may require the continued application of these provisions).

### No alterations to constitution or bylaws of pre-transition society before transition

- 229** Despite sections 14 [*alterations to constitution*] and 16 [*alterations to bylaws*], a pre-transition society must not alter its pre-transition constitution or pre-transition bylaws before the society files with the registrar a transition application under section 231 [*pre-existing society must file transition application*].

### Section 229: No alterations to constitution or bylaws of pre-transition society before transition [New]

This section prohibits a society from altering either its constitution or bylaws before it transitions to the new Act. Under section 231, some changes to the constitution and bylaws are allowed to be made with the filing of a transition application under that section.

### Filings respecting directors and registered office of pre-transition society

- 230** After a filing is made under section 18 [*change of registered office*] or 51 [*filings respecting directors*] in relation to a pre-transition society, the registrar, for the purposes of section 18 (3) or 51 (3), as the case may be, must alter the information shown in the register of societies respecting the society and furnish to the society a confirmation of the change.

### Section 230: Filings respecting directors and registered office of pre-transition society [New]

Societies that have not yet transitioned can still change directors and registered offices. However, they will not receive the same corporate registry outputs as transitioned societies will receive. This section provides that they will receive a simple confirmation of the change from the registry, instead of a copy of the filed “statement of directors and registered office” that is given to transitioned societies.

## Division 3 – Transition of Pre-Existing Societies

### Pre-existing society must file transition application

- 231**
- (1) A pre-existing society, within 2 years after the coming into force of this section, must file with the registrar a transition application that complies with subsection (2).
  - (2) A transition application must contain
    - (a) a constitution for the society that sets out, as the name and purposes of the society, the name and purposes that the society had immediately before the filing of the application,
    - (b) the bylaws for the society, consolidated into a single set of bylaws, that contain
      - (i) the pre-transition bylaws of the society,

- (ii) any provisions from the society's pre-transition constitution, other than the society's name, its purposes and any unalterable provisions, as they read immediately before the coming into force of this section,
  - (iii) any unalterable provisions from the society's pre-transition constitution, as they read immediately before the coming into force of this section, identified in accordance with section 232, and
  - (iv) if the society is a pre-existing reporting society, the reporting society provisions, and
- (c) a statement of directors and registered office for the society that sets out
- (i) the full name and address of each individual who was, immediately before the filing of the application, a director of the society, and
  - (ii) the delivery address and mailing address of the office that was, immediately before the filing of the application, the registered office of the society.
- (3) When a transition application in respect of a society has been filed with the registrar in accordance with this section, the society has the constitution, bylaws and statement of directors and registered office contained in the transition application.
- (4) Despite any wording to the contrary in a security agreement or other record, the filing of a transition application by a society in accordance with this section, including any alteration to the constitution or bylaws of the society required by this section, does not constitute a breach or contravention of, or a default under, the security agreement or other record, and is deemed for the purposes of the security agreement or other record not to be an alteration to the constitution or bylaws of the pre-existing society.
- (5) After a transition application in respect of a society has been filed with the registrar in accordance with this section, the registrar must furnish to the society a certified copy of the following records contained in the application:
- (a) the constitution of the society;
  - (b) the bylaws of the society;
  - (c) the statement of directors and registered office of the society.

**Section 231: Pre-existing society must file transition application [New]**

This section requires all societies formed under the current Act (pre-existing societies) to file a transition application within 2 years after the new Act comes into force. The transition application must contain the new constitution and bylaws for the society – that is, the society will have to copy and paste, or re-type, its current constitution and bylaws into the electronic database proposed for the new Act.

There are several significant features contained in this section. First, the section requires the consolidation of existing bylaws – that is, societies that have bylaws contained in multiple documents will have to submit one updated “clean” version (see notes to section 12 for a more extensive discussion of this issue). Second, the section requires that any provisions of a pre-existing society's constitution, other than its name and purposes, be migrated, word-for-word, into the society's bylaws. This includes both alterable and unalterable provisions, including provisions stating where a society's property is to go on its dissolution. Finally, if the pre-



existing society is a “reporting society” under the current Act, its new bylaws must include the “Reporting Society Provisions” set out in the regulations (see notes to section 228).

### **Pre-existing societies with unalterable provisions in pre-transition constitution**

- 232** If a pre-existing society’s pre-transition constitution contains an unalterable provision, the society must, in the bylaws contained in the transition application filed under section 231, identify the provision as having previously been an unalterable provision.

### **Section 232: Pre-existing societies with unalterable provisions in pre-transition constitution [New]**

This section describes how provisions of a pre-existing society’s constitution that are stated to be “unalterable” are to be treated on transition. When the society includes these constitutional provisions, word-for-word, into the society’s bylaws on transition, they must be identified as previously unalterable provisions. After this, they can be altered like any other bylaw. However, the fact that these provisions are flagged as having formerly been unalterable will cause societies to consider carefully before altering them.

As discussed in the notes to section 16, the treatment of unalterable provisions that is being proposed here may be controversial. Some societies value the ability to tie their hands by including provisions in their constitutions that cannot be changed. However, consultations have indicated that the ability to make provisions unalterable often does more harm than good. The proposed approach recognizes that times change and that societies should be able to adapt and change to meet new circumstances, without having to dissolve and reform in order to escape unalterable provisions that seemed desirable at some point in the past.

### **Other alterations to bylaws of pre-existing society on transition**

- 233** (1) Despite section 231 (2) (b) [*pre-existing society must file transition application*], the bylaws contained in a transition application filed under section 231 may contain alterations in addition to those described in section 231 (2) (b) or may contain an entirely new set of bylaws, if those alterations or new bylaws have been approved by a special resolution.
- (2) Despite subsection (1), a transition application must not contain bylaws that reflect any alterations to an unalterable provision referred to in section 231 (2) (b) (iii) or a reporting society provision referred to in section 231 (2) (b) (iv).

### **Section 233: Other alterations to bylaws of pre-existing society on transition [New]**

This section allows a pre-existing society to make some additional amendments to its bylaws on transition, if approved by special resolution. However, no amendments can be made to any provisions that were previously unalterable provisions of the society’s constitution or to the reporting society provisions (if they apply).



**Division 4 – Transition of Special Societies**

**Transition of pre-existing society  
wishing to become member funded society**

- 234** Despite section 231 (2) (a) [*pre-existing society must file transition application*], the constitution included in a pre-existing society's transition application filed under section 231 may include the statement referred to in section 188 (1) [*statement in constitution that member funded society exists primarily for members*], without the approval of the court referred to in section 190 (2) [*altering constitution to become member funded society*], if
- (a) the society wishes to become, on the filing of the application, a member funded society as defined in section 187 [*definitions*],
  - (b) the society is not prohibited from being a member funded society under section 188 (2), and
  - (c) the inclusion of the statement has been approved by a special resolution.

**Section 234: Transition of pre-existing society wishing to become member funded society [New]**

This section allows a qualified pre-existing society, at the time of transition, to designate itself as a member funded society (see Division 1 of Part 12). Member funded societies receive little or no public funding, and are therefore subject to fewer accountability requirements.

The intent is to provide transitioning societies the same opportunity as is provided to new societies upon incorporation to designate themselves as member funded societies. Subsequent to transition, a qualified society that wishes to alter its constitution to take on this designation will require court approval to do so. A pre-existing society that has any of the attributes set out in section 188 (2) may not alter its constitution to become a member funded society under this section.

**Transition of pre-existing occupational title societies**

- 235** (1) Despite sections 233 [*other alterations to bylaws of pre-existing society on transition*] and 234 [*transition of pre-existing society wishing to become member funded society*], a pre-existing society that is an occupational title society as defined in section 198 [*definitions and interpretation*] and that is registered under Division 2 [*Occupational Title Societies*] of Part 12 [*Special Societies*] must not submit to the registrar for filing under section 231 [*pre-existing society must file transition application*] a transition application that includes
- (a) alterations described in section 233 to the bylaws of the pre-existing society, or
  - (b) a constitution containing the statement referred in section 188 (1) [*statement in constitution that member funded society exists primarily for members*].
- (2) The registrar may cancel the registration of an occupational title society under Division 2 of Part 12 if the society submits for filing a transition application that does not comply with subsection (1) of this section.

**Section 235: Transition of pre-existing occupational title societies [New]**

This section prohibits an occupational title society from altering its bylaws, or altering its constitution to include the member funded statement, at the time of transition.

**Restoration of pre-transition society**

- 236** A pre-transition society that
- (a) has been restored under section 157 (1) [*restoration by registrar*] or 159 (2) [*filing of restoration application with registrar in court-ordered restoration*], and
  - (b) has not been subsequently dissolved under this Act
- must file with the registrar, within one year after the society's restoration, a transition application that complies with section 231 [*pre-existing society must file transition application*], and this Part applies.

**Section 236: Restoration of pre-transition society [New]**

This section requires a dissolved society that is restored, and that has not yet transitioned to the new Act, to file a transition application within one year of its restoration.

**Division 5 – Application of Act to Pre-Existing Societies**

**References to members, senior managers and filings**

- 237** (1) A reference in this Act to
- (a) a member of a society includes a person who, immediately before the coming into force of this section, was a member of a pre-existing society and remains, in accordance with the bylaws, a member of the pre-existing society, and
  - (b) a senior manager of a society includes an individual who, immediately before the coming into force of this section, held, in a pre-existing society, a position similar to the position held by an individual described in the definition of “senior manager” in section 1 [*definitions*] and remains in that position.
- (2) A reference in section 176 (1) (a) or (b) [*cancellation of registration by registrar*] or 211 (1) (a) or (b) [*involuntary dissolution by registrar*] to an annual report or other record required to be filed with the registrar under this Act includes a reference to an annual report or other record, as the case may be, required to be filed with the registrar under the previous Act.

**Section 237: References to members, senior managers and filings [New]**

This section simply clarifies the meaning of certain terms in the new Act as these terms relate to pre-existing societies.

**Application of Act to directors and senior managers of pre-existing societies**

- 238** Sections 19 (1) (e) [*records to be kept*], 40 [*employment of directors*], 43 [*individuals disqualified as directors*], 45 [*remuneration and reimbursement of directors*] and 62 (3) [*senior managers*] do not apply in relation to a pre-existing society until the date that is 2 years after the date on which this section comes into force.

### **Section 238: Application of Act to directors and senior managers of pre-existing societies [New]**

This section provides that certain new requirements – including directors' qualifications and restrictions on the composition of the board of directors – do not apply to pre-existing societies until 2 years after the new Act comes into force. This is intended to provide existing societies with sufficient time to make the necessary changes to comply with the new Act.

### **General meetings and voting in relation to pre-existing societies**

- 239** A general meeting called or requisitioned, or a voting process begun, in relation to a pre-existing society before the date on which this section comes into force must be called, held or continued, as the case may be, as nearly as possible, in accordance with this Act.

### **Section 239: General meetings and voting in relation to pre-existing societies [New]**

This section simply clarifies that meetings called or votes "in process" when the new Act comes into force are to be held or continued, as much as possible, in accordance with the procedures set out in the new Act.

### **First financial statements of pre-existing society**

- 240** If, when this section comes into force, a pre-existing society has not completed a financial year, the financial statements of the society must be prepared in relation to the period beginning on the date the society was incorporated or otherwise formed under the previous Act.

### **Section 240: First financial statements of pre-existing society [New]**

This section deals with societies that are incorporated under the current Act shortly before the coming into force of the new Act. It clarifies the period for financial statements of a newly formed society that has not yet completed a financial year.

## **Division 6 – Registration of Extraprovincial Non-Share Corporations**

### **Registration requirements for extraprovincial non-share corporations**

- 241** (1) An extraprovincial non-share corporation that, immediately before the coming into force of this section, was registered under Part 8 of the previous Act continues to be registered under Division 2 [*Registration*] of Part 11 [*Extraprovincial Non-Share Corporations*] of this Act.
- (2) An extraprovincial non-share corporation that, immediately before the coming into force of this section, was not registered under Part 8 of the previous Act and was not required to be registered may, but, despite section 165 [*extraprovincial non-share corporations required to be registered*], is not required to, register under Division 2 of Part 11 of this Act before the date that is 2 years after the date on which this section comes into force.

### **Section 241: Registration requirements for extraprovincial non-share corporations [New]**

This section provides that the registration of an extraprovincial society under the current Act is continued when the new Act comes into force. As well, it gives extraprovincial non-share

corporations that were not required to register under the current Act a 2 year period in which to register under the new Act.

## **Division 7 – Regulations**

### **Regulations establishing reporting society provisions**

**242** The Lieutenant Governor in Council may, by regulation, prescribe a set of provisions and designate those provisions as the “Reporting Society Provisions”.

#### **Section 242: Regulations establishing reporting society provisions [New]**

This section allows for the “Reporting Society Provisions” to be set out in the regulations (see Appendix B).

### **Transition – regulations**

- 243** (1) Despite this or any other Act, the Lieutenant Governor in Council may make regulations as follows:
- (a) respecting any matter that the Lieutenant Governor in Council considers is not provided for, or is not sufficiently provided for, in this Act;
  - (b) making provisions that the Lieutenant Governor in Council considers appropriate for the purpose of more effectively bringing this Act into operation;
  - (c) making provisions that the Lieutenant Governor in Council considers appropriate for the purpose of preventing, minimizing or otherwise addressing any transitional difficulties encountered in bringing this Act into effect, including, without limitation, provisions making an exception to or a modification of a provision in an enactment or providing for the application or continued application of a previous enactment;
  - (d) resolving any errors, inconsistencies or ambiguities arising in this Act.
- (2) A regulation under subsection (1) may be made retroactive to the date this section comes into force or a later date, and if made retroactive is deemed to have come into force on the specified date.
- (3) To the extent of any conflict between a regulation under subsection (1) and another enactment, the regulation prevails.
- (4) This section and any regulations made under this section are repealed on the date that is 3 years after the date this section comes into force.

#### **Section 243: Transition – regulations [New]**

This section allows for regulations to deal with matters arising from the transition of societies to the new Act. This power is needed to ensure that any unforeseen difficulties in applying the new legislation can be dealt with quickly.

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### **Repeal**

#### **Repeal**

**244** The *Society Act*, R.S.B.C. 1996, c. 433, is repealed.

#### **Section 244: Repeal**

This section repeals the current *Society Act*.

**APPENDIX A**

**MODEL BYLAWS**

The following proposed “Model Bylaws”, based on Schedule B of the current Act, provide a simplified template of fundamental rules respecting internal governance matters, such as the conduct of meetings and the role of directors. New societies will be offered these Model Bylaws for adoption upon their incorporation, but may choose to customize the rules to fit their particular needs.

Please note that these bylaws have been written specifically in conjunction with provisions of the new Act, and may not be consistent with requirements of the current Act.

**Bylaws of**

.....

**Name of Society (the “Society”)**

**Part 1 – Interpretation**

**Definitions**

**1.1** In these Bylaws:

“**Act**” means the *Societies Act* of British Columbia as amended from time to time;

“**Bylaws**” means these Bylaws as altered from time to time.

**Definitions in Act apply**

**1.2** The definitions in the Act apply to these Bylaws.

**Interpretation**

**1.3** In these Bylaws, words in the singular form include the plural and vice versa and words importing a specific gender include the other gender and a corporation.

**Conflict with Act or regulations**

**1.4** If there is a conflict between these Bylaws and the Act or the regulations under the Act, the Act or the regulations, as the case may be, prevail.

**Part 2 – Membership**

**Application for membership**

**2.1** A person may apply to the directors for membership in the Society, and the person becomes a member on the directors’ acceptance of the application.

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### **Compliance with Bylaws**

**2.2** Every member must comply with these Bylaws.

### **Amount of membership dues**

**2.3** The amount of the first annual membership dues, if any, must be determined by the directors, and after that any proposed change to the amount of the annual membership dues, including discontinuing the requirement to pay annual membership dues, must be approved by ordinary resolution at a general meeting.

### **Members in good standing**

**2.4** All members are in good standing other than members who are not in good standing under Bylaw 2.5.

### **Member not in good standing**

**2.5** A member is not in good standing if the member fails to pay the member's annual membership dues, if any, or any other debt owing by the member to the Society, and the member is not in good standing for so long as the debt remains unpaid.

### **Member not in good standing may not vote**

**2.6** A voting member who is not in good standing may not

- (a) vote at a general meeting, or
- (b) consent to a resolution of members.

### **Termination of membership if member not in good standing**

**2.7** A person's membership in the Society is terminated if the person is not in good standing for 12 consecutive months.

## **Part 3 – Meetings of Members**

### **Time and place of meeting**

**3.1** A general meeting must be held at the time and place that the directors determine.

### **Ordinary business**

**3.2** At a general meeting, the following business is ordinary business:

- (a) adoption of rules of order;
- (b) consideration of the financial statements of the Society;
- (c) consideration of the auditor's report, if any;
- (d) consideration of the directors' report on the financial statements, and any other directors' reports to the members;
- (e) consideration of a resolution that proposes to increase the number of directors;
- (f) the election or appointment of directors;
- (g) the appointment of an auditor, if the Society is required to have an auditor.



**Notice of special business**

- 3.3** A notice of a general meeting must state the nature of any business, other than ordinary business, to be transacted at the meeting in sufficient detail to permit a member receiving the notice to form a reasoned judgment concerning that business.

**Chair of meeting**

- 3.4** The following individual must preside as the chair of a general meeting:
- (a) the president of the Society;
  - (b) the vice-president of the Society, if the president is unwilling or unable to preside as the chair;
  - (c) one of the other directors present at the meeting, if the president and vice-president are unwilling or unable to preside as the chair.

**Alternate chair of meeting**

- 3.5** If, at a general meeting,
- (a) there is no director present within 15 minutes from the time set for holding the meeting, or
  - (b) none of the directors present is willing and able to preside as the chair of the meeting,
- the members who are present must elect one of those members to preside as the chair.

**Quorum required**

- 3.6** No business, other than the election of the chair of the meeting and the adjournment or termination of the meeting, may be conducted at a general meeting when a quorum of voting members is not present.

**Lack of quorum at commencement of meeting**

- 3.7** If, within 30 minutes from the time set for holding a general meeting, a quorum of voting members is not present,
- (a) in the case of a meeting convened on the requisition of members, the meeting is terminated, and
  - (b) in any other case, the meeting stands adjourned to the same day in the next week, at the same time and place, and if, at the continuation of the adjourned meeting, a quorum is not present within 30 minutes from the time set for holding the continuation of the adjourned meeting, the voting members present constitute a quorum for that meeting.

**If quorum ceases to be present**

- 3.8** If at any time during a general meeting there ceases to be a quorum of voting members present, business then in progress must be suspended until there is a quorum present or until the meeting is adjourned or terminated.

**Adjournments by chair**

- 3.9** The chair of a general meeting may, or, if so directed by the voting members at the meeting, must, adjourn the meeting from time to time and from place to place, but no

business may be conducted at the continuation of the adjourned meeting other than business left unfinished at the adjourned meeting.

**Notice of continuation of adjourned general meeting**

**3.10** It is not necessary to give any notice of a continuation of an adjourned general meeting or of the business to be transacted at a continuation of an adjourned general meeting except that, when a general meeting is adjourned for 30 days or more, notice of the continuation of the adjourned meeting must be given.

**Order of business at general meeting**

**3.11** The order of business at a general meeting is as follows:

- (a) elect a person to chair the meeting, if necessary;
- (b) determine that there is a quorum;
- (c) approve the agenda;
- (d) approve the minutes from the last general meeting;
- (e) deal with unfinished business from the last general meeting;
- (f) if the meeting is an annual general meeting,
  - (i) receive the directors' report on the financial statements of the Society for the previous financial year, and the auditor's report, if any, on those statements,
  - (ii) receive any other reports of directors' activities and decisions since the previous annual general meeting, and
  - (iii) elect or appoint directors;
- (g) deal with new business, including any matters about which notice has been given to the members in the notice of meeting;
- (h) terminate the meeting.

**Resolution need not be seconded**

**3.12** A resolution proposed at a general meeting need not be seconded.

**Chair may propose resolution**

**3.13** The chair of a general meeting may propose a resolution.

**Chair has no casting or second vote**

**3.14** The chair of a general meeting does not have a casting or second vote at the meeting in addition to the vote to which the chair may be entitled as a member.

**Methods of voting**

**3.15** At a general meeting, voting must be by show of hands except that if, before or after any vote by show of hands, 2 or more voting members request a secret ballot or a secret ballot is directed by the chair of the meeting, voting must be by secret ballot.

**Announcement of result**

**3.16** The chair of a general meeting must announce the outcome of each vote and that outcome must be recorded in the minutes of the meeting.

**Proxy voting**

**3.17** Voting by proxy is not permitted.

**Part 4 – Directors**

**Number of directors**

**4.1** The Society must have a board of directors consisting of the number of directors that is equal to the number of the Society's first directors, unless a different number is set by ordinary resolution.

**Election or appointment of directors**

**4.2** At each annual general meeting, the voting members entitled to vote for the election or appointment of directors must elect or appoint a board of directors.

**Directors may fill casual vacancy on board**

**4.3** The directors may at any time, by directors' resolution, appoint a member as a director to fill a vacancy that arises on the board of directors as a result of the resignation, death or incapacity of a director during the director's term of office.

**Term of appointment of director filling casual vacancy**

**4.4** A director appointed under Bylaw 4.3 ceases to be a director at the end of the unexpired portion of the term of office of the individual whose departure from office created the vacancy.

**Remuneration of directors**

**4.5** A director must not be remunerated for being a director, but a director may receive remuneration for services provided to the Society in another capacity.

**Part 5 – Proceedings of Directors**

**Directors' meetings**

**5.1** Any director may at any time convene a directors' meeting.

**Meeting valid despite omission to give notice**

**5.2** The accidental omission to give notice of a directors' meeting to a director, or the non-receipt of a notice by a director, does not invalidate proceedings at that meeting.

**Conduct of meetings**

**5.3** The directors may regulate their meetings and proceedings as they think fit.

**Quorum of directors**

**5.4** The directors may from time to time set the quorum necessary to conduct the business of the directors, and, if not so set, the quorum is a majority of the directors.

**How matters decided**

**5.5** Matters arising at a directors' meeting must be decided by majority vote, and, in the case of a tie vote, the chair does not have a casting or second vote.

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### **Committees of directors**

- 5.6** The directors may appoint one or more committees consisting of the directors that they consider appropriate and may delegate to a committee so appointed any of the directors' powers, except
- (a) the power to fill vacancies under Bylaw 4.3, and
  - (b) the power to appoint or remove senior managers.

### **Committee meetings**

- 5.7** A committee of directors established under Bylaw 5.6 may regulate its meetings and proceedings as it thinks fit.

### **Obligations of committee**

- 5.8** A committee of directors established under Bylaw 5.6, in the exercise of the powers delegated to it, must
- (a) conform to any rules imposed on the committee by the directors, and
  - (b) report every act or thing done in the exercise of those powers to the earliest directors' meeting held after the act or thing has been done.

## **Part 6 – Positions for Directors**

### **Election or appointment to positions**

- 6.1** Directors must be elected or appointed to the following positions:
- (a) president;
  - (b) vice president;
  - (c) secretary;
  - (d) treasurer.

### **Director may hold more than one position**

- 6.2** A director may hold more than one position described in Bylaw 6.1.

### **Appointment of directors at large**

- 6.3** Directors who are elected or appointed to positions in addition to those referred to in Bylaw 6.1 are elected or appointed as directors at large.

### **Role of president**

- 6.4** The president is the chair of the board of directors and is responsible for supervising the other directors in the execution of their duties.

### **Role of vice president**

- 6.5** The vice president is the vice chair of the board of directors and is responsible for carrying out the duties of the president if the president is absent or unable to act.

### **Role of secretary**

- 6.6** The secretary is responsible for the following:
- (a) issuing notices of general meetings and directors' meetings;
  - (b) taking minutes of general meetings and directors' meetings;

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(c) ensuring that the records of the Society are kept in accordance with the Act.

### **Absence of secretary from meeting**

**6.7** In the absence of the secretary from a meeting, the directors must appoint another person to act as secretary at the meeting.

### **Role of treasurer**

**6.8** The treasurer is responsible for the following:

- (a) the keeping of accounting records in respect of all of the Society's financial transactions;
- (b) the preparation of the Society's financial statements.

**APPENDIX B**

**REPORTING SOCIETY PROVISIONS**

Under the current Act, pre-existing reporting societies (which include hospitals, insurance societies, societies with subsidiaries and societies requiring government consent to incorporate) are subject to a number of special provisions, in particular the requirement to have audited financial statements. These special provisions have been streamlined and updated, and are now included in the following proposed “Reporting Society Provisions” (RSPs). The RSPs will continue to apply to pre-existing reporting societies until they transition to the new Act. When a pre-existing reporting society files a transition application, it will be required to include these provisions in its bylaws. After that, the society may amend its bylaws, in accordance with the Act, to alter or remove any or all of the RSPs.

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**Name of Society (the “Society”)**

**Part R1 – Interpretation**

**Definitions**

**R1.1** In these Reporting Society Provisions, “**Act**” means the *Societies Act* of British Columbia as amended from time to time.

**Definitions in Act apply**

**R1.2** The definitions in the Act apply to these Reporting Society Provisions.

**Interpretation**

**R1.3** In these Reporting Society Provisions, words in the singular form include the plural and vice versa and words importing a specific gender include the other gender and a corporation.

**Conflict with Act or regulations**

**R1.4** If there is a conflict between these Reporting Society Provisions and the Act or the regulations under the Act, the Act or the regulations, as the case may be, prevail.

**Part R2 – Auditors**

**Auditor**

**R2.1** The Society must have an auditor.

**Requirements for changing auditor**

- R2.2** At an annual general meeting, a resolution appointing an auditor other than the incumbent auditor must not be proposed unless
- (a) the incumbent auditor has declined reappointment, or
  - (b) 14 days' written notice of the proposed resolution has been given to
    - (i) all persons entitled to receive notice of the meeting, and
    - (ii) the incumbent auditor.

**Part R3 – Financial Statements**

**Comparative financial statements**

- R3.1** The financial statements of the Society must be prepared as comparative financial statements relating separately to
- (a) the period determined under section 34 (2) of the Act, and
  - (b) the preceding period, if any, in respect of which financial statements for the Society were prepared.

**Exception to requirement for comparative financial statements**

- R3.2** Despite Reporting Society Provision R3.1, the financial statements of the Society may deal only with the period determined under section 34 (2) of the Act if the reason is set out in the financial statements.

**Providing financial statements and auditor's report to auditor and members**

- R3.3** At least 10 days before the date of each annual general meeting, the Society must send to the auditor and to each member a copy of
- (a) the financial statements that are to be presented at the meeting, and
  - (b) the auditor's report on those financial statements.

**Providing financial statements and auditor's report to security holder**

- R3.4** The Society, on demand by a person holding a bond, debenture, note or other evidence of debt obligation, whether secured or unsecured, of the Society, must send to the person a copy of the Society's latest financial statements and a copy of the auditor's report on those financial statements.