Societies and Unincorporated Associations –
Ensuring your Organization is Geared for Success

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Introduction

Registered Societies and Unincorporated Associations - Discussion Topics:

1. Comparing Societies and Associations;

2. Tips for Drafting a Constitution and Bylaws

3. Upcoming changes to the BC Societies Act
Comparing Societies and Associations

Societies:
• Incorporated under the BC Societies Act
• Results in the formation of a separate legal entity

Associations:
• groups of individuals organizing themselves to carry on a common purpose
• No formal registration with the BC Corporate Registry

*Note: Both types of organizations can be registered as charities with Canada Revenue Agency – registration with CRA does NOT indicate that your organization is an incorporated Society
Associations vs. Societies

• Unincorporated Associations
  › Not a separate legal entity
  › Assets held in trust by members
  › No minimum requirements with respect to operation or management (purely contractual relationship – very flexible, but also creates uncertainty)
  › Members are liable for debts/liabilities

• Incorporated Societies
  › Separate legal entity
  › Holds title to its own assets
  › Minimum requirements regarding operation and management set by the Society Act
  › Members not liable for debts/liabilities
  › Perpetual existence
Advantages of Incorporation

- Limited liability of members – no longer responsible for the debts/obligations of the association
- Provides continuity and stability – members may come and go, but the association continues until it is dissolved or wound up
- An incorporated association can maintain and/or defend legal actions in its own name, and can enter into contracts, buy and sell property, etc.
- Formal corporate structure facilitates ongoing operations and decision making
- May be increased credibility with government agencies, funders, and the general public
Situations where Incorporation is Recommended

• Where the association will own/deal with real property

• Where the association enters into contracts as a regular part of its business

• Where officers or members incur debts on behalf of the association

• Where there is a significant risk of liability
  (e.g. offering services to public/youth)
Advantages of Unincorporated Associations

• Very Flexible form of organization

• Can tailor rules/procedures to fit specific circumstances

• No public disclosure requirements

• Can always convert to a Society in the future if desired
Situations where Unincorporated Association is Recommended

• Small, uncomplicated organizations

• Where the association will not own/deal with real property

• Where the association does not enter into contracts as a regular part of its business

• Where officers or members do not incur debts on behalf of the association
Constitution and Bylaws

- Both Societies and Associations should have a Constitution and Bylaws

- The Constitution and Bylaws define the purposes for which the organization exists and the rules by which its members and directors must conduct themselves

- This can be the most important, time consuming, potentially contentious aspect of the setting up an organization
Drafting the Constitution and Bylaws

Under the Society Act, there are specific clauses that the Constitution and Bylaws MUST include.

Although there are no similar rules for unincorporated Associations, it is recommended that Associations follow the same guidelines, as they provide a solid basis for the operation of any organization.
Drafting the Constitution and Bylaws

Every Society’s Constitution must contain:
- The Society’s Name
- The purpose(s) for which the Society will be incorporated

If applying to be a registered charity, the Constitution may also contain:
- A Non-profit clause
- A Winding-up clause
- A Non-Alterability clause
Drafting the Constitution and Bylaws

Purposes:

- Used to identify and describe the organization’s goals and objectives
- Purposes should be clear, but not overly restrictive
- Typically start with phrases such as:
  - “to promote”
  - “to maintain”
  - “to foster”
  - “to assist”
  - Etc.
Drafting the Constitution and Bylaws

• Example purpose:

“The purpose of the organization is to support the ___________ Hospital by providing supplementary patient services and financial support.”
Drafting the Constitution and Bylaws

• Other clauses can be added to the Constitution, for example, organizations that plan on becoming registered charities must also include the following clauses in their Constitutions:
  • Non-profit clause
  • Winding-up clause
  • Non-Alterability clause
Drafting the Constitution and Bylaws

• Non-Profit Clause:

"The activities and purposes of the Organization shall be carried on without purpose of gain for its members and any income, profits or other accretions to the Organization shall be used in promoting the purposes of the Organization."
Drafting the Constitution and Bylaws

• Winding-Up Clause:

"Upon winding up or dissolution of the Organization, the assets which remain after payment of all cost, charges, and expenses which are properly incurred in the winding up shall be distributed to a registered charity or registered charities in British Columbia, as defined in the Income Tax Act (Canada), as may be determined by the members of the Organization at the time of winding up or dissolution."
Drafting the Constitution and Bylaws

• Non-Alterability Clause:

Under the Society Act, there is a presumption that, unless specifically stated otherwise, every additional clause set out in the Constitution (other than the Society’s name and purpose) is alterable. Therefore, the following clause is required:

“Paragraphs 3, 4, 5 and 6 of the Constitution are unalterable in accordance with the Society Act.”
Drafting the Constitution and Bylaws

• Bylaws
  ➔ Provide rules as to how the operation and management of the organization will be carried out on a day-to-day basis
  ➔ Section 6 of the Society Act sets out certain matters that must be included in the Bylaws:
    • the admission of members, their rights and obligations and when they cease to be in good standing;
    • the conditions under which membership ceases and the manner, if any, in which a member may be expelled;
    • the procedure for calling general meetings;
Drafting the Constitution and Bylaws

• Required Bylaws, continued:
  • the rights of voting at general meetings, whether proxy voting is allowed, and if proxy voting is allowed, provisions for it;
  • the appointment and removal of directors and officers and their duties, powers and remuneration, if any;
  • the exercise of borrowing powers;
  • the preparation and custody of minutes of meetings of the society and directors.
Drafting the Constitution and Bylaws

- Other typical issues dealt with in the Bylaws:
  - establishing procedures for general meetings, Directors' meetings, and the establishment of committees
  - authorizing or restricting the Society from investing in certain types of securities
  - inspection of certain documents by members and Directors
  - increasing a quorum for general meetings to more than three
  - setting the auditor’s responsibilities (if any)
  - allowing or restricting minors and/or corporations from membership
Upcoming Changes to the BC Society Act

• On March 25, 2015 a new Bill was introduced to the legislature to repeal and replace the Society Act with a brand new act (if and when it is passed).

• Expected to come into effect within the next two years.

• It is a brand new act and contains several key changes
Upcoming Changes to the BC Society Act

- Transition: existing Societies will have two years to transition under the new Act
  - Will likely require a new Constitution and Bylaws to be adopted
  - Good opportunity to review these issues
  - No other changes to Bylaws will be permitted until the transition is complete
Upcoming Changes to the BC Society Act

- Corporate and Governance Procedures
  - Largely adopted from the BC Business Corporations Act
    - Allowing proxy voting
    - Member proposals (if they hold more than 5% of membership)
    - Allowing multiple classes of membership
    - Reducing the “special majority” requirement from 3/4 to 2/3
Upcoming Changes to the BC Society Act

- Introducing different rules for “member funded” Societies and “charities” or “publicly funded” Societies
  
  “member funded”
  
  - Decreased disclosure requirements (financial/remuneration info)
  - On liquidation, assets may be distributed among members
  - Can have only one director and no residency requirement
Upcoming Changes to the BC Society Act

“Charities” and “Publically Funded Societies”

• a majority of their directors must not be entitled to receive remuneration from the society under contracts of employment or services

• Financial statements must disclose remuneration paid to directors and 10 highest paid employees/contractors

• Public inspection of financial statements

• Minimum of 3 directors, one of whom must be ordinarily resident in BC

• Distribution to “qualified recipients” only
Upcoming Changes to the BC Society Act

- Members to have oppression remedy similar to that found under the BC Business Corporations Act
- Specifically setting out societies’ record keeping/inspection obligations
- Implementing an online filing system (for incorporation, bylaw changes etc.);
- Introducing minimum director qualifications (e.g. no undischarged bankrupts)
- Directors must consent in writing before being appointed
- No more requirement to obtain court approval for director indemnity payments;
Upcoming Changes to the BC Society Act

• providing limitations on director liability where the directors relied on the society’s financial statements or an expert report
• clarifying that bylaw authorization is needed if directors are to be compensated for being directors
• enabling unalterable provisions in a society’s bylaws (or currently in the society’s constitution) to be altered by special resolution
• removing the ability of societies to create branch societies
• introducing the concept of a subsidiary (corp or society) – a subsidiary’s financial statements must also be provided
Incorporating a Society in British Columbia

The process for incorporating a society in BC is set out in the Society Act and administered by the Registrar of Companies.

General procedural steps:

1. Reserving the Association’s Name
2. Drafting the Constitution and Bylaws
3. Submitting the Application to the Registrar of Companies
Ongoing Compliance with the Society Act

- Societies are governed by the Societies Act and all Societies must abide by the rules and regulations associated with the Act, including the following:
  - The holding of meetings of the members
  - Record keeping and access to records
  - Directors responsibilities
  - Filing certain documents with the Registrar
  - Fiscal Responsibility
  - Amending a Society’s Constitution and Bylaws
Ongoing Compliance with the Society Act: Meetings

- Provisions of the Society Act dealing with meetings:
  - When annual general meetings must be held
  - Where meetings may be held
  - Requisitioning meetings
  - Court called meetings
  - Notice requirements
  - Quorum
  - Information to be presented at meetings
Ongoing Compliance with the Society Act: Record Keeping

• Provisions of the Society Act dealing with record keeping:
  ➢ Register of Members
  ➢ Accounting records
  ➢ Register of Indebtedness
Ongoing Compliance with the Society Act: Access to Records

- Provisions of the Society Act dealing with access to records:
  - Inspection by members
  - Documents filed with the Registrar
  - Financial Statements
Ongoing Compliance with the Society Act: Required Filings

- Documents required to be filed with the Registrar:
  - Annual report
  - Special Resolutions
Ongoing Compliance with the Society Act: Directors

- Provisions under the Society Act dealing with directors:
  - Nomination, election and/or appointment of directors must be done in accordance with the Society’s bylaws
  - Subject to the Society Act and the Constitution and Bylaws of the Society, the directors:
    - must manage, or supervise the management of, the affairs of the society, and
    - may exercise all of the powers of the society.
  - Directors must “act honestly and in good faith and in the best interests of the society” and “exercise the care, diligence and skill of a reasonably prudent person”
Ongoing Compliance with the Society Act: Directors

- A society must have at least 3 directors.
- At least one of the directors of a society must be ordinarily resident in British Columbia.
- Notice of a change of directors of a society must be filed with the registrar, without delay, in the form established by the registrar.
- If a society has less than 3 members for more than 6 months, each director is personally liable for payment of every debt of the society incurred after the expiration of the 6 months and for so long as the number of members continues to be less than 3.
- No exceptions from statutory duties
- Conflicts of interest
- Removal of directors
Ongoing Compliance with the Society Act: Fiscal Responsibility

• Provisions of the Society Act promoting fiscal responsibility:
  ➢ Restrictions on investments
  ➢ Restrictions on use of funds and property
  ➢ Ability to appoint an auditor
Ongoing Compliance with the Society Act: Amending Constitution and Bylaws

• A Society may only amend its Constitution and Bylaws by passing a “special resolution” of the members:
  ➢ A resolution passed in a general meeting by a majority of not less than 75% of the votes of those members of a society who, being entitled to do so, vote in person or, if proxies are allowed, by proxy (or a resolution in writing signed by all of the members entitled to vote)
  ➢ The resolution does not take effect until approved by the Registrar
Questions