



SOCIETIES ACT NEWSLETTER



TRANSITIONING TO THE NEW SOCIETIES ACT

On November 28, 2016 (the “Effective Date”), the existing Society Act (BC) was repealed and replaced by the new Societies Act (BC) (the “New Act”). A new electronic filing system was established. Between the Effective Date and November 28, 2018 over 25,000 societies incorporated in British Columbia will need to perform certain “onboarding” and “transition” activity in respect of the New Act. This newsletter provides an overview of the process and highlights certain issues of interest.

Getting Ready

Societies will need to make certain adjustments to their constitution and bylaws as part of the transition process. One challenge will be to verify the current text of those governance documents. The BC Corporate Registry is offering a transition package service. For a fee of \$40, a society can obtain copies of a society’s original constitution, bylaws, and any filed special resolutions amending the constitution and bylaws on the registry records. As part of transition, societies must consolidate their bylaws and have them in an electronic format. Ordering a transition package from the Registry is an opportunity to understand what the bylaws on file with the Registry actually are, and may be useful for those societies who do not currently work off of an up-to-date electronic copy.

On transition, societies may elect to make additional contemporaneous substantive changes to their bylaws. Some organizations may need to proceed through a process of governance review and membership consultation and approval, prior to transition, in order to be prepared to implement such additional governance changes.

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Helpful Guidance

The best source of information on transition is the Registry’s Transition Guide, available online at <http://www.bcregistry-services.gov.bc.ca/bcreg/societiesact/index.page>. FAQs and other resources are also available on the Registry website.

Onboarding - November

Prior to transition, each society must “onboard” into the new electronic filing system. As part of this, they must ensure all annual reports are filed. They should also ensure their address in their Statement of Directors and Registered Office is current and up to date with the Registry.

Each society has received a letter from the Registry containing a PIN which will allow them to log in to the new website after the Effective Date and create a BCeID, an online account for using BC government services. They can then reset the PIN and distribute it to others in their organization as appropriate. Each BCeID account will be tied to an individual, and individuals can be associated with multiple society PINs.

Societies should choose one member of the society to onboard. This person will create a BCeID, an electronic account, specific to that individual. This person will then link the personal BCeID with the PIN and be asked to change it. The PIN may then be distributed to other key society directors and managers, as well as service providers of the society (such as accountants, paralegals, or lawyers). Each person will be able to link that person’s own BCeID with multiple societies, if appropriate.

New Online System

The new system is used for the majority of filings. There is a revision history, showing which BCeID changed what information, and an ever-green copy of the bylaws. Payments can be made either by pre-authorized debit or credit cards. Certified copies of documents are available by logging in to the system and downloading specific PDFs.

The online filing system is straight-forward and relatively simple. The Registry will not be checking the constitution or the bylaws -- it expects applicants to comply with the New Act without the Registry's involvement. The constitution alteration will be done on a separate screen with a fillable box to cut-and-paste or type in the constitution, minus any unalterable provisions. A checkbox exists on this screen for societies wishing to be member-funded. Bylaws will be uploaded as a .doc or other file formats (for those that do not use Word). This will be done on a separate screen.

What Needs To Be Done On Transition

Transition applications will be completed online, after onboarding, at a date and time selected by the society. The process for transitioning for most societies will include altering the constitution and bylaws to comply with the New Act. The New Act does not allow the constitution to contain anything other than the society's purposes, and the New Act may make existing bylaw provisions unenforceable or unnecessary, depending on the circumstances.

Until a society completes its transition, it is prevented from making any substantive alterations to its constitution or bylaws. This and other factors, such as status as a member-funded society (see article below) may impact the decision on transition timing.

Before transition:

- All annual reports must be up to date and filed with the Registry; if not, the society cannot transition.
- The Statement of Directors and Registered Office should be the most up to date and accurate as possible.

On basic transition:

- Anything other than a society's name and purposes (word-for-word) must be moved from the constitution into the bylaws.
- If reusing the prior bylaws, the bylaws must be a complete set (i.e. the original set of bylaws, updated to include any amendments to the original set filed with the Registry) and must be word-for-word what appears in the Registry.

- The bylaws must identify any unalterable provision inserted from the constitution as being "previously unalterable".
- For societies having status as "reporting societies" under the current act, some special wording must also be inserted into the bylaws.

There is no need to obtain member approval of these mandatory changes required for basic transition. However, as noted above, a society may choose to make additional substantive changes to its bylaws upon transition (or perhaps completely repeal and replace its bylaws with a new version). This must be approved by special resolution of the members.

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If approved before the Effective Date, the special resolution requires a 3/4 vote; if it is approved on or after the Effective Date, a 2/3 vote is required (unless the bylaws specifically require a higher than 2/3 vote).

If a society does not transition by November 28, 2018, it may be dissolved by the Registry.

MEMBER-FUNDED SOCIETIES

The New Act introduces the new concept of “member-funded society”. If a society successfully obtains this status, then it is eligible for certain relaxed governance rules.

A member-funded society is a society that is funded primarily by its members to carry on activities for the benefit of its members, that has received special resolution authorization to obtain member-funded status, and

that has amended its constitution to include a claim of member-funded status. To qualify as a member-funded society, the society must not have received public donations and/or government funding having a total value calculated as the greater of \$20,000 and 10% of the society’s gross income within the two financial years immediately preceding the current financial year. The relaxed governance rules available to member-funded societies are as follows:

	Member- Funded Societies	Other Societies
1.	Ability to distribute society assets to members on wind-up of the society.	Assets may only be distributed to certain entities and cannot be distributed to members.
2.	May have only one director, and there is no residency requirement.	Must have at least three directors, one of whom is ordinarily resident in BC.
3.	No restrictions on the number of directors employed or under contract with the society.	A majority of the directors must not be employed by or under contract with the society.
4.	No requirement to make financial information publicly available.	Public has right to obtain copies of financial information.
5.	No transparency disclosure of director or other remuneration required.	Financial statements must include remuneration paid to directors and highly paid employees or independent contractors.
6.	Can convert to a company.	Cannot convert to a company.
7.	Cannot be a registered charity.	Can be a registered charity.
8.	Restrictions on receipt of public donations and government funding.	No restrictions on receipt of public donations and government funding.



Financial Disclosure Transparency

The New Act introduces a new financial disclosure requirement to BC societies which does not exist under the current Act. It requires BC societies to disclose in a note to the financial statements information regarding the remuneration of certain directors, employees and contractors. Member-funded status would excuse a society from this transparency.

Director Remuneration

Any remuneration paid to directors in the financial year must be disclosed in the note to the financial statements containing:

- a) a list of all the directors to whom the society paid remuneration, along with the position or title of each director (the names of those directors is not required);
- b) the amount of remuneration paid to that individual for acting in the capacity as a director; and
- c) the amount of remuneration paid to that individual for acting in any other capacity other than that of director.

Employee and Contractor Remuneration

Remuneration paid to employees and contractors earning more than \$75,000 for the financial year must separately be disclosed in the note to the financial statements containing:

Either:

- a) a list of persons which includes:
 - i) in the case of employees, each employee's position or title (the names of those employees is not required);
 - ii) in the case of contractors, the nature of the contractor's services provided (the names of those contractors is not required);

and

- iii) the amount of remuneration paid to each person;

or

- b) the total number of those persons and the total amount of remuneration paid to those persons.

Transitioning As A Member-Funded Society

In order to become a member-funded society under the New Act, a BC society must include the following statement in its constitution confirming this status after the New Act comes into force, upon transition (or upon incorporation, if a newly-created entity):

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.

Note that a BC society may only include this statement if the society has not received public donations or government funds within the two financial years preceding the current financial year exceeding the above-described financial thresholds.

CORPORATE RECORDS

The New Act is very prescriptive in the maintenance of corporate records, and also expands transparency rights of members to view some of those records.

Member-Accessible Records

Section 20(1) contains a detailed list of certain corporate records which each society will need to maintain, and easily identify and produce upon request, by category. All of the records in this category are open to inspection by members of that society, which means that for societies with broad membership, those records may essentially become public documents. Two categories of records merit further comment.

Conflict Declarations

The list of required records includes copies of each director conflict declaration or senior manager conflict declaration. Although such declarations may be infrequent, often they are routinely recorded inside the text of board minutes, rather than being the subject of separate formal declaration documents. This creates a potential problem with the new required transparency and records maintenance. A change in organizational conflict protocols may be required to ensure that separate and stand-alone declarations, with only minimal information, are created and segregated into this transparency category. Otherwise, member access to full board minutes may be claimed if those minutes contain the conflict declaration information.

Member List

The transparency extends to include a complete “members register”. Often, societies maintain a members listing which (for convenience) contains supplemental details relating to the member’s interaction with the society. To maintain member privacy, but fulfill the transparency requirements of the New Act, the society will need to ensure it creates and maintains a separate and formal “register”, in paper or electronic form, listing (by class of membership) member names and contact information and no other information. The register should display the start and cessation date of each member’s membership in the organization.

For large societies using statutory exemptions available in the New Act concerning meeting notices, the register should have an available field to display an optional email contact address for any member who has provided an e-mail address for governance purposes, as part of the member’s contact particulars.

The New Act permits the Board to pass a specific resolution restricting member access to the members register, if it believes inspection would be harmful to the interest of the society or its members. However, even with such a restriction in place, the New Act enables a member to subsequently gain access to the members register if the member provides certain assurances in an application in writing, including an undertaking to only use the information for society governance purposes.



To deter wholesale perusal of the members register, the society’s board should consider implementing such a restricting resolution. The resolution should discuss specific concerns about the potential harm to the society and its members which would result from unfettered access to the list. Such harm could include personal privacy and spam vulnerability for members.

Potentially Accessible Records

The New Act sets out requirements for certain accounting records and minutes of directors' proceedings to also be maintained. These records are also potentially open to inspection by the members, unless the bylaws specifically restrict access. If it is appropriate for such records to be shielded from member review, the society should ensure that appropriate restrictions exist in the Bylaws.

Format

Records may be kept in any format, paper or technology, which permits the required transparency access to occur and implements safeguarding and accuracy principles.

Retention/Destruction

For governance purposes, the New Act permits destruction of records over 10 years old if no longer relevant. This is a subjective test and should be approached with caution. Other requirements, including tax and regulatory matters, and the preservation of due diligence defences, may dictate longer retention periods. Records should only be destroyed pursuant to a specific policy developed by the society.

Fees

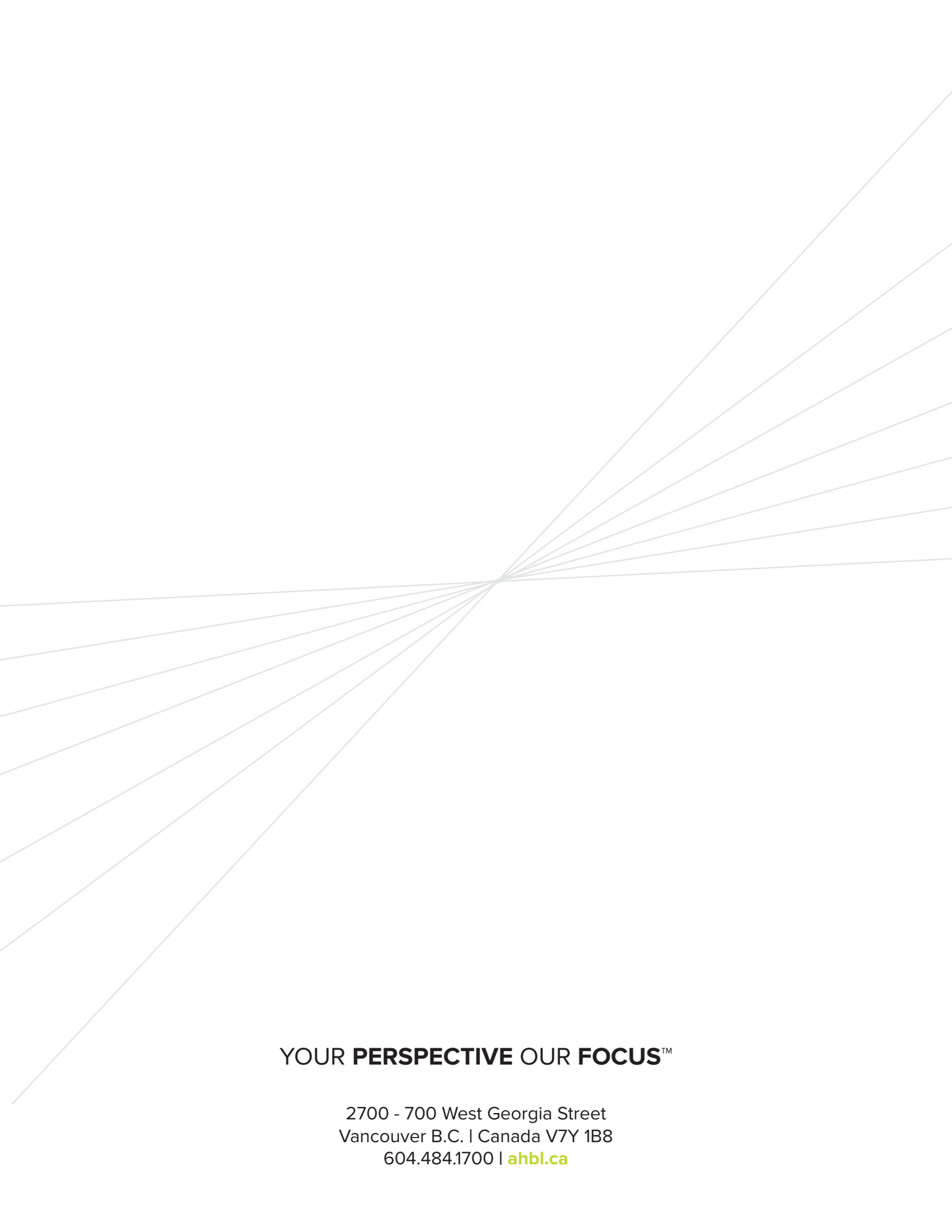
The society may charge a reasonable fee to members for a requested copy of a record subject to transparency (other than for a copy of the constating documents and the financial statements). The copy must be provided within 14 days. Persons who are not members may also obtain copies of the annual financial statements, on payment of a reasonable fee established by the society.

For more information on these and other issues affecting BC societies, please contact one of the following members:

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