

# The New BC *Societies Act*: What You Need to Know

September 22, 2016  
Vancouver, BC

**Ken Burnett**

kburnett@millerthomson.com | 604.643.1203

**Brendan Burns**

bburns@millerthomson.com | 604.643.1216

**Sarah Fitzpatrick**

sfitzpatrick@millerthomson.com | 604.643.1272

# Types of Organizations

- Societies
- Extraprovincial non-share corporations
- Not-for-profit organizations
- Charities

# New *Societies Act*

- *Societies Act*
  - New *Societies Act* in force November 28, 2016
  - Repeals and replaces current *Society Act*

# Corporate Governance Procedures

- Default governance provisions
  - Similar to those under BC *Business Corporations Act*
- General Meetings
  - Timing for AGM
  - Deemed AGM
  - Location

# Corporate and Governance Procedures

- General Meetings
  - Calling general meetings
    - Requisition by directors
    - Requisition by members
  - Notice Requirements
    - At least 14 days before & not more than 60 days before
    - If 250+ members and in bylaws, notice may be given by:
      - E-mail to members who have provided e-mail address &:
        - » Posting it in a newspaper identified in bylaws, or
        - » Posting it on a website maintained by the society

# Corporate and Governance Procedures

- General Meetings
  - Greater member participation rights
    - Proxy voting
    - Participation by electronic means

# Corporate and Governance Procedures

- Increased internal governance options
  - Multiple classes of membership
  - 2/3 threshold for special resolutions

# Financial Reporting & Remuneration

- Remuneration
  - Director remuneration only allowed if bylaws permit
    - No director remuneration for charities
  - Limits on number of directors remunerated under contracts of employment or contracts for services
  - Public disclosure of director/employee compensation
  - Threshold for disclosing employee compensation is \$75,000



# Record Keeping

- List of documents that must be kept
- Can dispose after 10 years
- Location: registered address or other place in BC
- Electronic format permitted

# Inspection of Records

- Can restrict members' access to certain records:
  - Directors' resolutions, accounting records, members' register
  - In camera minutes?

# Director Appointment

- Qualifications for directors
  - 18 years of age or older (can be 16 or 17 if Bylaws permit)
  - No recent convictions for fraud
  - Not an undischarged bankrupt
  - Not mentally incapable
- Director consent or presence for election
- Ex Officio Directors

# Director Liability

- Directors personally liable for improper distribution of money or property
  - 2 year limitation period
  - Due diligence defense
- Director indemnification
  - No longer subject to court approval
- Relief of directors in legal proceedings

# Senior Managers

- Directors may delegate management powers to senior managers
  - Can be a director
  - Qualifications
  - Duties
  - Indemnification

# Member Rights

- Member Proposals
  - 5% of voting members (unless bylaws set lower %)
  - Send notice of matter they want considered at AGM
  - Procedure:
    - Notice must include names of members (and be signed)
    - Must not exceed 200 words
    - Must be received at least 7 days before notice of AGM is sent

# Member Rights

- Unalterable Provisions
  - Ability to alter the unalterable provisions in constitution
  - Some societies need consent of designated minister

# Member Rights

- Oppression remedy
  - Activities of society conducted in manner oppressive to member; or
  - Act of the society was done or threatened that is unfairly prejudicial to the member
- Court has broad powers



# Member-Funded Societies

- Member-Funded Societies
  - Relaxed regulatory burden
    - Distribution of assets to members on liquidation
    - Financial statements not publicly accessible
    - No disclosure of director remuneration
    - No limit on number of directors remunerated
    - Single director
    - No residency requirement for director

# Member-Funded Societies

- Disqualified if:
  - Registered charity
  - Student society
  - Hospital society
  - Designated by regulations
- Examples:
  - Sports clubs
  - Professional organizations

# Member-Funded Societies

- “Publicly Funded” Societies
  - Subject to current Society Act requirements respecting directors, financial statements and distribution of assets on dissolution
  - Increased regulatory burden
    - Majority of directors must not employed or under contract
    - Disclosure of director remuneration
    - Disclosure of remuneration of highest paid employees
    - Public inspection of financial statements

# Other Changes – Removal of Directors

- Directors can now be removed from office by any method in the bylaws
- Not restricted to a member vote

# Other Changes – Borrowing

- Society may not issue debentures unless authorized by special resolution (*Society Act*)
  - Debenture = Mortgage?
- Can borrow money and issue bonds, debentures or notes as directors determine (*Societies Act*)
  - Bylaws can restrict directors' powers

# Transition Period

- Two year transition period from November 28, 2016
- Act applies except for:
  - Director remuneration, qualifications and consents

# What existing societies need to do

## Transition Application

- File transition application within two years of November 28, 2016
  - Constitution
    - Name and Purposes
    - Member-funded society? (on transition or by court order)

# What existing societies need to do

- Transition Application (cont.)
  - Bylaws
    - Existing bylaws (subject to any desired amendments)
    - Any unalterable provisions in existing Constitution
    - Reporting society provisions
  - Statement of directors
    - Name and address
    - Registered office of society



# What existing societies need to do

- If a registered charity, need to update CRA
- File a certified copy of the new Constitution and Bylaws

# What existing extraprovincial non-share corporations need to do

- If registered, automatic transition
- Now all extraprovincial non-share corporations that carry on activities in BC must register
  - Pre-existing extraprovincial non-share corporations have 2 years
- If not registered, fine may be imposed

# [www.millerthomson.com](http://www.millerthomson.com)

## Added experience. Added clarity. Added value.

Follow us...



© Miller Thomson LLP, 2016. All Rights Reserved. All Intellectual Property Rights including copyright in this presentation are owned by Miller Thomson LLP. This presentation may be reproduced and distributed in its entirety provided no alterations are made to the form or content. Any other form of reproduction or distribution requires the prior written consent of Miller Thomson LLP which may be requested from the presenter(s).

This presentation is provided as an information service and is a summary of current legal issues. This information is not meant as legal opinion and viewers are cautioned not to act on information provided in this publication without seeking specific legal advice with respect to their unique circumstances.