



# **Preparing for B.C.'s New *Societies Act*:**

## **A Guide to the Transition Process**

*Please note:*

These materials provide general background information only, and are not intended as a substitute for legal advice.

*Further information:*

To access an electronic version of this guide, and to obtain other information and materials about the new *Societies Act*, please visit and bookmark the BC Registries and Online Services website at [www.gov.bc.ca/SocietiesAct](http://www.gov.bc.ca/SocietiesAct)

# Preparing for the New *Societies Act*

The new *Societies Act* will come into effect on **Nov. 28, 2016**. In the two years following that date, every pre-existing society will be required to “transition” to the new Act. This document sets out some basic information about the transition process and other matters that societies may wish to consider over the coming months.

## The transition process

It’s easier than you may think. “Transitioning” requires a society to re-file, in electronic format, its current constitution and bylaws with the Corporate Registry. A few changes to the content of the constitution and bylaws may be required, as will be discussed below.

Societies *cannot* transition until the new Act comes into effect on Nov. 28, **2016**. They will then have two years, until Nov. 28, **2018**, to file their Transition Application. The Transition Application will be an online form provided by the Corporate Registry – paper filings will not be allowed.

Before filing its Transition Application, every society should take care of the following matters:

**1. Constitution:** The society should prepare a version of its constitution that consists of nothing but the society’s existing name and purposes, word-for-word as they appear in the society’s constitution on file with the Corporate Registry. Any provisions of the existing constitution other than name and purposes must be relocated to the society’s bylaws, under #2 below.

The constitution should be in electronic format (such as a Word document). As part of its Transition Application, the purposes must be cut and pasted or typed directly into the online space provided in the Transition Application. Either way, the purposes must be exactly as they exist immediately before the Transition Application is filed. There will be no opportunity to change purposes as part of the Transition Application.

**2. Bylaws:** The society should prepare a complete set of bylaws consisting of the society’s existing bylaws in consolidated form (that is, the society’s original set of bylaws, updated to include any amendments to the original set that have been filed with the Corporate Registry). Like the constitution, the consolidated bylaws should be in electronic format (such as a Word document). As part of its Transition Application, the society will be required to upload its complete set of bylaws to the Corporate Registry database.

A society that has adopted by reference the set of bylaws in Schedule B of the current *Society Act* can find those bylaws in electronic format on the BC Registries and Online Services website ([www.gov.bc.ca/SocietiesAct](http://www.gov.bc.ca/SocietiesAct)). The society must, before transitioning, update these bylaws to include any amendments to them that have been filed by the society since the bylaws were adopted.

As of Aug. 29, 2016, societies will be able to order a transition package for \$40. The transition package will include a certified copy of the society’s bylaws and constitution as filed with the Corporate Registry. These will not be in a consolidated form, but will consist of the original filings and any filed special resolutions amending them. It will then be up to the society itself to merge the documents into a complete, consolidated electronic version that can be uploaded to the Corporate Registry database.

Like the society’s purposes, the bylaws must be word-for-word as they appear on file with the Corporate Registry. In addition, provisions of the society’s existing constitution (other than its name and purposes) that were removed from the constitution under #1 must be added, without alteration, to the bylaws. Any unalterable provisions must be identified as having been “previously unalterable.”

The following chart provides an example of how a society’s constitution and bylaws are to be treated when the society transitions:

	Before Transition	After Transition
<b>Constitution</b>	<p>The name of the society is Arbutus Community Band.</p> <p>The purposes of the society are</p> <ul style="list-style-type: none"> <li>(a) to provide an opportunity for amateur musicians to play together, and</li> <li>(b) to make the band available for civic and charitable functions.</li> </ul> <p>No director shall be paid any remuneration for services rendered to the society.</p> <p>On winding up or dissolution of the band, any assets that remain shall be distributed to a charitable organization carrying on activities of a similar nature. This provision shall be unalterable.</p>	<p>The name of the society is Arbutus Community Band.</p> <p>The purposes of the society are</p> <ul style="list-style-type: none"> <li>(a) to provide an opportunity for amateur musicians to play together, and</li> <li>(b) to make the band available for civic and charitable functions.</li> </ul>
<b>Bylaws</b>	<p>Bylaws of Arbutus Community Band</p> <p>1 In these Bylaws, unless the context otherwise requires, "directors" means . . .</p> <p>...</p> <p>46 The society must use its seal in all official correspondence.</p>	<p>Bylaws of Arbutus Community Band</p> <p>1 In these Bylaws, unless the context otherwise requires, "directors" means . . .</p> <p>...</p> <p>46 The society must use its seal in all official correspondence.</p> <p>47 No director shall be paid any remuneration for services rendered to the society.</p> <p>48 On winding up or dissolution of the band, any assets that remain shall be distributed to a charitable organization carrying on activities of a similar nature. <b>This provision was previously unalterable.</b></p>

A society that reorganizes its constitution and bylaws, as shown above, in order to remove excess provisions from its constitution and place them in its bylaws, as well as to mark certain provisions as having been previously unalterable, does not need to have a general meeting and hold a vote in order to do this.

Instead of preparing a consolidated set of existing bylaws as described above, the society may wish to write a new set of bylaws (either partially new or completely new). A society could choose to use the Model Bylaws (available in electronic format at [www.gov.bc.ca/SocietiesAct](http://www.gov.bc.ca/SocietiesAct)), just as they are or with amendments, or could come up with an entirely new set, tailor-made to fit the needs of the society. Even if a society is generally satisfied with its existing bylaws, it may want to take this opportunity to clarify or refine just a few of the provisions.

A society that wishes to adopt new bylaws or to make changes to its bylaws must have the new/altere d bylaws approved by means of a "special resolution" of its members. If the changes are approved before Nov. 28, 2016, a 3/4 vote is required; if the special resolution is passed on or after this date, it will ordinarily require only a 2/3 vote (unless the society's bylaws impose a higher threshold).

A society that adopts new bylaws on transition cannot change or delete any unalterable provisions that were in its constitution – these must still be added in, without alteration, to the new bylaws and identified as "previously unalterable." Once a society has transitioned, it can then alter previously unalterable provisions by complying with the new Act's bylaw amendment procedures. Some exceptions apply to designated government-related societies (see section 245 of the Act and section 18 of the Societies Regulation).

**Reporting societies:** In the rare case where a society is a “reporting society” under the current Act, a short set of provisions will be required to be copied and included without alteration in the society’s bylaws on transition. These Reporting Society Provisions (RSPs) contain special rules, such as the requirement to have an auditor. Once the RSPs have been included in a society’s bylaws on transition, they can be altered like any other bylaw. Only about 1% of B.C.’s 27,000 societies are reporting societies, and most can expect to be notified of this status by the registrar by early November 2016. The RSPs, and further information about reporting societies, can be found on the BC Registries and Online Services website at [www.gov.bc.ca/SocietiesAct](http://www.gov.bc.ca/SocietiesAct)

In addition to the Constitution and Bylaws, there are two other matters a society must look after before transition:

**3. Statement of Directors and Registered Office:** Before transitioning, the society should ensure that the information on file with the Corporate Registry about its directors and registered office is up to date. The most current directors and registered office information on file with the Corporate Registry will be automatically included in the society’s Transition Application. Therefore, to avoid having the society transition with incorrect director or registered office information, that information should be updated before transition. If this information is inaccurate at the time of transition, it will need to be changed by making a separate filing after the society’s transition is completed.

**4. Annual Reports:** The transitioning society must be up to date in its annual report filings. A society that has outstanding annual reports will *not* be able to transition.

### Member-funded or not?

On transition, each pre-existing society will be asked whether it wishes to designate itself as a “member-funded society” by including a statement to that effect in its constitution. A member-funded society is a society that is funded primarily by its members to carry on activities for the benefit of its members. Common examples might include some sports clubs, golf courses and professional associations.

Member-funded societies are allowed to distribute assets to their members if the society winds up. As well, the *Societies Act* makes them subject to fewer accountability measures than other societies. For example, they need only have one director and are not required to make their financial information publicly available. The following chart summarizes the different rules applicable to member-funded societies as compared to other societies:

	Member-funded societies	Other societies
<b>Distribution of assets on winding up</b>	No restrictions – assets could go to members	Assets can only be distributed to certain entities (e.g. non-member-funded societies, registered charities or community service cooperatives)
<b>Number of directors</b>	One director is sufficient – no residency requirements	At least three, one of whom is ordinarily resident in B.C.
<b>Composition of board of directors</b>	No restrictions on number of board members who are employed by or under contract with the society	Majority of board must not be employed by or be under contract with the society
<b>Financial statements</b>	No public right to copies	Public has right to obtain copies
<b>Disclosure of remuneration</b>	No disclosure of remuneration required	Financial statements must set out remuneration paid to directors and to highly paid employees/contractors
<b>Conversion to company</b>	Can convert	Not possible

A society cannot be a member-funded society if it is a registered charity or another type specifically prohibited from being one, such as a student society, hospital or independent school (see section 191(2)(b)-(f) of the Act and section 13 of the Societies Regulation).

As well, a society cannot be a member-funded society if it receives public donations or government funding above a certain threshold. A society that wishes to determine whether it is precluded from becoming a member-funded society under this test should carefully read sections 190 and 191(2)(a) of the Act and section 12 of the Societies Regulation, and then perform the necessary calculations. The chart below gives an example of this.

### Does my society receive too much in public donations or government funding to be a member-funded society?

A society that wishes to determine whether it is eligible to be a member-funded society under the section 191(2)(a) test should follow these steps: **First**, identify the relevant period. The relevant period is the two financial years immediately preceding the current financial year. For example, if a society's financial year runs from January 1 to December 31, the relevant period would be from Jan. 1, 2014 to Dec. 31, 2015 (assuming that 2016 is the current financial year). **Second**, determine the total dollar amount of public donations and government funding (combined) that the society received in the relevant period. If this amount is \$20,000 or less, the society is not prohibited from being a member-funded society under this test. **Third**, if the dollar amount of public donations and government funding received in the relevant period is more than \$20,000, the society must determine what percentage of its gross income for the relevant period is represented by this dollar amount. If the amount received is equal to or less than 10% of the society's gross income, the society is not prohibited from being a member-funded society under this test.

**This chart summarizes this information:**

Amount of public donations plus government funding received during relevant (two-year) period = \$ _____	If \$ _____ is \$20,000 or less, society can be member-funded society	If \$ _____ is more than \$20,000, but is 10% or less of the society's gross income for that period, the society can be member-funded society	If \$ _____ is more than \$20,000, and is more than 10% of the society's gross income for that period, the society CANNOT be member-funded society
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In other words, a society that receives \$20,000 or less over two years is not prohibited from being a member-funded society under the 191(2)(a) test. A society that receives more than \$20,000 is only prohibited if this amount constitutes a significant proportion (more than 10%) of the society's gross income.

**Here are some examples:**

Society 1 received government funding of \$19,000 over the relevant two-year period. The society's gross income for the two-year period was \$26,000. Even though the society's income is largely comprised of government funding, the society received \$20,000 or less in funding over the relevant period. The society is not prohibited from being a member-funded society.

Society 2 received public donations of \$496,000 over the relevant two-year period. The society's gross income for the two-year period was \$5 million. Even though the society received a significant amount of public money, that amount was 10% or less of its gross income. The society is not prohibited from being a member-funded society.

Society 3 received public donations of just over \$24,000 over the relevant two-year period. The society's gross income for the two-year period was \$100,000. The society is prohibited from being a member-funded society – it received more than \$20,000 over the relevant period, and that amount constituted more than 10% of its gross income.

Becoming a member-funded society is a significant choice that needs to be authorized by a special resolution of the members. Even societies that are technically eligible to be member-funded societies may choose not to do so. Because the Act allows member-funded societies to distribute their assets to their members on winding up, these societies could be disqualified from receiving benefits, such as certain types of government funding, that other societies subject to the dissolution "asset lock" might be eligible for.

If an eligible society wishes to be a member-funded society, it should indicate this choice on its Transition Application. Adopting member-funded society status after transition will require a court order.

If you have any doubt about whether your society can or should become a member-funded society, you should seek legal advice before transitioning.

## Optional bylaw amendments

In addition to various bylaws that a society may ultimately want to adopt in order to take advantage of the new Act's flexibility (e.g. regarding types of memberships, location of meetings, methods of giving notice), there are a few amendments that may be useful to make in the shorter term.

Some societies may have bylaws that do not work well with the provisions of the new *Societies Act*. For example, a society may have a bylaw that restricts members' access to certain corporate records in a way that is no longer allowed under the new Act. A bylaw that conflicts with the Act or regulations is simply ineffective. However, to avoid confusion, a society may wish to review and update its bylaws to ensure such conflicts are removed.

Certain provisions of the new Act are intended to protect members by ensuring there is clear authority, set out in a society's bylaws, for certain practices and procedures. For example, a society that wants to allow voting by proxy at members' meetings should ensure its bylaws provide authorization for this – otherwise, proxy voting will not be permitted once the new Act comes into force.

Finally, several provisions in the new Act are intended to remove restrictions and provide more flexibility for societies. Some societies may not want this new flexibility and would prefer to carry on as they have in the past. In some cases, they can do this by passing bylaws that carry forward restrictions from the current *Society Act* that they wish to maintain. For example, societies may wish to pass a bylaw to restrict the powers of directors to borrow money on behalf of the society, or to maintain a higher than 2/3 vote for some (or all) bylaw amendments.

### When can bylaw changes be made?

Societies will have several opportunities to amend their bylaws (or replace them entirely) in order to remove inconsistencies, impose restrictions and provide authorizations. Here are the options:

1. Amend bylaws before new Act comes into force (before Nov. 28, 2016)
  - requires special resolution – 3/4 vote
  - requires separate filing of special resolution (under current *Society Act*) and \$50 fee
- Note:** Once the new Act comes into force on Nov. 28, 2016, a society will be unable to amend its bylaws until it transitions.
2. Amend bylaws on transition (on or after Nov. 28, 2016)
  - requires special resolution – 2/3 vote (unless higher threshold expressly set out in bylaws) or 3/4 vote if special resolution was passed before Nov. 28, 2016
  - can be done as part of the Transition Application – no separate filing or fee is involved
3. Amend bylaws after transition
  - requires special resolution – 2/3 vote (unless higher threshold expressly set out in bylaws)
  - requires separate filing (bylaw alteration application) and \$50 fee

The following table sets out the major policy changes in the new Act and identifies possible bylaw amendments the society may wish to consider in order to maintain the status quo or otherwise modify the application of new provisions.

## Bylaw amendments that a society may wish to consider

The following new/changed provisions will become effective on Nov. 28, 2016:

New Provision	Bylaw Amendments to Consider
<p><u>Special resolution threshold:</u> 2/3 is the “default” threshold for special resolutions, but different (higher) thresholds may be set by bylaw [ss. 1 and 11 (4)].</p> <p>Under the Societies Transitional Interim Regulation, any threshold other than 2/3 must be spelled out – as a number, percentage or by means of a formula – in the bylaws.</p>	<p>A society that wants the new lower threshold but whose bylaws currently specify a 3/4 vote, may want to amend those bylaws to remove the higher threshold and adopt 2/3 for special resolutions passed after Nov. 28, 2016.</p> <p>Alternatively, if the society <u>does not</u> want to have the 2/3 threshold, its bylaws would have to be amended to set a higher threshold (expressed as a fraction, percentage or formula) unless the bylaws do so already.</p> <p>A society may want to customize its bylaws to require higher than ordinary thresholds for the amendment of particular bylaws, possibly as an alternative approach to unalterable provisions.</p>
<p><u>Access to records:</u> Members have access to all society records, but the bylaws may restrict member access to accounting records and records of directors’ proceedings [s. 24].</p>	<p>If a society wishes to restrict member access to accounting records and records of directors’ proceedings, its bylaws would have to set this out.</p> <p>A bylaw restricting member access to records (other than accounting records and records of directors’ proceedings) will be of no effect – bylaws cannot conflict with the Act [s. 11(3)]. If the society has this type of restrictive bylaw, it may want to remove or amend the bylaw to avoid misleading its members.</p>
<p><u>Investment of funds:</u> The society may invest its funds in any prudent investment, but this power can be expanded or limited by bylaw [s. 33].</p>	<p>By bylaw, a society could expand the permissible types of investment to include more risky ones, or could limit the nature and type of prudent investments available (for example, if a society did not wish to allow investments in a particular type of company or endeavour).</p>
<p><u>Borrowing of funds:</u> The society may borrow funds, but this power may be limited by bylaw [s. 34].</p>	<p>If the society wishes to control borrowing by its directors, the society’s bylaws could impose requirements, such as an ordinary or special resolution of members, before borrowing can occur.</p>
<p><u>Financial statements:</u> No regulations currently set out how these must be prepared [s. 35].</p>	<p>If the society wishes, its bylaws could impose particular requirements respecting the information to be included in its financial statements.</p>
<p><u>Directors’ terms of office:</u> A director’s term of office is until the end of the next AGM after his or her election or appointment, unless the bylaws provide otherwise [s. 48(2)].</p>	<p>If the society wishes, its bylaws could set different terms of office, such as two-year terms or staggered terms.</p>
<p><u>Indemnification:</u> Directors/senior managers who are found legally liable (e.g. for negligence) can be indemnified by the society in certain situations, but this can be limited by bylaw [ss. 63-65].</p>	<p>If the society wishes, its bylaws could prohibit the payment of indemnity, restrict the circumstances for its payment, or cap the amounts that may be paid.</p>
<p><u>Participation at general meetings:</u> Members may participate electronically (e.g. by means of a conference call), but the bylaws may limit this [s. 83].</p>	<p>If the society wishes, its bylaws could restrict or prohibit electronic participation at members’ meetings. (The Act already specifically states that the society is not obligated to provide the means for electronic participation to occur.)</p>
<p><u>Proxy voting:</u> Proxy voting is allowed if permitted by bylaw [s. 85].</p>	<p>If a society wishes to allow proxy voting, its bylaws should state this. The bylaws could also establish requirements that must be complied with in order for proxies to be effective.</p>

The following new/changed provisions will not apply until Nov. 28, 2018:

New Provision	Bylaw Amendments to Consider
<p><u>Youth directors and senior managers:</u> Individuals aged 16 or 17 can act as directors or senior managers only in certain circumstances [s. 44(2), and Societies Regulation, s. 10].</p>	<p>If the society wishes to have 16- or 17-year-old directors or senior managers, its bylaws must provide authorization for this. As well, the society must ensure that a majority of directors on the board are at least 18 years old.</p>
<p><u>Directors' remuneration:</u> Directors can only be paid for being directors if remuneration is authorized by the society's bylaws [s. 46].</p>	<p>If the society wishes to remunerate directors, its bylaws must provide authorization for this.</p>
<p><u>Reimbursement of expenses:</u> Directors' expenses, so long as they are reasonable, may be reimbursed, but this can be limited by bylaw [s.46].</p>	<p>If the society wishes, its bylaws could specify the type of expenses to be reimbursed, define the appropriate circumstances or cap the amount of reimbursement that directors may receive.</p>

### A Few Last Words...Potential Traps for the Unwary

The following new provisions *cannot* be altered by the bylaws. However, societies should be aware of them, as they may have to change their procedures or operations in order to comply with the new requirements.

Applicable Nov. 28, **2016:**

Financial statements to set out remuneration: A society (other than a member-funded society) must include a note setting out remuneration paid to its directors and its highest paid (\$75,000 plus) employees/contractors on its financial statements prepared after Nov. 28, 2016 [s. 36, and Societies Regulation, s. 9].

Financial statements to include financial assistance: A society must set out details, on its financial statements prepared after Nov. 28, 2016, respecting any financial assistance (e.g. loans, guarantees) given outside of the ordinary course of its activities [s. 37].

Disclosure of conflicts of interest: Directors and senior managers should be aware of their obligation to disclose to the directors all material interests in matters that may conflict with their duties to the society [ss. 56 and 62].

Applicable Nov. 28, **2018:**

Unaffiliated board members: A society (other than a member-funded society) must ensure that a majority of its directors are not employed by or under contract with the society [s. 41].

Director/senior manager qualifications: The society must ensure that all of its directors and senior managers meet the required qualifications [ss. 44 and 61(3)]. An individual who is an undischarged bankrupt is not qualified, nor are individuals under 18 years old – but see special exception for youth directors/senior managers, above. As well, individuals convicted of fraud-related offences may not be qualified.

Consent to act as director: The society must ensure that all directors (other than those elected or appointed at a meeting they attend) have provided written consent [s. 42(4)].

We hope your society's transition to the new *Societies Act* is a smooth one. Please continue to consult the BC Registries and Online Services website, which will be updated as new information becomes available:

[www.gov.bc.ca/SocietiesAct](http://www.gov.bc.ca/SocietiesAct)



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