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## **MEMBERS MEETINGS OF B.C. SOCIETIES DURING THE COVID-19 PANDEMIC**

It is springtime, which for many societies in British Columbia usually means that it's time for the annual general meeting ("AGM"). With the Covid-19 pandemic severely limiting meetings and interpersonal contact, holding an in-person AGM may not be possible. Perhaps the information in this document will help.

The following information is for the information of directors, managers, and members of organizations incorporated under the Societies Act (the "Act"). It is general information only. Please consult your society's bylaws, and obtain legal advice, before acting on it.

As a result of the pandemic, many societies face substantial challenges. There is much uncertainty, which will take some time to resolve. One challenge is ensuring that the minimums of legal and governance requirements are met, in particular that of holding AGMs.

Many societies have fiscal year-ends on December or March 31<sup>st</sup>, and so a lot of AGMs are held from March to June. All such meetings will be strongly discouraged if not prohibited for the foreseeable future. The question then is how to do what is legally needed, without putting anyone at risk? A solution is to hold an electronic AGM.

### **CAN A SOCIETY HOLD AN AGM BY ELECTRONIC MEANS?**

Yes, in most cases. Section 83 of the Act now allows such AGMs for most societies, unless the bylaws state otherwise. Most bylaws don't mention the subject. An electronic AGM is better than no AGM at all, and does what's legally needed. If the bylaws don't forbid an electronic AGM, you can hold one. It's a decision that the directors ("Board") need to make.

### **WHAT DOES "ELECTRONIC MEANS" MEAN?**

The options include teleconference, videoconference, skype, zoom, other methods. You'll need to research what will work, both for your society and for its members, or at least most of them. The keys are that the chair plans for and has control of the meeting, that notice is sent to all voting members and that most or all are capable of 'attending', that there's some way to record who is 'present', to ensure that only members and invited guests are present, and that all members who choose to attend can speak to and hear each other. And, of course, that you have a quorum.

### **WHAT ABOUT VOTING?**

Check your bylaws, to see what they require for voting, especially in elections. If they require that voting be by secret ballot, holding the AGM by electronic means may be a challenge.

Many societies adopted the 'model' bylaws from the Act. Bylaw 3.13: "At a general meeting, voting must be by a show of hands, an oral vote or another method that adequately discloses the intention of the voting members, except that if, before or after such a vote, two or more voting members request a secret ballot or a secret ballot is directed by the chair of the meeting, voting must be by a secret ballot." If your society has that bylaw, or something similar, voting electronically and so an electronic AGM should be possible.

However, it can be difficult to hold a secret ballot by electronic means. For example, at a teleconference every voter must say how she/he votes. Secrecy isn't possible. If your society's bylaws require that some or all votes be by secret ballot, or you anticipate a contested vote, for example an election, consider getting legal advice.

Most resolutions at an AGM really only require consensus. A formal vote isn't needed. As long as the electronic means allows everyone to be able to communicate with each other the following business can easily take place: adoption of agenda, approval of last year's minutes, presentation of financial statements, and election of the directors.

### **WE HAVE AN AUDIT - CAN WE PROCEED?**

The biggest challenge may be obtaining the annual financial statements and auditor's report (if required) in time – auditors may be reluctant to do required site visits, if they're even possible. So, talk with your financial people and auditor, and find out what they can do, and when. Beyond that, the meeting and all related documents and procedures should be kept as simple and clear as possible. Take care of only the minimum required.

### **YEAR END DECEMBER 31<sup>ST</sup> - CAN WE DELAY BEYOND JUNE 30<sup>TH</sup>?**

The members have the right to be presented with financial statements within six months after the end of the fiscal year, that is June 30<sup>th</sup> (September 30<sup>th</sup>, if the year-end is March 31<sup>st</sup>.) One option is to produce whatever financial statements you have available, with an undertaking to provide the finalized or audited ones (if required) as soon as is practically possible.

Check if any funder requires approved the financial statements and auditor's report by a deadline, and if needed request an extension.

### **PLANNING A SIMPLE MEETING**

Keep it as simple as possible:

1. Send notice more than 14 days before the meeting, with clear instructions as to how members can participate – at the society's expense, should there be any cost. For some members, something like a teleconference may be a new experience.
2. Explain that this is being done due to present unusual circumstances. Provide some way for members with questions to contact the society before the meeting.



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3. Include the agenda, minutes of the last AGM, financial statements and auditor's report, any reports that will be presented, the results of any nominations/elections process required under the bylaws, and any special resolutions that you can't delay.
4. If an auditor's report is required but not available in time, provide the unaudited financial statements, with an undertaking to members that the auditor's report will be sent as soon as available. Hopefully the funders that are often the reason an audit is needed would not object to the delay, given the circumstances.
5. Undertake to members that only the business on the agenda will be dealt with. Everything else should wait.
6. State how much time the meeting will take. 30 – 60 minutes at most.
7. Ensure that a quorum is present. Your bylaws should tell you how many members are needed for a quorum.
8. Keep short minutes.

It doesn't need to be a 'perfect' meeting. As long as most members have and can use the needed technology, it's reasonable to proceed. Democracy is rarely perfect, and in times like this we must do what's needed, while also protecting members' rights.

The Registrar in Victoria can sometimes allow AGMs and filings to be delayed. Use of those powers is discretionary, and it would be unwise to count on them used. It's best to plan for an electronic AGM, and take care of this legal obligation in a timely and reasonable manner.

## CHECKLIST FOR AN ELECTRONIC AGM

The information that you need, to decide what to do:

- A. The Act – [http://www.bclaws.ca/civix/document/id/complete/statreg/15018\\_01](http://www.bclaws.ca/civix/document/id/complete/statreg/15018_01)
- B. Your society's constitution and bylaws, as on file with Societies OnLine. They will have the Registrar's stamp on them.
- C. Reliable e-mail addresses and telephone numbers for most or all members.

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A summary of requirements under the Act.

**83** (1) *Unless the bylaws of a society provide otherwise, a person who is entitled to participate in a general meeting may do so by telephone or other communications medium if all of the persons participating in the meeting, whether by telephone, by other communications medium or in person, are able to communicate with each other.*

(2) *Subsection (1) does not obligate a society to take any action to facilitate the use of any communications medium at a general meeting.*

(3) *If one or more members of a society vote at a general meeting in a manner contemplated by this section, the vote must be conducted in a manner that adequately discloses the intentions of the members.*

The minimum legal requirements:



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1. Hold an annual general meeting (“AGM”) of the members, in B.C., each calendar year (section 71).
2. Not less than 14 and not more than 60 days written notice of an AGM. Some bylaws require more than 14 days, and occasionally as few as seven. The minimum information that must be sent is the date, place, and time of the meeting, and any special resolution that will be proposed (sections 77 and 72). (If all the voting members agree in writing as to the required business at the AGM, then the meeting need not be held. In most cases that isn’t possible.)
3. At the AGM, present the annual financial statements to the members. They must be, for a period ending not more than six months before the date of the meeting. The statements must include any auditor’s report to the members, be approved by the directors (“Board”), and signed by two of them (sections 35 (2) and 38 (1)).
4. File an annual report with Societies OnLine within 30 days after the AGM (section 73).
5. If the society also a registered charity, file an Annual Charity Information Return (T3010) with the Charities Directorate. It must be filed within six months after the fiscal year-end, is separate from the annual report, and not directly linked to the AGM.

The bylaws may vary some of these, or add requirements, particularly in terms of process.

To file an annual report, you need access to your organization’s Societies OnLine dashboard (Basic BC Electronic ID + Registry Key), the date of the AGM, the names and addresses of the directors as of that date, any change to the society’s delivery or mailing addresses, any change to the Registry Key, and payment of \$40 (credit card). The person filing the annual report must certify that she/he “..has relevant knowledge of the society, and is authorized to make this filing.” It is an offence under section 223 to file an annual report that is “..false or misleading..” An annual report can be filed even if an AGM hasn’t been held, essentially for one year only. It’s not advisable to do this.

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## **SOCIETY BOARD MEETINGS DURING THE COVID PANDEMIC**

The Act (section 54 (1)): “Unless the bylaws of a society provide otherwise, the directors may meet at any location, on any notice and in any manner convenient to the directors.” Which simply means you need to check your bylaws. If the bylaws don’t say anything about electronic Board meetings, and don’t have general requirements for Board meetings that would be impossible to comply with electronically, your society can have electronic Board meetings. The bylaws should tell you what is needed: who can call a Board meeting, how much notice must be given, what quorum is, who is the chair, and so on. Policy and practice, and current needs, should decide what the agenda/business should be, what minutes need to be kept, etc. The technology chosen is up to you, but must work for all the directors, and allow them to fully communicate during the meeting.

One item of business that societies may want to consider in the near future is a Board resolution delegating full authority and responsibility to an executive or management committee, for the duration. Of course leaving all regular management decisions to management. An executive/management committee would often include the CEO/General Manager, CFO,



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perhaps other senior employees, and the Board chair, vice-chair, treasurer, and secretary. As a group they would have the power to make any needed urgent decisions, without referring back to the Board, but of course having to report regularly. It's pretty clear that important decisions are going to be needed, and there often won't be time for 'usual' process.

Of course, for the time being, don't hold meetings unless they're necessary. There's nothing in the Act and in most bylaws that says you have to have a board meeting every month. And don't forget that people may have other priorities just now.

IF YOU HAVE A QUESTION CONTACT [LAW.STUDENTS@LAWFORNONPROFITS.CA](mailto:LAW.STUDENTS@LAWFORNONPROFITS.CA)

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