



## The Canadian Not-For-Profit (NFP) Sector by the Numbers

- 2.4 NFP percentage of Canadian GDP (2008)
- 4 Average number of NFP memberships per Canadian
- 27,000 Estimated number of societies in BC
- 170,000 Estimated number of charities and NFP in Canada
- 139 million Estimated NFP members in Canada
- 35.4 billion NFP share (in \$\$\$) of Canadian GDP



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## What are the Reform Goals?

- Modernize corporate governance rules
- Provide a “user-friendly” legal framework
- Create greater flexibility for societies
- Improve accountability and public transparency
- Streamline, fill gaps and clarify



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## Overview of the *Societies Act*



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## The New Societies Act - Highlights

### New Concepts

- Electronic filing system
- "Member-funded" societies vs. charitable and publicly funded societies
- Accountability provisions
  - Majority of independent directors (no employment, services contract)
  - Reporting on director and top 10 employee and contractor remuneration
  - Reporting on financial assistance given by societies
  - Broader record inspection rights for members
  - Broad range of new court remedies for members (oppression remedy, derivative actions)
- Senior Managers
- Continuance of NFP into BC



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## The New Societies Act – Highlights, cont'd

### Flexibility Measures

- Single incorporator
- More flexible member classes (voting and non-voting)
- Abolition of "unalterable" provisions
- Default majority requirement for special resolutions reduced from 3/4 to 2/3
- Records can be electronic; kept elsewhere in BC; and destroyed after 10 years
- AGMs to be held during each calendar year (no 15-month requirement) and can be held outside BC
- Participation by telecommunication facility and more voting flexibility
- More flexibility for directors making investments
- Borrowing and issuing securities no longer require member approval
- No more court approval for director indemnification
- Restoration without court order



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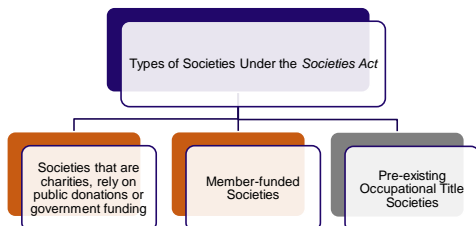
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## Taxonomy of Societies



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## Fundamental Matters (Part 2)

### Nature of Society

- Can carry on business incidentally, but no for-profit business purpose (clarification)
- Distributions only permitted if:
  - For full and valuable consideration;
  - In furtherance of the purposes of the society;
  - To "qualified recipients" (and not member funded societies); or
  - In accordance with the Societies Act or by regulation (e.g. remuneration of directors)
- Full capacity of a natural person (purpose-specific capacity removed)
- Indoor management rule codified (public can rely on authority of societies, directors senior managers and agents)



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## Fundamental Matters (Part 2)

### Name & Governing Documents

- Name reservation requirements of the BCA adopted
- Name restrictions will follow by regulation
- Registrar can reject name for "good and valid" reason
- Society's constitution can only set out:
  1. Name of the Society
  2. Purposes of the Society
- Bylaws must contain provisions on internal affairs, including:
  - Membership (incl. admission, classes, conditions re: good standing)
  - Directors (incl. election/appointment and term)
  - General meetings (incl. quorum, proxy, indirect, delegate, mail or electronic voting rules, if applicable)
  - Restrictions, if any on activities and powers
- Residential address no longer required of the Directors (protection of privacy)



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## Incorporation and Alterations (Part 2)

- Formation of Society
  - Only one incorporator required (versus 5 under the current Act)
- Required documents:
  - Name reservation
  - Constitution (name and purpose)
  - Bylaws
  - Statement of directors and registered office
- Minimum of three directors (one resident in BC) remains
- Electronic filing for incorporation
- Registrar remains public repository of bylaws
- No more pre-vetting of purposes and bylaws
- Alterations to Constitution & Bylaws
  - May file "alteration application" online to alter constitution or bylaw
  - All bylaws are alterable (i.e. unalterable bylaws not permitted)



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## Society Records\* (Part 3)

### Records – Category 1

- Certificate of Incorporation
  - Constitution, bylaws, statement of directors and registered office
  - Confirmations, certificates and other records furnished by Registrar
  - Copies of orders from courts and tribunals, federal, provincial, municipal government bodies, agencies or officials
  - Register of directors and each consent to act and resignation
  - Copies of all director and senior manager disclosures of interest
  - Register of members (organized by class)
  - Minutes of meeting for members, including text of each adopted resolution
  - All resolutions consented to in writing
  - FS and auditors reports
- All minutes of meetings of directors (incl. directors present and text of each adopted resolution)
  - Copy of each consent resolution of directors (incl. all consents)
  - Adequate account records for each financial year including records for each transaction materially affecting the financial position of the society
- \* Records may be electronic and must be kept for a minimum of 10 years.



### Records – Category 2

## Society Records, cont'd Inspection Rights

### Directors

- All Category 1 and 2 records

### Members

- All Category 1 records
- Category 2 records related to disclosures of director's interest
- All other Category 2 records **unless prohibited** by bylaws\*

### Other Persons

- All records permitted by bylaws (other than register of members)
- Can obtain copies of financial statements



Failure to grant access is an offence

\*Note: Directors may restrict member access to member register if harmful to the society or one or more of its members (certain exceptions apply)



## Finance (Part 4) and Audits (Part 9)

### Investment

- Default remains "prudent investor" standard
- Bylaws may restrict or expand permitted investments

### Borrowing

- Society may borrow money and issue debt obligations, unless restricted by bylaws

No longer special resolution of members - left to directors

### Financial Statements

- No fundamental changes – subject to regulations

### New Disclosure requirements

- Remuneration paid to each of the directors
- Remuneration of the 10 highest paid employees and contractors
- Financial assistance by society outside ordinary course (loans, guarantees, security other assistance)



## Finance (Part 4) and Audits (Part 9)

### Audits

CURRENT	NEW
Audited statements are not required for societies	Audited statements are optional for all societies
EXCEPT	EXCEPT
the society is a "reporting society" (e.g. hospitals, insurance societies, societies with subsidiaries.)	Pre-existing reporting societies which have not amended their bylaws post-transition to remove audit requirement



## Management and Members



## Management (Part 5) Directors

- Minimum of **three** directors (one resident in BC) remains
- Minimum of **18 years** of age (exceptions by regulation – e.g. student societies)
- Majority of directors **must not** be employees or contractors of Society
- *Ex officio* directors expressly permitted
- Written consent to act (or presence at meeting and no refusal)
- Written resignation

Express list of director qualifications (plus flexibility to add more in bylaws)

- Remuneration for being a director must be permitted by bylaws
- Removal of Directors by:
  - special resolution of members (always 2/3)
  - Any other method provided in the bylaws



## Management (Part 5) Directors, cont'd

- Directors' function:  
Manage or supervise the management of the activities and internal affairs of a society (subject to *Societies Act, regulations and bylaws*)
- Directors' duties:
  - Act honestly, in good faith and with a view to best interest of society
  - Exercise care, diligence and skill of reasonably prudent person
  - Act in accordance with *Societies Act* and regulations (clarification)
  - Act in accordance with bylaws (if consistent with previous duties) (new - hierarchy)

\*Note: Persons who function as directors are subject to the same obligations (but not senior managers under director/senior manager supervision)




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## Management (Part 5), cont'd Conflicts of Interest

Current	New
Direct or indirect interest in: proposed contract or transaction of society	Direct or indirect material interest in: (a) (proposed) contract or transaction, (b) matter considered by the directors, if interest could result in duty or interest that materially conflicts with director's duty or interest as director of the society
Disclose fully and promptly nature and extent of interest to board	Same
N/A	Disclosure must be evidenced in: (a) Minutes (b) Consent resolution (c) Other record mailed/delivered to society
Abstain from voting on approval	Abstain from voting on or consenting re: contract, transaction matter
N/A	Leave directors' meeting during discussion and voting and no influencing of discussion or voting




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## Conflicts of Interest, cont'd

Current	New
Exception: Insurance for benefit of director	Exceptions: (a) Payment of remuneration by society (b) Indemnification of director (c) Insurance for benefit of director (d) All directors subject to conflict of interest
Approval by members: (a) Contract/transaction reasonable & fair to society, (b) Full disclosure to members of nature and extent of interest, and (c) Approved by special resolution	Approval by members: (a) Full disclosure to members of nature and extent of interest, and (c) Approved by special resolution
Director accountable for profits made in case of non-compliance.	Same
Contracts remain valid despite conflict of interest, but court may prohibit or set aside	Same




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## Management (Part 5), cont'd

### Liability

- Directors who **voted for / consented to** distributions (incl. payments) contrary to Act / bylaws are personally liable
- "Asset lock" protection
- Liability is joint and several
- 2-year limitation period from date of resolution
- Reasonable and good faith reliance defence:
  - FS / auditor's report re financial position of society
  - Correctness of statements by other directors or senior managers
  - Reports from professionals (lawyers, accountants, engineers, etc.)
  - Other records, information or representation providing reasonable grounds



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## Management (Part 5), cont'd Senior Managers

### Senior Managers

- Equivalent of "officer" in business corporation
- Rules modelled on BCA "officer" provisions
- Unless bylaws say otherwise, senior managers serve at the pleasure of the board

Express distinction between corporate appointment and contract rights (e.g. **employment agreement or contract of service**)

- Senior managers must meet director qualifications
- Director duties apply to senior managers

Directors may be senior managers (**subject to bylaws and requirement to have majority of independent directors**)

- Director conflict of interest rules apply to senior managers



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## Management (Part 5) cont'd Indemnity

### Indemnity & Reimbursement

- Indemnity of (former) directors & senior managers w/o court approval **unless restricted in bylaws**
- Indemnity **required** for reasonable defence expenses if director / senior manager exonerated
- Payment of expenses as they are incurred is permitted upon repayment undertaking
- Director / senior manager must have:
  - acted "honestly and in good faith with a view to the best interests of the society"; and
  - had reasonable grounds to believe conduct was lawful in any proceeding other than civil proceeding.
- **Exception:**
  - Proceeding against director/senior manager by society itself – court approval of indemnification/reimbursement



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## Management (Part 5) cont'd Indemnity and Insurance

### Relief from Liability for Directors

- Court may relieve director from all or some liability for:
  - negligence
  - default
  - breach of duty
  - breach of trust
- Director has acted honestly and reasonably and ought fairly to be excused.

### Insurance

- Purchase of insurance for benefit of directors /senior manager against personal liability is still permitted.



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## Members & Meetings (Part 6)

### Membership

- Membership concept broadened:
  - Partnerships and other non-corporate entities may become members
- Multiple classes permitted - at least 1 class must be voting
  - Voting members no longer need to outnumber non-voting members
- Bylaws may permit transfer of memberships
- New explicit rules re: termination of membership:
  - Term of membership, if any, expires,
  - Membership is terminated in accordance with the bylaws,
  - Member resigns or dies, or
  - Member is discipline / expelled as set forth in bylaws or by special resolution:
    - Written notice with reasons to member
    - Reasonable opportunity to member to respond



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## Members & Meetings (Part 6)

### General Meetings

- AGM must be held in each calendar year
  - 15-month interval abolished
  - More flexibility (e.g. AGM's could be held on Jan. 1, Year 1 and Dec. 31, Year 2)
- Registrar extensions to March 31 of next year available
- Annual Reports must still be filed 30 days after AGM (and no later than January 31 of following year – unless extended)
  - Annual report must indicate whether AGM (incl. by consent resolution) has been held
- Failure to hold two consecutive AGM will trigger warning notice from Registrar re: dissolution if AGM is missed in Year 3
- Consent resolutions by all voting members can replace meeting



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## Members & Meetings (Part 6)

### General Meetings, cont'd

- More flexibility for meeting locations; can be **outside B.C.** if:
  - Location specified in bylaws; or
  - All voting members consent in advance.
- Notice must be given between 60 and 14 days before meeting
  - **Bylaws may shorten period from 14 to 7 days**
- Special resolution text must be included in notice
- Notice must be "sent" to every member:



- Societies with 250+ members may permit in bylaws to:
  - Send notice by email; and
  - Publish notice in newspaper or on website



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## Members & Meetings (Part 6)

### General Meetings, cont'd

- Directors can call general meetings of members at any time
- 10% of members may requisition meetings within **60 days** (no longer 4 months) **unless bylaws provide lower %**
  - Society must reimburse requisitionists for costs of calling meeting
- 5% of members may make proposals for next AGM
- Participation by phone or other communications medium expressly permitted
- Quorum is 3 voting members (or all voting members if fewer than 3) – or higher bylaw threshold
- One voting member – one vote
- Bylaws may authorize **indirect** or **delegate** voting, or voting by **mail, fax, email or other electronic means**



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Special Societies:  
Member-funded Societies and  
Occupational Title Societies



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## Member-funded Societies (Part 12)

### What Are They?

- Societies that are primarily member-funded and carry on activities for the benefit of their members
- Similar to societies **without charitable purpose** under old Society Act
- Examples: Private clubs, sports clubs, professional organizations
- **The following cannot be member-funded societies (MFS):**
  - Societies receiving **public donations** or **government funding** above a prescribed threshold and within prescribed time periods
  - Registered charities
  - Designated recipients under the *Provincial Sales Tax Act* (accommodation taxes)
  - Student societies
  - Hospital societies



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## Member-funded Societies (Part 12), cont'd

### Why the Distinction?

- MFS are solely for the benefit of their members and do not receive significant public funding
- Need to protect the public is less pronounced

### Regulatory Exemptions

- No public access to FS
- No mandatory reporting on remuneration (**for directors, top employees and contractors of the society**)
- Only need 1 director and that director need not be ordinarily resident in B.C.
- No requirement for the majority of the board to be independent
- May convert to a company under the *BCA*
- May distribute property to any person on dissolution and liquidation (**not just qualified recipients**)
- Property held as joint tenant devolves on the other joint tenants



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## Member-funded Societies (Part 12), cont'd

### How to Become an MFS?

- Upon incorporation, by including the following statement in the constitution:

"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."

- By altering the constitution to become an MFS:
  - Alteration authorized by special resolution
  - Court order declaring that society is not prohibited from becoming a member funded society (**e.g. as a result of receiving public donations**)



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## Occupational Title Societies (Part 12)

### What are Occupational Title Societies?

- Societies that have as one of their purposes the representation of the interests of an occupation or profession ("OTS")
- Members of OTS have exclusive right to use registered words or initials ("brand"/occupational title protection for registered group)
- **Example:** Society of Translators and Interpreters of BC
  - Certified Translator (C.T.) / Certified Court Interpreter (C. Crt.) / Certified Conference Interpreter (C.C.I) / Certified Terminologist (C. Term)
- OTS's are permitted under the old Society Act
- Pre-existing OTS are permitted to continue under the Act
- Registration is available until December 31, 2015
- No new registrations under the *Societies Act*



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## Occupational Title Societies (Part 12), Cont'd

### OTS Bylaws

- Bylaws must provide for:
  - Qualifications for admission to membership
  - Courses of study and examinations for members
  - The conduct of members, ethics and standards of practice
  - Suspension, expulsion or other penalties
- These provisions can only be changed with prior Registrar consent

### Cancellation of Registration

- Registration may be cancelled if:
  - Registration no longer in the public interest
  - Society has less than 50 members
  - Society's constitution no longer includes purpose of representing the interests of an occupation or profession
  - Society submits bylaw alteration application without first obtaining required consent
- On request



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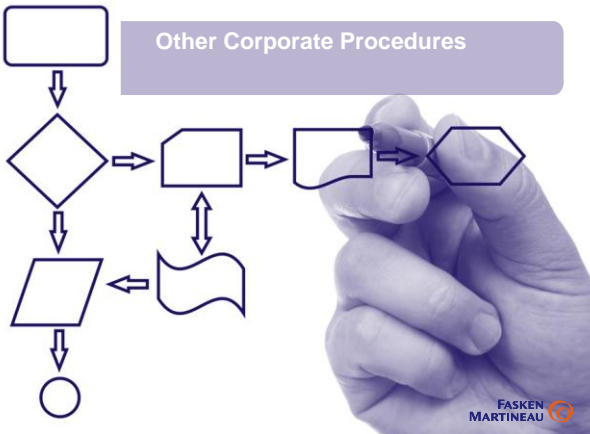
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## Corporate Reorganizations (Part 7)

### Amalgamation

Can amalgamate with:	Cannot amalgamate with:
<ul style="list-style-type: none"><li>• BC society</li><li>• Extra-provincial non-share corporation (NFP corporation)</li></ul>	<ul style="list-style-type: none"><li>• A corporation that is not a society (company, business corporation, cooperative) or not an extra-provincial non-share corporation</li></ul>
 Amalgamated entity must be BC society (no amalgamating "out")	



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## Corporate Reorganizations (Part 7), cont'd

### Disposal of Society's Undertaking

- Special resolution (of voting members) required to sell, lease, otherwise dispose of all or substantially all of society's undertaking

### Continuation – "in"

- A non-profit corporation from another jurisdiction can continue into BC as a society
- A society cannot continue outside of B.C.

### Arrangement

- Flexible tool for reorganizations not specifically covered by *Societies Act* or combinations thereof
- Special resolution (of voting members) required
- Court must approve



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## Remedies (Part 8)

### Available Proceedings

- Complaints by members ("oppression remedy")
  - On application of members
  - Activities "oppressive" or "unfairly prejudicial to members"
  - "Voice of the minority"
- Derivative actions
  - On application of members, directors, or other persons court considers appropriate
  - Prosecute/defend legal proceedings on behalf of society
- Compliance order / restraining orders
- Court power to remedy irregularities
- Registrar/court process to access records
- Court power to correct records or reconstruct missing records



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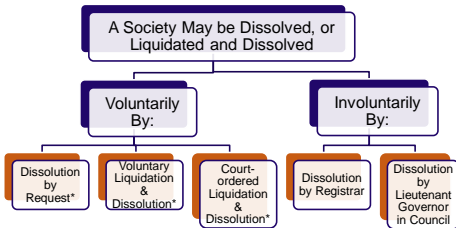
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## Liquidation, Dissolution and Restoration (Part 10)



**\*Distribution of remaining assets must be to "qualified recipient"**

- society, community service cooperative, qualified donee, trusts w/ charitable purpose; designated persons

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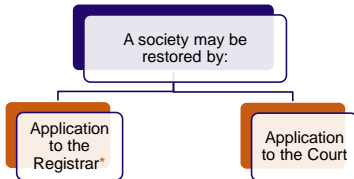
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## Liquidation, Dissolution and Restoration, (Part 10), cont'd



\* If a society was dissolved before the *Societies Act* comes into force, then it cannot be restored by the Registrar if it has been dissolved for more than 10 years

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## Extrajurisdictional Non-Share Corporations (Part 11)

OLD	NEW
Registration of extrajurisdictional society carrying on activities in B.C. required ONLY IF required by the Registrar	Registration required for ALL extrajurisdictional non-share corporations that carry on activities in B.C.
	60 day deadline for registration
	Carrying on activities without registration is an offence subject to <b>daily</b> fine.

### Carrying on Activities in BC

- Name listed in a BC telephone directory w/ BC phone no. or address
- Name in advertising (incl. radio/TV) w/ BC phone no. or address
- Resident agent or employee, office or similar place in BC from which activities are carried out

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## Offences & Fines (Part 14)

### Offences under the *Societies Act* include:

- Becoming or acts as a Director or Senior Manager when not qualified to do so
- Society that contravenes an order of the Minister
- Extraprovincial non-share corporation do not register
- Society refuses to give access to society's records, without justification
- Makes a false or misleading statement in a record filed with the Registrar

### And

- A Director or Manager who knowingly authorizes, permits or acquiesces in the commission of the offence is deemed to have also committed the offence (regardless of whether the society is prosecuted or convicted)



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## Offences & Fines (Part 14), Cont'd

### Fines

- A person other than an individual: max. \$5,000
- An individual: max. \$2,000
- Higher penalties for misleading statements (\$25,000 – person / \$10,000 – individual)
- A fine does not relieve a person from any other liability

### Limitation Period

- Time limit to commence a prosecution for an offence under the *Societies Act* is 3 years



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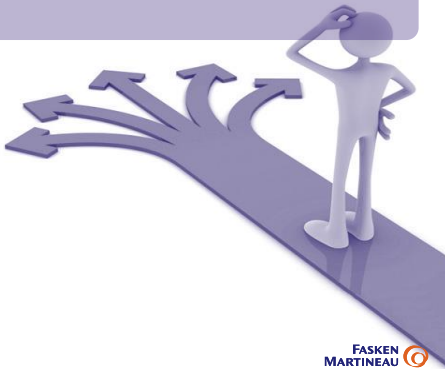
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## What's Next?



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## What's Next?

- Bill 24 – *Societies Act* – (received Royal Assent on May 14, 2015)
- Government to draft implementing regulations (Fall 2015?)
- Entry into force – Fall 2016?
- Two-year delay before existing societies must comply with new rules re:
  - Majority of directors independent
  - Director consent to election, appointment, designation
  - Director / senior manager qualifications
  - No remuneration of directors (unless bylaws permit)
- Existing societies must complete transition process within **two years**
- Extra-provincial non-share corporations have two years to register
- Until an existing society has transitioned, it **cannot** change its constitution or bylaws or amalgamate



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## What's Next? - Transition to *Societies Act* (Part 16)

### Transition Steps for Existing Societies

- Decide whether to become an MFS (only special resolution needed)
- File with the Registrar a transition application within 2 years:
  - New constitution
  - Amended and consolidated bylaws
  - Statement of directors and registered office
- Constitution can only include name and purposes of the society (and new MFS statement)
- Move all other constitution provisions to bylaws
  - Current **unalterable provisions** must be identified in bylaws as "having previously been unalterable"
  - Reporting societies must add "reporting society provisions" to bylaws
  - Consolidate all existing bylaws and submit to Registrar's electronic database



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## Transition to *Societies Act* (Part 16), Cont'd

### Transition Steps for Existing Societies, cont'd

- "unalterable" provisions & "reporting society provisions" cannot be changed on transition
- Special bylaw provisions of OTS cannot be changed on transition
- All other bylaw changes on transition require special resolution

### Post-Transition

- Minister consent required to change unalterable provisions in bylaws of government-related societies (to be set by regulation) that:
  - Perform statutory functions
  - Ministers/public officers appointed by Cabinet as members or directors
  - Receive grants, money, property, taxes, fees or other revenues from government organizations



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