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MAINTAINING A PROVINCIAL SPORT ORGANIZATION: LEGAL AND GOVERNANCE OBLIGATIONS AND OPPORTUNITIES

Session Handout

Saturday November 20th, 2010

Please note: This handout and the session are not intended to provide legal advice. Participants with questions specific to their organizations should seek appropriate help.

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A. SESSION OBJECTIVE, SCOPE, AND LIMITATIONS

Minimum Eligibility Criteria for Recognized BC Provincial Sport Organizations (PSOs) to be Considered for Government Funding 2010, states that to be eligible to be considered for funding, a PSO must have been “a Registered Society in British Columbia under the Society Act of BC for at least 3 years (36 months) at the time of application for funding, and remain in Good Standing annually by fulfilling all compliance requirements”.

Many PSOs have little idea what this requirement means, how to meet it and why; and, how relatively easy it is to comply. As well, most do not know how easy it is to fail to comply and the consequences, some of which can be serious.

The objective of this session is to provide PSOs incorporated under the B.C. Society Act (the Act) with the information they need to understand what it means to be incorporated under the Act, how to stay incorporated, how to generally comply with the Act, and to understand what can and in some cases will happen if they fail to comply. It also touches on other common and important legal issues that confront PSOs.

To put this in terms relevant to PSOs, PSOs devote and expend considerable time, effort, and resources to creating, following, and updating the “rules” that govern how their sport is organized, played and regulated. The rules of each sport are important. Likewise, the “rules” of being an incorporated society are set out in the Act, and the constitution and the bylaws of the PSO. When a PSO becomes incorporated, its members and directors are legally agreeing to their PSO being structured, governed, and operated as set out in the constitution and bylaws - whether they realize it or not. Those are the “society” rules they have agreed to. The “rules” of being a society are if anything more important than the rules of their sport, as a PSO must have a sound legal and organizational foundation to build itself on. A little time and attention to those rules pays great dividends

There is considerable flexibility as to how PSOs can be structured and function under the Act. They must balance many factors, including members, athletes, supporters, local and regional sport organizations, and the requirements of national and international bodies. Therefore, PSOs should seek appropriate legal and other professional advice concerning specific questions they may have about their circumstances, and to ensure that they are organized and operate in the most appropriate way.

There may also be many other legal issues, or issues with legal ramifications, which are not covered in this program of which PSOs need to make themselves aware. For example, PSOs are in many ways small businesses, with all the normal legal issues that may confront such organizations.

This session will not discuss the requirements for becoming and maintaining status as a federally registered charity, as a PSO can never be one. It will briefly address Canadian Registered Amateur Athletic Associations and their status under the Income Tax Act.

Lastly, since the Act and the law in general are constantly changing and evolving, it is important for societies to stay up-to-date on the Act and other laws that apply to them, and to determine the implications any changes may have on their organizations and how they operate.

B. BASIC GOVERNANCE

In B.C., the words 'non-profit' and 'not-for-profit' are often used to identify organizations that exist primarily to advance socially desirable outcomes, as distinguished from business corporations, which exist to generate monetary profit for their owners. Non-profits are usually incorporated societies, and often also registered charities. The various terms are often used loosely, although they may have specific legal meanings. PSOs are incorporated societies, and so by definition non-profits – whatever else, they do not exist for the personal financial benefit of the members and directors. For formal legal and financial purposes, PSOs are incorporated societies, but it is acceptable to informally refer to them as non-profits.

The main terms which underlie governance are generally defined below, but there are exceptions to most of these comments.

- 'Society' or 'Association': This means an organization that is incorporated under the Society Act (or its equivalent in another province), or federally under Part II of the Canada Corporations Act. Incorporation creates a legal entity and provides some structure, rights, and responsibilities. Most, but not all, societies use the word 'society' or 'association' in their name. However, not all do. In B.C., an unincorporated organization may also use those words.
- Canada Corporations Act Non-Profit: Some national sports organizations are incorporated as "corporations without share capital" under Part II of this Act, or under a statute in another province. There are many parallels between the various statutes, and what they require, but there are also differences. Your national sports organization may sometimes need to be educated as to such things. Also, a few PSOs may be legal branches or divisions of national organizations, which may mean less independence.
- 'Non-profit': Legally, this means an organization (usually incorporated) that is also registered as a non-profit under the Income Tax Act. Many societies and charities informally refer to themselves as "non-profits", although they are not registered as such. (Most do not bother.) A variation is 'not-for-profit', a term which has no general legal definition.
- 'Charity': No PSO can be a registered charity under the Income Tax Act. However, the national parent organization of many PSOs is a Registered Amateur Athletic Association ('RAAA'), a status nearly equivalent to being a registered charity. A PSO that is a member of or has a formal relationship with a national RAAA may indirectly benefit, (for example, donations can be made to the national organization), it can issue a tax receipt to the donor, and the money can then be transferred to the PSO, if that is what the donor requests.

C. THE SOCIETY ACT – AN OVERVIEW

1. Introduction to Societies and the Act

Societies, including PSOs, are a key part of Canada's society, economy, culture and history. They enable us to participate in and influence the direction of our province and country. Societies have deep roots. Under the federal Constitution Act, power to regulate societies is given to the provinces. Although it is possible to incorporate a society federally under Part II of the Canada Corporations Act, most groups choose to incorporate at the provincial level. The Society Act is the provincial statute that allows groups of people to establish a separate legal entity, a society (legally, a not-for-profit corporation), in B.C. Most provinces in Canada have a statute that is similar to the Act.

There are about 25,000 societies incorporated under the Society Act in B.C. Few than 100 are PSOs, although many PSOs may also have local or district societies that are members, so there may be hundreds or even a thousand or more incorporated "sport" societies in B.C.

2. Democratic and Common Law Principles Underlying the Act

The Act is based on a number of democratic and common law principles. An understanding of these principles and how they are reflected in the legislation will provide PSOs with an appreciation of how the Act is structured, the importance attached to different parts of the Act, and why it is important for PSOs to do certain things in a certain way in order to comply with the Act and to maintain their registered status.

This is particularly so in that PSOs not only deliver services to their members, but are also responsible for governing their sport in B.C., perhaps subject to a national or international body. If you want to govern, you need to ensure that there is clear authority for doing so.

Societies as Miniature Democracies

PSOs are generally assumed to be miniature democracies. They have a legal structure (constitution and bylaws), members (owners), directors (servants of the members), and possibly employees. They may have other stakeholders (clients, funders, and others), and must always be aware of their external environment. PSOs may derive some of their authority from their relationship with Sport B.C., and with a national or international sport-governing body. Within this context, there is considerable flexibility. The 'default' setting may be more or less democratic, but it does not always apply, and can mean different things.

The Rule of Law

As democracies, PSOs are governed by the rule of law – the incorporating statute (Act), incorporating documents (constitution and bylaws), any applicable laws, and possibly a relationship with a national or international governing body, always apply.

There may be disagreement on what they are or mean; there can be no disagreement that they govern. PSOs which disregard what is required by the Act, their constitutions and their bylaws, and other legal requirements do so at their peril!

The Hierarchy of the Law

All PSOs are governed first by what is required under the Act, and any other applicable laws, second by their constitutions and bylaws, and lastly by procedural and substantive decisions made by the members or directors as applicable. Policies, and any rules of order for meetings that may be adopted, are always subject to the bylaws.

This hierarchy is of particular relevance to PSOs since they often attempt to address key governance matters in policies and rules that would be better addressed in the bylaws, or which may already be addressed in the bylaws or the Act, but which they do not notice. Also, unless done carefully, this can result in additional confusion rather than clarity.

The Act sets certain minimum requirements of all PSOs, both to become incorporated and to continue in existence. Most of these are basic organizational and operational matters, such as holding an AGM every year and having at least three directors. Some are more purely legal, such as filing the constitution and bylaws (to become incorporated), filing an annual report (to stay incorporated), and providing financial statements to members.

The Act allows considerable flexibility as to how a society is organized, structured, and operates so long as minimum requirements are met. Very often the Act sets a minimum or default standard, which a PSO can vary if it wishes. For example, PSOs are restricted to trustee investments (low risk, low return) unless the bylaws specifically authorize other investments. Notice of general meetings must be written, and delivered by mail or personally unless the bylaws authorize other means. Subject to other applicable legal limitations, for example the Personal Information Protection Act, all the records of a PSO must be open to the inspection of the members and directors – unless the bylaws provide otherwise.

The Hierarchy of Decisions and Decision Makers

In PSOs there is not only a hierarchy of governing laws and documents, but a hierarchy of decisions and decision makers.

The decisions range from that to incorporate (unanimous), to amend the constitution or bylaws where permitted (usually by special resolution), to policy and operational decisions (directors), to provide advice but not to bind the PSO (ordinary resolution), etc.

Each decision has its own process that must be followed. Decision makers range from the incorporators, to the members, the directors, the officers, an executive director (CEO, general manager), and so forth.

Due Process

Following proper and due process is important. A major element is knowledge and education – knowing what is mandatory under the Act, the constitution and bylaws, and other laws, what may be permissible, how decisions can and cannot be made, and so forth. A great deal is simply procedural fairness – ensuring that all those who are or might be concerned or affected know what is going on, allowing them to participate in debate and decisions, and so on.

There are often disagreements on what should be done. There should not be disagreements on how it can be done. If the way in which a decision is made or an action is taken fails the smell test, there is probably some procedural if not legal problem with it.

Ensuring there is due process is of particularly importance to PSOs, especially in matters involving conduct and discipline, which in turn involve questions such as authority, natural justice, and national/international standards.

The PSO as an Independent Legal Entity

A PSO is a legal person, independent of its members and directors. It is nominally immortal – the oldest surviving incorporated society in B.C. dates from 1892. Members of a society cannot personally benefit in the financial sense from the society – there are no shares, dividends cannot be paid, etc.

Control of the PSO by the Members

All societies are required to have members, and it is the members who ultimately determine what takes place within the society, particularly questions of control and direction. That is why, for example, B.C. Gaming Policy and Enforcement Branch guidelines require societies to have twice as many members as directors, and for the directors to be chosen by the members. Sport B.C. policies reinforce this, as may the requirements of national bodies.

The Act requires that every society keep a current and complete register of members, to ensure that it knows who its members (owners) are at all times. If a society does not know who its members are, it becomes difficult to hold a valid AGM, to elect directors, and to do other essential business. If there is ever a serious dispute, you have to know who your members are, because they will probably decide what happens.

Directors - A Governing Body

All societies must have directors, who are responsible for governing the society on behalf of the members, in what they decide are the best interests of the society. All directors have common duties set by the Act and the bylaws, and they sit on behalf of the members and the society, not on their own behalf. Subject to the Act, the constitution and bylaws, and other legal considerations, the directors as a group (the "Board") generally have unlimited power to govern the affairs of their society. This may at times also be subject to a power of a national or international body to overrule a decision of a PSO, particularly in matters of conduct or discipline, and the national or international body, or Sport B.C., may also have requirements with how a PSO must be structured.

The Right of the Majority to Make a Decision

Societies are structured to allow the majority to make a decision, or in the case of major decisions, such as amending the bylaws, a super majority. This is a common democratic principle. Bylaws typically set out the process for the members and the Board to make various decisions. PSOs need to be aware of what decisions can be made in their organizations, by whom, and the process that must be followed. For those organizations that choose consensus decision making, it is essential to have a practical definition of consensus, and a fallback process (for example, a majority vote).

The Right of the Minority to Be Heard

The minority always has a right to be heard, to require the majority to comply with the limits and processes in the governing statutes and documents, and to ensure there is procedural fairness. It is important for PSOs to know the rights of minorities within their organizations, how these rights may be exercised, and to ensure due process is adhered to in the exercise of these rights. However, the minority does not have the legal right to unreasonably delay or obstruct the majority.

The Right and Responsibility of PSOs to Govern Themselves

PSOs, as democracies, have the right and responsibility of governing themselves as set out in the laws that apply to them. If a dispute arises, it is important to get good advice, and be careful to comply with the procedural requirements in the Act and the bylaws. That is particularly so in the case of situations involving decisions on the rights and privileges of members.

The courts tend to be reluctant to interfere in the substantive affairs of societies – they will not decide what a society should do, and rarely substitute their judgment for that of the members. However, the courts will often provide direction on procedural matters. When asked about a dispute, particularly relating to a substantive matter decided in a procedurally flawed manner, they will refer it back to the members or Board – with clear directions on procedure.

In the case of PSOs, examples include a failure to give proper notice to a member of a conduct/disciplinary matter, to provide natural justice, or even to show that the PSO has valid jurisdiction.

The Registrar's office in Victoria rarely investigates into or interferes with the internal affairs of societies. It has neither the resources nor the mandate to do so. If a problem arises, the members and directors are expected to sort it out.

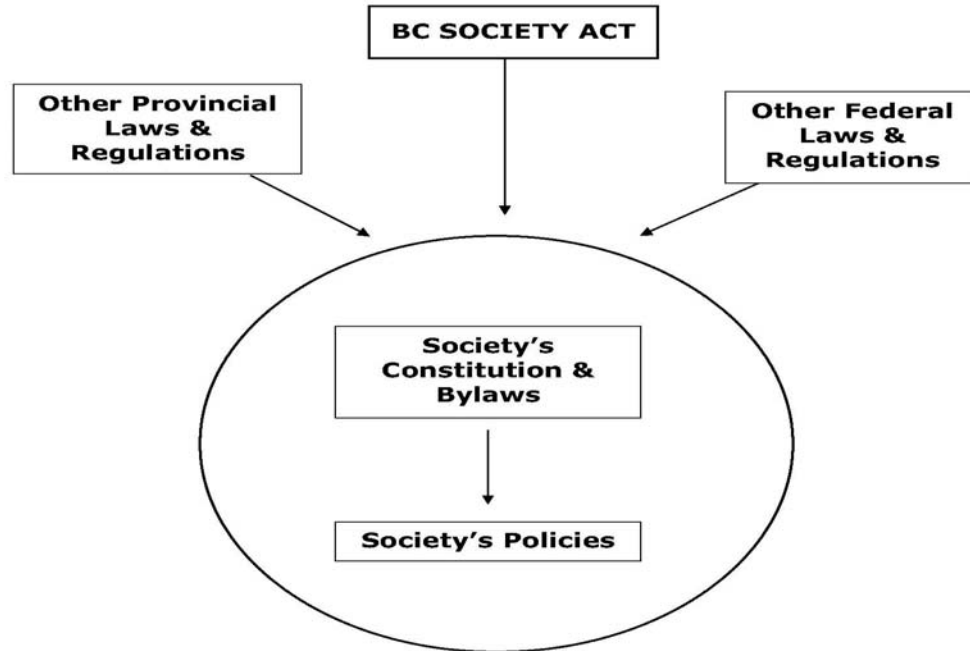
PSOs as Imperfect Democracies

Democracy is as much organization and process as result oriented, and is necessarily imperfect. Consequently, PSOs as democracies are also imperfect. Each PSO must find an appropriate balance in terms of its needs, environment, and goals, particularly in that many have large memberships, and lively democracies.

3. The Structure, Governance, and Operation of Societies under the Act

The following diagrams illustrate how these democratic and common law principles underlying the Act are reflected in how societies are structured, governed, and operated. The relationships between these components are poorly understood by most PSOs and many other societies, and the conventional wisdom practiced by most PSOs and again societies is often the opposite of what is reflected in these diagrams. As well, many PSOs and societies in general have difficulty accepting this order of things because it does not match with the way they structure, govern, and operate, as it means having to change or modify their organization, which can be challenging at the best of times.

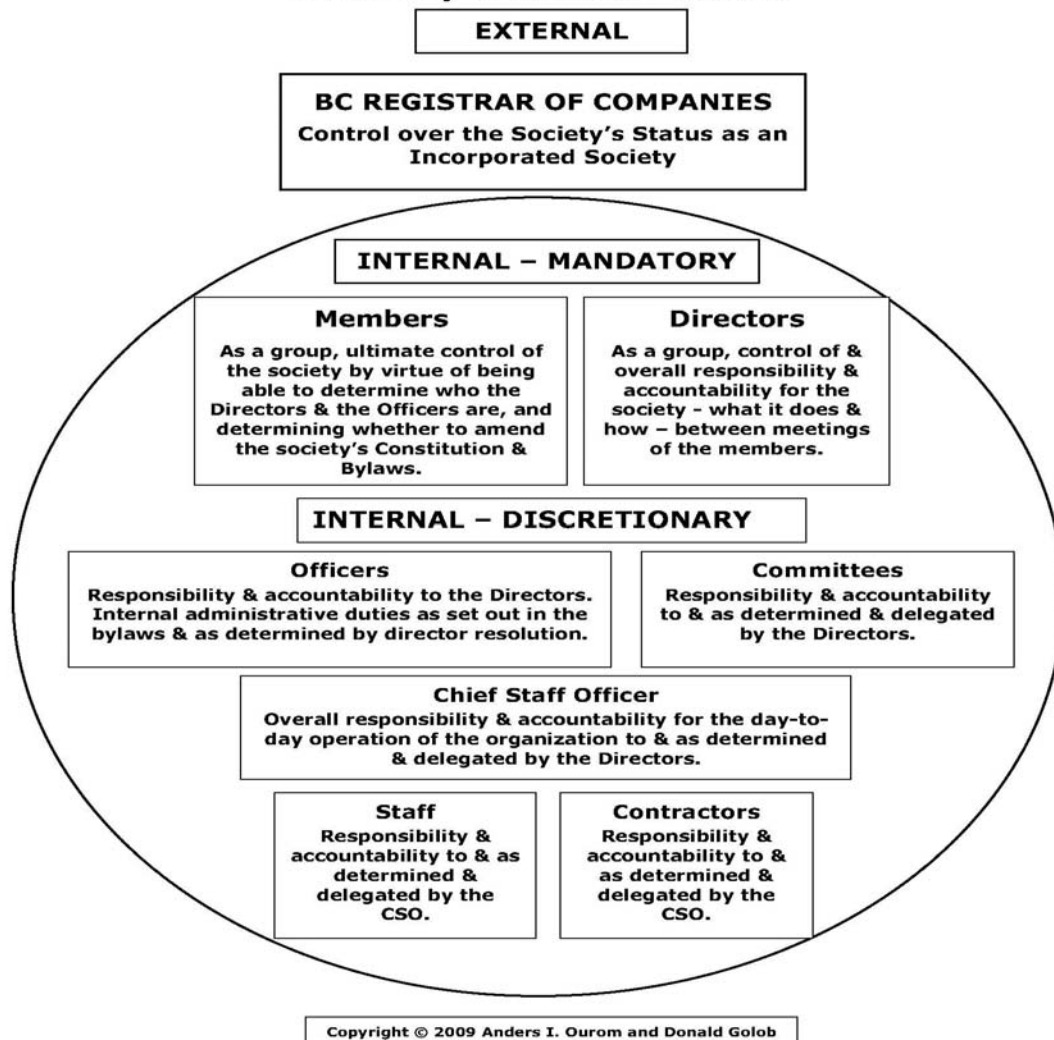
INCORPORATED SOCIETIES
The Rule & Hierarchy of the Law



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This diagram shows the relationship between the Act, other laws, the constitution and bylaws of the society, and its policies. It is important to note how far down the hierarchy policies are legally in contrast to the level of importance PSOs tend to place on them in the operation of their societies. Many societies focus their attention on and spend an inordinate amount of time on policies (and in the case of PSOs internal “rules”, and rules for their games), and little time on their constitution and bylaws and the Act. In some cases societies do not give any importance to their constitution and bylaws or the Act and operate as though they do not exist or have any bearing on their organizations. Their focus is on the policies and “rules” that they put in place in relation to their sport, and on the “rules” that their national sports organizations put in place.

INCORPORATED SOCIETIES Hierarchy of Decision-Makers



This diagram highlights that the Act requires all societies to have two mandatory groups – members and directors – having officers, staff, etc. is up to the society. It also outlines the power and authority of the various parties, and who reports to whom. Many societies act and operate differently, for example confusing the relative roles, responsibilities and authorities of the various groups. Ultimately, it is the members who own and govern the society, through its constitution and bylaws, and through the directors that they elect. The directors in turn often hire and delegate much authority and responsibility to staff.

4. How the Act Is Organized and Should Be Read and Used

How the Act is Organized

The Act is divided into eleven Parts, and since the major changes introduced in 2004, two remaining Schedules. The Parts of the Act are to some extent ordered by function, starting from the very broad (definitions, constitution, bylaws) to subjects of limited application. The Parts of the Act and what they cover are as follows:

Section 1 Definitions

This Section includes definitions of some very important terms, such as director and special resolution. Note that it does not include what some assume are standard definitions; for example, “Board” is not defined as meaning “the directors, acting as a group”, and “AGM” is not defined as such. It is essential to have and consistently use precise definitions of key things, including those from the Act, and any added in the bylaws.

Part 1: Incorporation

This Part and its Sections 2-19 cover key concepts and processes relating to incorporation and structure, and constitution and bylaws.

When incorporating, PSOs need to ensure that their bylaws clearly define their relationship with their national or international body. (The bylaws of the national body need to parallel this.) Is the PSO the member of the national body, or is it the individual members? Who chooses the directors of the national body? Who has final decision as to the rules of play, code of conduct, and disciplinary matters? Can the national body interject itself into the affairs of the PSO? What about local or regional sport organizations which are members of the PSO? What is the relationship, and what is the authority of the PSO? These and related governance questions need to be addressed, so that the roles, responsibilities, authority, inter-relationship and communications are all clear, and there is an agreed method of solving disputes.

Likewise, if incorporating, Sport B.C. has policies with regard to matters such as representation, essentially to ensure that the organization credibly represents those it claims to represent, and that it is competently organized.

Part 2: Changes in Constitutions and Bylaws

This Part and its Sections 20-23 cover the processes and limitations for name changes, and for amending the constitution and bylaws.

Part 3: Directors

This Part and its Sections 24-31 discuss directors - who they are, minimum requirements, limitations, conflicts, and similar matters. Section 24 (2) is key, in that it states that, subject only to the Act, the constitution and bylaws, and any other applicable laws, the Board has legal responsibility for managing the affairs of the society.

The question for Boards concerned about their authority is not "Does it say we can do this in the bylaws?", but "Does it say we can not do this in the bylaws?"

Part 4: Financial

This Part and its Sections 32-40 cover financial matters, such as investment, deposits, borrowing, records, access to information, and financial statements.

Part 5: Audit

This Part and its Sections 41-55 cover audits.

Part 6: Members and Meetings

This Part and its Sections 56-70 set out requirements for members and general meetings. These are largely mandatory, but in some cases a society may have a higher standard, for example 21 days notice for general meetings instead of 14.

Part 7: Termination of a Society

This Part and its Sections 71-74 cover termination and dissolution, or in other words what happens when you do not file your annual report. It immediately refers you to the now repealed Company Act, which still applies to societies, for information on the processes for winding up and dissolution.

Part 8: Extraprovincial Societies

This Part and its Sections 75-82 apply to societies from outside B.C. wishing to do business in B.C.

Part 9: Special Procedures

This Part and its Sections 83- 85 are important, although they are near the end of the Act. They cover the powers the Registrar has to investigate societies, which is rarely exercised, and what a court may do to remedy irregularities in the status or proceedings of a society.

If a member challenges a disciplinary decision of a PSO, or there is a dispute about control, section 85 may be the basis for a court having jurisdiction.

Part 10: Occupational Titles Protection

This Part and its Sections 86-93 is not relevant to PSOs, since they relate to occupational titles protection.

The Registrar will not permit a proposed new society with a similar name to a PSO, or a name that might confuse the public, to become incorporated, unless the PSO consents to the name. This gives you some protection for your name.

Part 11: General

This Part and its Sections 94-100 are general empowering and housekeeping matters.

Schedule A: Forms

This Schedule includes the various forms that were required under the Act until they were repealed in the autumn of 2004. The forms are now available on the Registry website, and with the exception of the required incorporation documents, are often in 'fillable' format. (They are also "savable" – you can partly complete them, save them, and return later to finish them.)

Schedule B: "Standard" Set of Bylaws

This is one of the two schedules remaining in the Act. It contains a set of standard/basic bylaws that meet the requirements of the Act, which societies may use if they wish.

Although they meet the requirements of the Act, the Schedule B bylaws may not and often do not meet the structural and procedural needs of other than small, basic societies. They are poorly suited to the needs of PSOs, particularly in terms of members, structure, the relationship with national and perhaps local organizations (clubs), and conduct and disciplinary matters.

For that reason, the Schedule B bylaws should be seen as a starting point, and should be modified to meet each society's actual needs. Once the bylaws are filed with the Registrar and the society becomes incorporated, they become harder to amend. Better to get them right, from the start, and before common and foreseeable issues arise.

Good bylaws are meant to provide a sound foundation for everything else a PSO does. They define the playing field and set rules for the conduct of the governance of a PSO, and how to resolve disputes. Many matters can be addressed through well-drafted bylaws, and resolutions (policies) built on them.

Schedule C: Table of Fees

This is the other of the two remaining Schedules in the Act, and contains a list of the fees charged by the Registrar for performing services in relation to the Act. A current list of fees is also available on the Registry website.

How the Act Should Be Read and Used

It is important to read and use the Act as a whole, since everything you may need to consider in relation to a particular topic or question you may have in relation to the Act may not be contained in one place within the Act or solely within the Act itself.

5. Terminology and Definitions Used in the Act

Many terms and definitions are contained and used in the Act. Some of the most important ones that all societies need to know about and understand include, in alphabetical order:

Addresses

- A society may have three addresses:
 1. Business Address: Where the society is physically located ("head office").
 2. Records Office: Where a society keeps all or perhaps some of the records.
 3. Registered Office: Where a society wants legal documents and notices from the Registrar to be sent. For the Registrar's purposes, this is your address – the place they send notices and other official papers.

- All three of these addresses may be one and the same. However, be aware of which of the three is which, particularly in terms of the Act. Many societies have experienced problems because they either do not know what their registered office is, or have not told the Registrar where it is, especially if it changes. If the Registrar needs to get in touch with a society, it will refer to the address on file. It is the responsibility of every society to keep its registered address current.
- The annual report and the notice of address forms ask for the addresses of the registered office and of the records office. Often they are the same.
- The registered and the records office must be physical addresses – the location someone would go to, to serve documents on the society, or to view the records.
- The registered office address is often a lawyer's office, for reasons of continuity and certainty.
- If a society looks after its own filings with the Registrar, all three addresses may be the same.

Certificate

- A certificate of incorporation is issued under seal by the Registrar when a society becomes incorporated. The Registrar also returns a certified copy of the constitution and bylaws to the society. The society is not legally incorporated until the documents are filed and a certificate has been issued.
- A certificate is also issued by the Registrar if a society changes its name.

Certified Copy

- A certified copy is a copy of a document filed with the Registrar that is returned to the society, certified as having been filed. It has the Registrar's stamp on the first page.
- The Registrar issues a certified copy of every special resolution to amend the constitution or bylaws, once it is filed.
- Anyone can obtain a certified copy of any document filed by a society, for a fee.
- It is essential to keep the certificate of incorporation, certified copy of the constitution and bylaws, and certified copies of any special resolutions amending the name, constitution or bylaws in a safe place. They are key legal documents and a necessary reference and resource.
- Certified copies are sometimes required as part of applications for grants, and similar official activities.

Constitution and Bylaws

- The constitution and bylaws are necessary legal documents to obtain incorporated status. They are a contract between the members as to the goals of the organization, how it will be organized, and what limitations there may be. Their importance to the governance of any society, and in particular PSOs, with their particular needs, cannot be overemphasized.
- To take an example, if a PSO disciplines a member, a lawyer for that member would first look to see if the PSO had authority in the first place to take disciplinary action – did it have jurisdiction? The bylaws should be very clear as to the authority of the PSO to discipline members, or not, whether individuals or groups or both, and whether just relating to the rules of the sport, or in other matters. The lawyer would then look at whether the rules of natural justice were applied, in effect whether there was a fair hearing. Disciplinary decisions are often thrown out, or sent for re-hearing, due to lack of a fair hearing.
- In simple language, if the PSO is going to govern a sport in B.C., and athletes, coaches, referees and others involved, the bylaws should make it quite clear that it has the authority to do so.
- There are ‘standard’ (more accurately, basic) bylaws in schedule B of the Act, as noted above. Neither they nor the bylaws of some apparently similar organization should be adopted without careful consideration and adaptation, especially for a PSO. Blindly borrowing another society’s bylaws is a sure way to get into trouble, and the schedule B bylaws are only a good starting point. This is all the more so in that the Registrar no longer reviews bylaws and amendments to them for compliance with the Act, and internal consistency.
- When amending constitutions and bylaws, it is often clearer to rescind and replace entire sections or parts. Piecemeal amendment can get very confusing. It is very important to ensure that amendments are properly filed with the Registrar, and that you keep careful track of them.
- Where a section of the constitution or bylaws is specified as unalterable, it cannot be changed in any way.
- Ensuring that their bylaws, and special resolutions to amend the bylaws, meet the requirements of the Act is the sole responsibility of the society, and one that many societies do not take seriously enough.

- The constitution and bylaws should be reviewed every time there is any major change in the organization and in any case at least every five years. When governance problems do arise, it is too late to fix the problem. Better to look ahead.

Directors

- The Act, and many societies' constitutions and bylaws, use this to mean what is often called the "Board of Directors" or the "Board". (The term "board director" is meaningless.)
- The directors, by whatever name they are referred to, are the governing body of the society. They have specific duties and responsibilities under the Act, the constitution, and the bylaws.
- An individual director or officer has no legal authority apart from that given by the bylaws, or by resolution of the directors.
- The directors generally have the power to manage the affairs of the society, subject to the Act, the constitution, the bylaws, and any other applicable laws. They can delegate some but not all of that power to others, such as an executive director or committees.
- It can be risky to require standing committees – permanent committees, with defined, ongoing tasks – in the bylaws. One Board per society is usually enough.
- The duties of all directors are stated in section 25 of the Act, and conflicts of interest are addressed in sections 26 – 29. These provisions apply to all societies. A society can set a more stringent standard, in its bylaws or policies, but not a less stringent one. Societies and their directors overlook these requirements.

Filing by the Registrar

- The Registrar maintains complete records of all filings by all societies – every document you ever file is on record with the Corporate Registry in Victoria, and available to the public on request, for a fee.
- The Act sets out which forms and documents must be filed with the Registrar.
- A document does not take effect until it has been filed (stamped) by the Registrar, or until the date specified in the document. If, for example, your society amends its bylaws at the AGM, the change does not take effect until it is filed, unless the resolution is to change the number of directors, or to remove a director.

General Meetings

- These include both annual general meetings (AGMs), and special general meetings. In both cases proper written notice must be given to all members, at least 14 days before the meeting.
- AGMs handle all regular annual business – reports, elections, minutes, financial statements, member concerns, resolutions, new business, etc.
- A special general meeting (“extraordinary general meeting”), is a general meeting called for a specific purpose, either by the directors or by petition of 10% of the members. It is restricted to the business in the petition, or the notice of the meeting.

Must versus May

- Must - something the society, directors, or members must do.
 - The Act requires that all societies, or certain types of societies, do certain things in a certain way in order to comply with the Act.
 - “Must” is now used instead of “shall”, and “must not” instead of “shall not” or (worse still) “may not”.
- May - something a society or its directors have discretion to do.
 - The Act includes many things that societies may do, with the decision to do so or not being left up to each society
 - An example is whether or not to have an auditor. Unless the Registrar requires that a society have an auditor, this decision is left up to the members of the society. Societies must often have an auditor to satisfy funder requirements, and bylaws sometimes require one. It is generally best if the bylaws state that an audit is optional, with the decision being made each year by the members, on the Board’s recommendation.
 - A PSO should probably leave the decision on an auditor up to its members – do not make one mandatory, as it can get expensive. Sport B.C. may have its own requirements, which of course the PSO would have to comply with.
 - If the society chooses to have an auditor, the Act states what a society must then do.

Notices

- The Act requires certain actions to be taken within a certain time period. Two examples are the 14 days minimum written notice of a general meeting (the bylaws may require longer), and 30 days after the AGM within which to file the annual report.
- As a general rule (there are exceptions):
 - When sending (“giving”) a notice of an AGM, the day on which it was delivered and the date of the meeting are not counted as part of the notice period. The notice period includes Saturdays, Sundays and statutory holidays.
 - It is advisable to allow a reasonable amount of time for delivery of a notice. Some societies define this in their bylaws, for example 24 hours for e-mail notices (if the bylaws allow them), two days for notices mailed in the same area, five days if farther away.
 - The Act requires that notices be in writing – if you want to send notices by e-mail, the bylaws should define written as including e-mail. It is every member’s right and the society’s responsibility to provide proper notice under the Act and bylaws.
 - Keep good records of what you sent to whom, and when and how. The easiest way to legally attack proceedings at an AGM is to say that improper notice was given.

Registrar

- Under the Act, the Registrar of Companies is also the Registrar of Societies. The Societies Section is the part of the Registrar’s office in Victoria that deals with incorporation of societies and filings by them. In this handout, “Registrar” always means the Registrar of Societies.
- The Registrar’s office has neither the mandate nor the resources to provide legal or organizational advice. Staff are professional and long-suffering, but simply can not help societies draft bylaws, or resolve disputes over control and direction.

Resolutions

- There are three types of resolutions outlined in the Act: special resolutions, ordinary resolutions, and directors’ resolutions.
- It is important to know the characteristics of and distinctions between the three types, where it is appropriate to use them, the proper process for using them, as well as their implications.

- In order of importance, they are:

Special Resolutions

- Resolutions considered by and voted on by the members at a general meeting. (Formerly called extraordinary resolutions.)
- Can also be approved unanimously in writing by all voting members.
- Address fundamental issues, such as changes to the constitution and bylaws, expulsion of members, or dismissal of directors
- The most important resolutions considered by the general membership of a society.
- The Act sets out those issues that must be considered as a special resolution, primarily changes to the society's constitution and bylaws.
- Must be passed by a 75% majority of all voting members present at a general meeting. An abstention is in effect a vote against, as it is not a vote in favour.
- Also, section 7 (1) of the Act in effect states one member = one vote, so a 'family' member (for example) can only ever have one vote.
- At least 14 days clear written notice must be given to all members. (The bylaws may require more.) The notice must state that the resolution is a special resolution, and include the text of the resolution
- If permitted by the bylaws, notice may be by other means, for example by e-mail or fax.
- Cannot be amended. They must be either adopted or defeated as presented in the notice of the resolution.
- Cannot come from the floor of a general meeting.
- Only binding on the society, directors, and members once they are filed by the Registrar.
- They come into effect either on the date that they are filed, or a later date specified in the resolution itself.
- The exceptions in the Act (section 66 (3)) are special resolutions to either change the number of directors or to remove a director, which come into effect immediately if they are approved by the membership.

Ordinary Resolutions

- Resolutions considered by and voted on at a general meeting.
- Usually not legally binding on the society or the directors. They have moral weight, but are generally considered advisory.
- Usually address issues of general importance to the organization and the membership.
- Exceptions include elections, and procedural motions, where a simple majority may make a binding decision. (Some procedural motions may require a 2/3 majority, depending on which if any rules of order a society uses.)
- Passed by a simple majority of members in attendance at the meeting who are eligible to vote; in effect 50% plus one of those voting must be in favour.

Directors' Resolutions

- Resolutions passed by the Board at a duly constituted meeting, by the majority required by the bylaws or the Act.
- Decisions that fall within the authority of the Board.
- An example is the ability of the Board to pass a resolution to keep records of the society at a location other than the registered address; in this instance the resolution must be sent to and filed by the Registrar.
- It is best if all significant Board decisions are by resolution, and clearly recorded in the minutes.
- An ongoing directors' resolution is a common way in which policy is created – essentially stating that until otherwise decided, this is how a certain issue or matter will be addressed.

Society

- This means a society incorporated and in good standing under the Act, or perhaps under the laws of another jurisdiction.
- A society is by definition non-profit and registered. Neither of these words is used in conjunction with the word 'society' as it would be redundant.

6. CHANGES TO THE ACT

Major Changes Made in 2004

The Act was amended in 1999, and again three times in 2004. In 2004, some fundamental and procedural changes were made. All PSOs should note and understand these changes, which have major implications for the operation and functioning of societies.

The Act is now available on-line, on the B.C. Laws website at <http://www.bclaws.ca/Recon/content/site?id=freesideandxsl=/Recon/template/toc.xsl/group-A/>.

Transfer of Responsibility to Societies

In November, 2004, the provincial government transferred most responsibility for compliance with the Act to societies. The Registrar still reviews and approves constitutions, and amendments to constitutions, to ensure that they comply with the Act. The Registrar also checks annual reports for completeness.

However, as noted, the Registrar no longer reviews bylaws, and amendments to bylaws, for compliance with the Act. It is now up to societies, and their advisors, to ensure that their bylaws comply. The lack of oversight seems likely to lead to problems for many societies.

Financial Statements No longer Filed with Annual Report

Financial statements need no longer be filed with the annual report. They must still be provided to the members, and the auditor (if there is one), and must be made available to the public on request, at the registered office.

Notice to Members

Until November 2004, notice to members for such things as AGMs had to be delivered by mail, or in person. Other methods were only permitted with the written consent of the Registrar. A society can now give notice to its members by other methods, such as e-mail, as long as it is written, sent in a timely manner, and with appropriate procedural safeguards.

It is a member's right to receive effective notice, according to the Act and the bylaws. It is the society's responsibility to ensure that this happens, even if it is inconvenient or costs more - especially if there is any dispute as to control or direction of a society. Where disputes arise and end up in court, one key line of attack is procedural problems, for example that proper notice was not sent. It may be up to the society to prove that notice was sent and received.

In order to send notices and other legal documents to members by e-mail, or other non-traditional means, a PSO:

- a. Must amend its bylaws so that the method is permitted, and so that there are appropriate procedural safeguards.
- b. Should ensure that all members are informed of how they will receive notices. For example, it is prudent to state on the membership application/renewal form how notices to members will be sent.
- c. Should remember that some members may not have or like e-mail, or simply prefer paper.
- d. Should not forget that e-mail addresses change often; require that members notify you of changes.
- e. Must keep in mind that it may be up to the society to prove that notice was not only sent but received – how do you prove that someone received an e-mail?

Schedule A Forms Included with the Act Have Been Abolished

The Registrar continues to work on a system of electronic filing for societies, similar to that under the Business Corporations Act. In the meantime, the forms that used to exist under the Act have been abolished, but can still be used. Forms 1 – 11, in Schedule A of the pre-2004 Act, are still acceptable. The required forms can be found on the Registry's website, and now are for the most part in 'fillable' format – you go to the website, find the form, open it, fill it in, print it out, and send it with the appropriate fee. (Do not forget to keep a copy for your records.)

The Registrar still mails societies an anniversary reminder of the AGM, or the blank annual report form. Whatever changes are made to the forms and filing system, it seems likely that they will be phased in, and that societies will be notified, which is an important reason for ensuring the Registrar has your current address on file.

D. MINIMUM REQUIREMENTS UNDER THE ACT

1. Introduction

There are minimum requirements that all PSOs must meet once they are incorporated, to ensure compliance with the Act and to maintain their incorporation. The common requirements that all societies must meet to comply with the Act are listed below. This is not intended to be an exhaustive list, and PSOs should always determine what additional requirements they must meet under the Act, based on their specific circumstances.

2. More Voting than Non-Voting Members (section 7(2))

A society may have non-voting members, but usually their number must not exceed the number of voting members. This is to ensure that members who have the right to vote are in the majority and have control over the affairs of the society.

Many PSOs have numerous members who are under 19 years of age, which is the legal age of majority in B.C. Because they are your members, you have both jurisdiction over them and responsibility for them, in terms of organization of your sport, conduct, discipline, and possible liability.

Unless the bylaws state otherwise, members who are under 19 have the right to vote and to be directors. It is often wisest if members under 19, or perhaps 18 or 16, can not vote or be directors. However, if you want the number of non-voting members to exceed the number of voting members, you have to request and receive the Registrar's written consent.

This may be less of a concern if the under-19s are members of a club which in turn belongs to the PSO, but that tends to weaken your jurisdiction over them – something that members and athletes always need to be clear about. This should be clearly addressed in the bylaws.

3. Address for Service (section 10(1))

A PSO must have a physical address in B.C. for its records office and for its registered office. The address must include a physical, street address, so that if necessary legal documents can be served (see section 12 – service). The Registrar will send all correspondence and documents to the registered address.

The registered and records office address may be different than the address where a PSO does business, as noted above. Again, a PSO needs to ensure it knows what its registered and records addresses are, that the one filed in Victoria is the one the PSO wants it to be, and that it is kept up-to-date with the Registrar.

4. Location of Records (section 11)

All documents of a PSO including its financial records must be kept at the records office, unless the directors pass a resolution permitting some of the documents to be kept elsewhere, and file the resolution with the Registrar. This ensures members and others have appropriate access to documents and records.

5. Keep a Register of Members (section 70)

A PSO must keep a current register of members from incorporation onwards, which must contain the following information about each member, as set out in section 70 of the Act:

- The applicants for incorporation (“founders”), and all persons who are subsequently admitted as members.
- The full name, resident address, date of admission, date of ceasing to be a member, and the class of membership (if applicable).

It is an offence not to comply with this section of the Act.

PSOs must keep additional information about their members due to Sport B.C. requirements, and perhaps also for insurance and liability concerns.

A current register of members is important because PSOs need to know who their members are, how to contact them, which members are in good standing, and who is eligible to vote. The register is a society’s “voters’ list” as well as its membership list.

This underscores the importance of PSOs having bylaws that clearly state how someone becomes a member and renews a membership, and what information must be provided: full name, birth date, address, telephone, e-mail address, parent or next-of-kin contact information, medical disclosure or information, signed release and waiver (problematic for under-19s), consent to criminal record check (for coaches, referees and officials), and so forth. And, be sure that your bylaws allow you to reject an application, if necessary.

Members have a right to a copy of the constitution and bylaws (section 69), and usually have the right inspect the records (section 37). The latter right can be limited or defined by the bylaws, and possibly the application of other laws.

It is also important for PSOs to distinguish between:

- a) Members as defined in the Act, and the role they play in the affairs of the society, and
- b) Individuals or others who use the services of the society, but who are often more appropriately termed as clients. An athlete or official who is a member of a club which in turn is a member of the PSO may not be as clearly bound by the bylaws and policies of the PSO as someone who is directly a member of the PSO.

Sometimes these two groups overlap, and clients are also members. More often they're quite separate. Members have rights and responsibilities as set out in the Act and the constitution and bylaws, clients or users of the society's services do not.

The bylaws must define who can become a member, how, and how the person ceases to be a member. Societies are traditionally known as voluntary or friendly societies – membership is by choice, both of the person applying, and of those who are already members. The members, through the bylaws and the directors, usually control who can become a new member. Consequently, having a true application and approval process is always advisable, so a society can do any screening that seems appropriate **before** people becomes members of the society. These procedural matters should be stated in the bylaws.

Membership in a society is not usually a right, but once someone is a member, she or he usually has the right to renew, subject to the bylaws. In the case of a PSO, there may also be particular human rights and due process considerations.

6. Keep Accounting Records (section 36)

A PSO must keep proper accounting records in respect of all its financial and other transactions. This is an important requirement under the Act, since the PSO is dealing with the money of its members and others, such as funders and donors. Where societies are in trouble, control and direction may be the issue, but often financial problems are involved also.

The requirements with regard to financial records and statements, and audits, are set out in much of Parts 4 and 5 of the Act. Details as to what must be in financial statements are in the Society Regulation, at <http://www.bclaws.ca/Recon/content/site?id=freeside&xsl=/Recon/template/toc.xsl/group-A/>.

There may be other limitations and requirements in terms of use of funds, records, and reporting. For example, the Gaming Policy & Enforcement Branch, and most funders, impose conditions as a term of grants. One of the most important legal duties of the Board is to act prudently with regard to financial matters. Keeping appropriate financial records is important for all of these and other reasons. As is said in the movies, "Follow the money" – which is what happens if something goes wrong.

7. Inspection of Records by Members (section 37)

Unless otherwise provided in the bylaws, all the documents of a PSO, including the accounting records, must be open to the inspection of a director or member on reasonable notice to the PSO. There is at least one court case which reinforces this principle, although the inspection may generally be taken to be subject to privacy laws (such as the Personal Information Protection Act), to the information being solely that of the PSO, and the request being for the proper purposes of the PSO.

This is an example of a “sleeping dog” issue that should be addressed in the bylaws before it can become a real issue. Members will legally always have access to some documents, such as the constitution, bylaws, AGM minutes, and annual financial statements. They are likely to have access to other records, such as the register of members, if it pertains to members’ rights under the Act and bylaws. It is risky to limit access to records by directors – who would want to be a director of a society that did so? But even given this it is possible to place reasonable limitations in the bylaws as to what members and directors can see and use, and when and how. Preventive medicine, with regard to proper access to information as with so many matters, is always best.

8. Maintain at least one account with a savings institution (section 33)

Every PSO must maintain at least one account with a credit union, bank or trust company. Usually a standard resolution is provided by the institution and passed by the directors. The resolution sets out the accounts that are being opened, the signing officers, and other key matters and limitations. It is important that signing authority on the society’s accounts be updated as changes to the society’s authorized signatories occur.

There is no need to mention in the bylaws who the signing authorities will be, beyond stating that the Board must decide who they are, by resolution. This allows for flexibility, if needed, although you can still use the standard “any two of the four officers” system in most cases.

9. Keep minutes of directors’ and members’ meetings (section 6)

The Act does not set out the format or content of the minutes. However, important, basic components include:

1. Date, time, and place.
2. Who was at the meeting, and when.
3. Name of secretary/recorder.
4. Committee and other reports received.
5. Issues discussed.
6. All resolutions proposed, and the result.
7. Financial reports.
8. Clear statements of actions items – who, what, when, where, etc.
9. Time of adjournment.

Minutes are important because they serve as a record of the decisions of the membership and the Board. They are a major part of the “memory” of any society, and its policies. If a contested issue arises, it is one of the first places people look for information, and possibly for leverage. It is ultimately up to the directors to ensure that proper minutes are taken and kept, and that they fairly reflect the proceedings.

10. Have a minimum of three members (section 24(8))

This states that if a society has less than three members for more than six months, each director is personally liable for payment of every debt of the society incurred after the expiration of the six months, for so long as the number of members continues to be less than three. Societies with few members need to keep this in mind, although it is rarely a problem for PSOs.

A society by definition is a group of people. It takes five members (founders) to create a society, and three to maintain one as an independent legal entity. By requiring a minimum number of members, and imposing liability on the individuals if the number drifts below that number, the government imposes some accountability on societies. A society that can not muster three members is not much of a society.

Members never have personal liability as members for the actions and obligations of a society.

11. Hold an Annual General Meeting (section 56)

This section requires that a PSO must hold an AGM once every calendar year, and not more than 15 months after last one. One can apply to the Registrar for permission for the interval to be more than 15 months, and if there is a good reason, it is likely to be granted – as long as there is always an AGM each year. Sport B.C. policies are not so flexible.

All general meetings, including the AGM, must be held in a manner that complies with the Act and the bylaws. They must be held within B.C. (section 57), unless approval has been granted by the Registrar to hold one outside the province (see below).

At least 14 days written notice to members entitled to receive notice of general meeting (section 60) is required. Some PSOs have a longer notice period as set out in their bylaws, and allow time for delivery. That is only fair, if your members are spread out all over B.C., as attending the AGM may involve some time and expense. (A good reason for PSOs in that situation to have the AGM in a different location each year.)

Notice can be sent by mail or delivered personally. If the bylaws specifically allow it, notice can be sent by other means, such as e-mail. Notice must be sent to the addresses in the register of members, and include the text of any special resolutions that will be proposed.

Members may waive or reduce the period of notice for a particular meeting by unanimous consent in writing – not likely in the case of PSOs.

It is essential to keep good records of what notices are sent, to who, and when.

At least the following must be put before the membership at an AGM:

- a) Financial statements as required by the Act (section 64),
- b) Report of the auditor, if any (auditor is not usually mandatory for non-reporting societies (section 41)),
- c) Report of directors to the members, and
- d) Further information as required by the PSO's bylaws or the regulations.

12. Special General Meetings (Section 59)

A special general meeting (sometimes called an extraordinary general meeting), is a general meeting, other than an AGM, called for a specific purpose. A special general meeting can be called by the directors, or by petition of 10% of the members. A PSO can set a lower threshold, for example 5%, but **not** a higher one. The petition must state the purpose for which the meeting is to be called, and must be delivered to the society. If the directors do not then call a special general meeting within a limited time, the petitioners have the right to call one, and so to access to the register of member for the purpose of doing so.

Special general meetings are usually about key issues relating to control and direction of a PSO, for example to make changes to the constitution and bylaws, or to dismiss directors. The procedure for handling petitions must be followed fairly and carefully.

13. Financial Statements and Annual Report (section 68)

This section states that a PSO must file an annual report within 30 days after each AGM. Failure to file an annual report is the main reason why societies are struck from the register by the Registrar.

The annual report must include:

- a) A list of directors (the full name of each director and residence (street) address are required), and
- b) Certificate of incorporation number, date of incorporation, address of society, number of voting and non-voting members, and date of AGM.

The annual report must be signed by an officer on behalf of the PSO, and at least one director must have an address in B.C. (The PSO's registered address must also be in B.C.). Form 11 may still be used.

As mentioned, financial statements need no longer be filed with the annual report. However, it is still mandatory to prepare financial statements, for the directors to approve and sign the statements, and for the statements to be provided to every member and the AGM. As well, the financial statements must be for a period ending not more than six months before the AGM.

A society may also file any special resolutions passed at the AGM with the annual report, but must pay the filing fee for the resolution in addition. (The Registrar will only file special resolutions of societies in good standing; in effect only if a current annual report has been filed)

14. Financial Organization

Other financial requirements:

- Use the assets and property of the society only to pursue the purposes in the constitution (section 32). A society can only pursue the purposes in its constitution; other activities or purposes are outside its authority (*ultra vires*). Directors may be personally liable for *ultra vires* actions.
- Keep proper accounting records (section 36), including a register of indebtedness to directors, officers and their associates (section 35.1), and allow them to be inspected on reasonable notice unless the bylaws provide otherwise (section 37).
- Invest funds only in investments authorized under the Trustee Act, unless the bylaws provide otherwise (section 32).
- Keep a copy of the financial statements at the registered and records office, and provide it to any person who requests it (sections 95, 95.1).

15. Conflicts of Interest and Directors' Duties (Sections 25 – 29)

These sections set out the responsibilities of each director, and how conflicts of interest must be addressed. They are mandatory – a PSO can set a higher standard, but not a lower one.

E. PROHIBITIONS

1. Introduction

Under the Act, there are a number of things a society must not do, either categorically or unless preconditions are met.

2. Prohibitions Under the Act

Under the Act, a society must not:

- Section 2(1)(a) – Operate a boarding home, orphanage, or other institution for minors without the written consent of the director of Child, Family and Community Services.

That Ministry licenses all organizations providing care to minors.

- Section 2(1)(b) – Operate a hospital without the written consent of the Minister of Health.

Many hospitals in B.C. are at least nominally owned and operated by societies, but all hospitals must be licensed by the Ministry of Health.

- Section 2(2) - Carry on a business, trade, industry or profession except incidentally to its constitutional purposes.

This is a complex subject, particularly as societies become more entrepreneurial in their activities, and businesses become more socially oriented. The key word is “incidental” – carrying on business-like functions as a part of operating a PSO is generally acceptable. It is nothing new for societies to carry on innovative and entrepreneurial activities, to earn money to support their main purposes. Calling it social enterprise is the most recent buzzword for it.

The larger the proportion of the society’s operations and finances that is business-related, the more open it is to challenge. If your society owns a building, uses 90% of it to conduct its operations, and rents out the other 10%, then that would be incidental. If you are renting out 90%, it may be another story.

- Section 2(2) – Distribute any profit, gain or dividend, or otherwise dispose of its assets to a member, without receiving full and fair value in return.

This emphasizes that members have no direct personal interest in a PSO’s property. “Full and fair value” would almost certainly mean “fair market value”. If you are not sure what full and fair value is, get an appraisal, or have some other proof.

- Section 7(1) – Limit the right of a voting member to vote.
This means that one is either a voting member or not. There is no intermediate class of members who can vote on some things but not others.

- Section 7(1) Provide otherwise than that one member = one vote.
This is a problem for PSOs where some of the members, for example families, are made up of several individuals. As noted earlier the family gets one vote, but the individuals in that family do not get one each.

- Section 7(5) – Not have members who are under 19 years old, unless permitted by the bylaws. (In other words, someone under 19 can be a member, can vote, and can be a director – unless the bylaws state otherwise.)

PSOs may want childrens’ parents as members, or those who are over 16 as members. They may not want seven to fourteen year olds as members, at least as voting members.

It is important for PSOs to make sure their bylaws correctly state the various classes of members, and their respective rights and responsibilities. When it comes to who is and is not a member, and who does and does not get to vote, it has to be in the bylaws.

- Section 8 – Have a capital divided into shares.

Unlike business corporations, when you join a society, you do not buy a share – societies do not have shares. Members do not have any proportional right to the property of the society.

- Section 9 – Allow membership to be transferred, unless permitted by the bylaws.

It is uncommon and would be unwise for PSOs to allow members to transfer their membership. It is your main screening device, and allows due diligence in several areas.

- Section 14 (1) & (2) – Have certain purposes without the consent of the Financial Institutions Commission, primarily relating to insurance and so not relevant to PSOs.

- Section 22(1) – Have constitutional purposes that are unalterable.

This is usually section 2 of the constitution – “The purposes of the society are to...”. The purposes can always be altered by special resolution. All the other sections of the constitution can also be amended, unless they are specified as unalterable. (Each must state whether it is or is not alterable.)

Sport B.C. policy has requirements with regard to the constitutional purposes of PSOs, as may national/international bodies. The winding-up/dissolution clause, which PSOs must have, is always unalterable.

- Section 26 – Relieve a director from the director’s legal duties and responsibilities.

All directors have the same obligations, subject only to their individual skills and knowledge. It is all or nothing - you’re either a director or you’re not. (There is no such thing as an ex officio director, or a “board director”.) The test under the Act is not what a society calls the person, but the function the person has. If it walks like a director, and quacks like a director... Clarity of roles and titles is essential.

- Section 32(1) – Use its funds and property for any other purpose than those set out in its constitutional purposes.

This is the *ultra vires* rule – a PSO literally has no legal power to pursue any other purposes than those in its constitution.

If there are *ultra vires* actions, and the PSO is adversely affected, individual directors may be personally liable for the loss. Part of the job of the directors is to ensure that the PSO sticks to its knitting. If directors are not sure whether something is authorized, they should seek proper advice. It is very easy to drift into *ultra vires* actions – fundraising, partnerships, donations, and etcetera.

- Section 32(3) – Invest its funds in anything but Trustee Act investments (low risk, low return), unless the bylaws authorize otherwise.

This is simply prudence. Again, directors may be personally liable for the adverse consequences of unauthorized investments.

- Section 34 – Acquire or dispose of a subsidiary company without a special resolution.

Very few societies have subsidiary companies, but sometimes it is a useful device for limiting liability, or carrying on some enterprise or partnership. Some now call such activities “social enterprises”. The purposes of the company would still have to be consistent with those of the society.

- Section 35(3) – Issue a debenture without a special resolution.

A debenture, essentially, is a loan secured by the property of the society.

- Section 40(1) – Issue or publish a financial statement, except internally, unless it is first approved by the directors, and signed by two directors.

This ensures that there is accountability. The process is usually that the financial statements are produced, audited, presented to and approved by the directors, signed, then presented to and received by the members at the AGM.

- Section 43 – Must not have an auditor who is not independent of the society.

This applies to societies that choose or are required to have an audit. An ‘auditor’ is a person who can provide a financial audit in the legal sense of the word.

- Section 62 – Must not allow a member who is not in good standing to vote.

What constitutes a member in good standing or not in good standing is something that must be set out in the bylaws. It can help to repeat in the bylaws that a member must be in good standing to vote: Another reason to keep an up-to-date register of members, for checking members in at the AGM and issuing voting cards.

- Section 63 – Must not allow permanent proxies.
Under section 6 (1), the bylaws must state whether proxy voting is allowed, and if so must set out provisions for it. A proxy by definition must be in writing; usually the bylaws set out the form, or the directors set one. Likewise, a proxy by definition is temporary; it can only apply to an identified general meeting. Permanent proxies are contrary to the democratic principle that members have one vote, and must exercise it themselves.
- Section 66 (3) – Must not act on a special resolution amending the bylaws until the resolution is received and filed by the Registrar.
If the resolution states that it does not come into effect until a certain date, and that date is later than the date of filing, then that applies. There are a few exceptions to this section.
- Section 70 – Must not fail to keep a register of members.
As noted elsewhere, this is an offence under the Offence Act, although it does not appear that there have been any related prosecutions for failure to keep one. Sport BC requires that you keep additional information, and indeed provide the summarized information, without identifying information, en masse to it once each year.
- Section 73 – Must not distribute its assets on winding up on dissolution, except pursuant to this section.
- Section 95, et seq. – Must not fail to provide copies of documents and statements to the public on request.

F. CONSEQUENCES OF NON-COMPLIANCE

1. Introduction

The consequences of not complying with a section of the Act are usually spelled out in the same section, or Part, of the Act. In the event of non-compliance, the directors may sometimes be personally liable for the consequences. The responsibility for compliance rests solely with the PSO, and so the directors.

The Registrar very rarely investigates the affairs of societies, and has no mandate or resources to do so.

There may have been five investigations under section 84 in the last decade; there have probably been more criminal investigations into the doings of societies, and their directors and officers. Investigations are usually in response to serious allegations of wrongdoing, an example being investigation of the Nanaimo Commonwealth Holdings Society.

Societies are for the most part left to police their own affairs. Often a technical violation of the bylaws or even the Act may not substantively prejudice anyone. Apart from the Act, the constitution, the bylaws, and democratic principles, the governing mechanisms are the directors, members, funders, and news media. In the last resort, the courts will become involved when there is a clear case for it. Part of such a case may be failure to comply with duties required by the Act, or to follow the processes provided in the bylaws.

2. Being Struck From the Register

This occurs in almost all cases when a PSO fails to file its annual report for two consecutive years, and if nothing else is very embarrassing. Being struck from the register of societies means that:

- a) Your society is not longer incorporated,
- b) You lose the right to your name,
- c) The assets of the society may be forfeited to the government,
- d) There may be implications for your funding agreements,
- e) Contracts, agreements and partnerships may be affected,
- f) The directors may become personally liable for the actions and obligations of the PSO, as it no longer exists as a separate legal entity, and
- g) It may cost you a fair amount of time, money, and embarrassment to fix the situation.

The Registrar can strike a society from the register for other reasons, but this is rarely done.

By the time a society is struck from the register, the Registrar would have sent it at least two partly completed annual report forms with a reminder leaflet, and a "Notice of Intent to Strike from the Register". Those are sent to the last address the Registrar had on file for the society. If you are lucky, you will at least pay attention to the final Notice, and do something about it immediately. It is serious, indeed deadly, stuff.

Fortunately, Sport B.C. requires its member organizations, certainly those that receive grants, to annually provide a Certificate of Good Standing, which proves the society is up to date with filing annual reports, and is a blunt reminder for those that are not.

There are several options in the case of a society that is struck from the register. See "Information for Restoration of a Society" on the Registrar's website <http://www.fin.gov.bc.ca/registries/corppg/crsocieties.htm#res>, but in summary the options are:

- a) Restore the society to the register.
 - Contact the Registrar and find out what happened, and what records they have. Sometimes it may be possible to remedy the situation fairly simply, without going to court.
 - The process for getting restored is somewhat complex, and governed by both the Act and the (former) Company Act. Get appropriate advice.
 - Assume it will take some time and money.
- b) Start a new society, and carry on.
 - In a few cases, this may be a simpler option than getting reinstated. This would probably be very awkward for PSOs.
 - There may be significant legal and financial obstacles, so get appropriate advice.
 - You would essentially have to start over.
 - The former society, struck from the register, may have no power to transfer property and assets to the new society.

3. Penalties for Non-Compliance with the Act

There are several requirements under the Act that, if a society does not comply, may lead to other penalties, including:

- Failure to keep register of members (section 70(3)), as noted above.
- Issuing, publishing or circulating financial statements that do not comply with section 40 of the Act.
- Impeding an investigation under the Act (section 85).
- Certifying a false document for filing.

The purpose of these penalties is to remind societies and their directors of their responsibilities. However, the police and crown counsel have many higher priorities than chasing societies or directors whose compliance with the Act may have been deficient. When they do, it is usually part of a larger problem, such as fraud or other criminal activity.

G. STAYING IN COMPLIANCE AND BEST PRACTICES

1. Introduction

Again, the responsibility for staying in compliance with the Act rests solely with the society. There are best practices that can go a long way to helping societies stay in compliance. Best practices are based on:

- a) Information, education and communication,
- b) Having the right people responsible,
- c) The right processes, and
- d) The right fall backs.

2. Record Keeping

- Set your society's records up correctly and keep them up-to-date and organized.
- Put all items pertaining to the Act and your society's dealings with the Registrar in one binder or file, and include:
 - a) A copy of the hand out from this seminar,
 - b) An up-to-date copy of the Act and Regulations,
 - c) The certificate of incorporation,
 - d) An up-to-date, certified copy of the constitution and bylaws,
 - e) Certified copies of all resolutions, notice, approvals approved by Registrar, and
 - f) Copies of all Annual Reports sent to the Registrar.

The binder should include all important legal and financial documents, original or copied, and be kept in a safe place. You may want to scan and store images of key documents in a separate location.

- Keep copies of all documents and correspondence you send to the Registrar.
- Ensure directors, volunteers, and key staff are aware of any changes that have either been approved or rejected by the Registrar.
- Put someone reliable in charge of the record keeping system and write it into that person's job description, even if a volunteer.
- Often the secretary or treasurer is responsible under the Act for filings and maintaining records. Ensure they know what they are supposed to do, and if any function is delegated, e.g. to an executive director, make sure there are sufficient resources, communication, authority, and responsibility. And a fail-safe: require that whoever supposed to have done something positively report that it is been done.

3. Assignment of Responsibilities and Reporting

- The ultimate responsibility for meeting the statutory obligations of the Act rests with the directors as a group, the Board, who are
 - a) Subject to the Act, and the constitution and bylaws, and
 - b) Responsible for managing or supervising the management of their society subject to those three documents.
- Regardless of to whom or how meeting the different obligations has been assigned or delegated within the PSO:
 - a) Ensure that all directors understand their statutory obligations and those of the PSO,

- b) Assign responsibility for meeting the administrative and procedural obligations to specific positions and write it into the position job description, in the bylaws for key actions,
- c) Make the meeting of any statutory obligations part of the agenda and record of board meetings, and
- d) Require the secretary to report to the board that the annual report was filed in a timely manner, and that resolutions are filed as required.

4. Proactive Administration

- Check the Registry website each year to see if the forms, fees, the Act, or regulations have changed, or there are changes planned. Make sure you use the current forms, fees, and system.
- Add the filing of the annual report to your yearly work plan.

5. Proactive Internal Communication

Ensure the directors, volunteers, and staff are aware when statutory filings are either approved or not approved by the Registrar, for example changes to the constitution or bylaws, as noted above.

6. Orientation for Directors, Members, and Staff

It is hard to over-emphasize the need for education and communication about the requirements of the Act, the constitution and bylaws, and other applicable laws. Educate members, directors, officers, employees, and others. Provide them with regular reminders.

It takes a little effort, and is a bit of a nuisance, but a gram of prevention may equal a kilogram of cure. You do not ever want to have to get up in front of funders, members, directors, or the media and say, red-facedly, "We forgot to do what we are supposed to do." Or, worse still, that "We did not know we were supposed to do it." Worst of all "The dog ate the annual report."

About 800 societies in B.C. get struck from the Register each year, almost always for failing to file annual reports for two years. For about half of them, it is inadvertent – they blew it.

7. Summary

If you get nothing else from this program, you should at least come away with the certainty that:

- a) Every PSO must file an annual report every year.
- b) Every PSO must hold an AGM once a year.
- c) Every PSO must keep a complete register of members.

- d) There are serious consequences if a PSO does not file its annual reports, both for the PSO and for its directors, who may be personally liable for negative results.
- e) It is essential to file a notice of change in addresses with the Registrar as needed, to ensure that the annual report reminder and form are sent to the right address.
- f) Whether or not the Registrar sends you a notice or form, or you receive them, a society must still file the annual report.

H. DISSOLUTION, DOWNSIZING, RESTRUCTURING, & MERGERS

1. Dissolution - Informal

As noted, about 800 societies are struck from the Register each year, and so dissolved. For about half of them, it is inadvertent – they forgot to file their annual reports, for two years in a row. They are left scrambling to fix things after the fact. For many, it may be deliberate – they no longer have any significant assets, operations or members, and choose to stop filing annual reports, so that the society dissolves. That can be better than trying to drag on the existence of a society that may not really have a continuing purpose. It is always preferable if such decisions are made deliberately, and implemented in an orderly fashion. That is, the members (if any) and stakeholders are consulted, and remaining assets are disposed of in accordance with what the Act, the bylaws, and the Income Tax Act require.

A society that is dissolved (struck from the Register), for any reason, may forfeit all its remaining property (if any) to the government. Depending on the purposes and the bylaws, the directors, the members, or both may be involved in deciding what happens to any remaining assets. If the members do not decide, then eventually the assets will revert to the government.

- a) If the society is an 'ordinary' society, that is neither a registered charity nor one with a charitable purpose in its constitution, then the constitution and bylaws, and any members' resolution, decide what happens. In the case of PSOs, Sport B.C. requires that the money go to another society with similar purposes.
- b) As a last resort, under section 73 (2) of the Act, if the constitution, bylaws or a members' resolution has not decided the matter, the assets must be transferred or are forfeited to the Minister of Finance.

This underlines the emphasis of following correct procedures if you decide that your society should be dissolved. You do not have to follow the formal procedure for dissolving as set out in the Act, but you do have to ensure that all property is correctly disposed of.

It can take some time and effort to properly wind things up, and it may take some time before Sport B.C. or the government becomes interested. And there is likely nothing left anyway. However, eventually any remaining property appears on their radar. In the case of credit union and bank accounts, eventually the institution must report inactive accounts to the government, and transfer their contents. In the case of land or buildings, ongoing failure to pay property taxes and such will eventually lead to its disposition.

2. Dissolution - Formal

There is a formal process for dissolution of a society, set out in Part 7 of the Act. It in turn refers to the former Company Act – essentially, a society is dissolved in the same way that companies used to be. The process is fairly involved, requires some time and resources, and does not seem to be often used. Most societies that are dissolving seem to simply tidy up their property and records, make sure their debts are paid, dispose of any remaining assets as required, and then stop filing annual reports. After two years, they are involuntarily dissolved – struck from the Register.

3. Amalgamation - Formal

Section 17 of the Act sets out a basic process for amalgamation, which legally creates an entirely new society from two (or more) existing societies. (As with a name change, all the debts and obligations of the new societies follow them.) Essentially, the following steps are required:

- a) Learn about what is required to amalgamate – it is a big commitment, with many challenges. Make sure there is an agreement in principle between the two organizations, covering all key points.
- b) Decide when you hope to accomplish the merger by, allocate a reasonable amount of time and resources, and do not be surprised if it costs more or takes longer. Where either society has a relationship with another party that is being transferred, especially a legal one, it will require the cooperation if not consent of that party.
- c) (Preferable) Get professional advice – accounting, legal, other.
- d) Reserve an acceptable name for the new PSO.
- e) Draft a constitution and bylaws.

- f) Each of the existing societies must have a general meeting to approve the amalgamation, the name, the constitution and bylaws, and any needed transitional arrangements – by special resolution.
- g) It seems likely that you would want to keep Sport B.C. fully informed as to what you are doing, and ensure they agree.
- h) Once all organizational, taxation, management, contractual, financial, reporting, employment and other matters are in order and ready, file the resolutions to accomplish the amalgamation. A new society is then created, with a new constitution and bylaws, and the two former societies cease to exist for all legal purposes. It is a one-way street.

4. Amalgamation - Informal

It is also possible to informally amalgamate. This is done by one society in effect taking over the activities and operations of the other, usually by agreement. Many of the same practical matters need to be addressed, as listed above, so that everything is transferred in an orderly manner. Many of the same legal considerations apply, in terms of transferring property, legal commitments, and etcetera. The “taking over” society may need to amend its constitution, to clearly encompass the activities of the “taken over” society, and may need to amend its bylaws, e.g. to absorb the members of the “taken over” society, to provide that the “taken over” society has some directors on the “taking over” society, and similar matters.

Informal amalgamation may require slightly less work, time and resources than a formal amalgamation, but many of the same considerations apply. It is much more than just some paperwork.

5. “Downsizing”

This is sometimes an unfortunate necessity. It is always better to be realistic about resources, goals, and priorities – many societies, in particular their Boards, seem to find it difficult to emotionally accept that they can not continue as they are, and must shrink.

As with so many important things, if you want the PSO to have a future, it is better if the downsizing is planned and orderly.

Start with some strategic planning, based very much on your resources and priorities. Then work out what decisions need to be made, and how they can be made. Again, if the changes/economies involve a change to legal relationships (lease, contracts, employees, etc), the other party will have to co-operate if not consent, and has legal rights too.

Seek appropriate professional advice, particularly with regard to legal, financial and human relations matters. There are ‘downsizing’ specialists, if you can afford them. A lot of your PSO’s future may depend on how it handles the transition, so the better you plan for it, the better off you will be.

Acting without planning and thought is a very risky strategy in these situations. The Board in particular is required to do its due diligence, and act reasonably and honestly and in the best interests of the PSO as a whole. Not a time to play favourites, or think short term – although sometimes short term actions are unavoidable.

6. Employees

One option during difficult times is to lay employee(s) off - legally, dismiss without cause. This needs to be planned for, and in the short term requires resources. Every employee has the legal right to proper notice, and so you will likely have to pay the person severance, in lieu of notice. The amount will depend on the minimums set in the Employment Standards Act (usually for hourly-paid, junior positions), common law (for more senior positions), and any contract with the employee. **[All employees have contracts – it is just that some of them are not written down, which provides room for disagreement.]** There are lawyers who specialize in employment law, and it is best to consult them regarding what is appropriate – bearing in mind that the employee also has the right to be represented.

It is sometimes tempting to economize by claiming that a person is not an employee, but is a contractor. It may appear to save money, for example statutory deductions, but is a risky strategy for societies and Boards. There is a well-established legal test as to whether someone is an employee or a contractor that can be found at <http://www.labour.gov.bc.ca/esb/facshts/employee.htm>.

Whatever you and a person may agree, if she/he meets the test of being an employee, she/he almost certainly is. That means that the PSO was and is liable for payment of statutory deductions (EI, CPP, income tax, WCB, etc) on the person's behalf – from the time the person became an employee. And possibly fines or penalties. And directors, even of societies, may be personally liable for ensuring that such payments are made.

7. Statutory Obligations

Every society and every charity has statutory obligations. Many are discussed above – filing annual reports, records, meetings, filings, etc. Other statutory obligations arise out the relations that societies may have with others – employees (WCB, EI, CPP, income tax...), the Canada Revenue Agency (GST, and HST on July 1st, 2010), the Minister of Finance (social services tax/PST), and so on. Very often, the directors may be personally liable for payment of these obligations. They may also have personal guarantees or other obligations to third parties, on behalf of the organization.

Always make sure that statutory obligations are calculated correctly, and paid in full and on time! Also ensure that there are reliable backups - a desperate executive director, looking for ways to cut corners short-term, may 'forget' to remit deductions and reports, hoping that a grant or cheque will arrive. Just because the executive director says that required payments have been made does not make it certain – check to make sure.

This is an example of why, when organizations get into financial difficulties, it is better to plan and make hard decisions, **before** you are backed into a corner.

8. Directors' Responsibilities

In times of crisis, as at all other times, the directors as a group – the Board – and individual directors are responsible for acting in accordance with what is required by the Act, the constitution and bylaws, and other legal constraints. See sections 24, 25 and 26 of the Act particularly. The responsibilities come with the territory. This can sometimes mean that when things get really bad, some or all of the directors resign, so as to (hopefully) avoid what they fear may be personal liability.

The simple solution is for the Board to make certain that all obligations, especially legal and financial ones, are met on an ongoing basis. Have safeguards. If for any reason the society fails to meet its obligations, immediately remedy the situation – or cease operations, and decide quickly what to do, with appropriate advice.

I. COMMON ISSUES IN PSOs

1. Sport B.C.

Societies that are recognized as PSOs by Sport B.C. have particular requirements with respect to governance. Formally, that means PSOs have to ensure they comply with Sport B.C. policies with regard to their bylaws, governance, and policies.

It is of particular importance that PSOs refer to:

- Minimum Eligibility Criteria for Recognized B.C. Provincial Sport Organizations to be Considered for Government Funding (2010).
- Recognition of a Provincial Sport Organization in British Columbia (2010).

Although these requirements change from time to time, the underlying motive does not: Sport B.C. wants to see that PSOs are organized and operate in an effective, credible manner, include most or all of those participating in the PSO's sport in B.C., and do a good job of serving the public.

2. National and International Sport Organizations

Many PSOs belong to national sport organizations, which in turn may belong to international organizations. Those organizations may have a variety of roles, which can include promoting and organizing the sport at their level, providing rules for the sport, providing a code of conduct and discipline, acting as an appeal body, and so on. The roles and relationships can vary widely.

The critical element is to ensure that the bylaws and policies of both the PSO and the national/international body are clear and consistent as to the roles, inter-relationship, authority, and responsibility of both parties. Clear communications also help a great deal.

A national or international sport governing body does not necessarily govern the affairs of a PSO, or the sport at the provincial level. Some of the common questions, which should be clearly addressed in a PSO's bylaws and those of the national/international organization, by agreement between the organizations, and through clear communications and common sense include:

- Are the members of the national body the provincial-level bodies, or the actual athletes/coaches/officials?
- Are members of the PSO required to belong to the national or international body, directly or through a club or the PSO?
- Who gets to vote in the national body?
- How are disputes, e.g. regarding competitions or rules, resolved?
- Who sets the rules and laws for competitions, athletes, etc? Banned substances?
- Training of athletes, coaches, referees?
- Co-ordination between the various programs?
- Is the national/international body the final appeal body for disputes between members, and disciplinary matters?
- Can the PSO set some rules for training and competitions on its own, to meet its particular needs?

Simply because a PSO belongs to a national body does not in and of itself make the PSO and its members subject to the national body.

Another matter is where the national organization is a Registered Amateur Athletic Association under the Income Tax Act, and so has quasi-charitable status. Donations may be received by and intended for the benefit of a PSO, but must be processed through the national, which is the only body able to issue donation receipts, and is strictly accountable for appropriate procedures.

3. Regions and Clubs

Many PSOs have members that are clubs, and the related governance questions that arise are parallel to those between a PSO and its national body, including:

- Are the athletes, coaches, and officials members of the club, which is in turn a member of the PSO, or are they directly members of the PSO?
- What about where there are not only clubs, but the clubs are organized on a regional basis? Who then are the members?
- Who gets to vote? This is a fundamental democratic question, ensuring that there is reasonable representation.
- Under 19 year olds, and related legal issues – voting, being directors, supervision, criminal record checks of adults, harassment, etc.
- Whether it is the clubs or regions that are members and have the right to vote, ensuring that there is reasonably balanced regional representation. There are simple and complex ways of doing this, but the key is a workable system.
- What about non-members? A PSO has a nominal monopoly in its sport only with the consent of those involved. To be credible, most participants need to be members.
- Ensuring that it is clear to all members, whether they are clubs or individuals, that they are bound by the bylaws of the PSO, the rules for the sport, and the code of conduct and discipline. Also ensuring they are clear as to what role (if any) the PSO has in resolving disputes between members or clubs.

It is generally preferable if all athletes, coaches, referees and officials are directly members of the PSO, to ensure that the PSO ultimately has control over them, as members. They may also belong to a club – in some groups, representation is only through a club, but in others the club is a non-voting member.

4. Disciplinary Proceedings, Rules & Codes of Conduct

This has already been discussed at some length. There is always a need for some flexibility, particularly in how the rules of your sport are applied. But there is a need for consistency throughout the organization, from the international level down. That is:

- What are the rules for competitions, who sets them, and who applies them?
- Rules for related matters, such as drugs, harassment, etc.

- Ensuring that your bylaws clearly state that the PSO (or national/international) can set binding rules for all participants, and set and enforce a code of conduct and discipline. Repeating that in the membership application/renewal form. You do not want there to be any doubt that participants know that they are bound by the rules.
- Providing for alternative dispute resolution (mediation, arbitration), at least within the PSO, as a more economical and practicable way to decide appeals than the courts.
- Ensuring that your disciplinary processes meet the requirements of fairness and natural justice. It is a complicated subject, but the bottom line is that proceedings not only must be fair, but be seen to be fair. When embarking on disciplinary proceedings of any significance, it is often best to get legal advice first. In the long run, you may save a lot of money and time.

5. Executive Director

Many PSOs employ a professional to manage their affairs. If you do so:

- Perform your due diligence, in terms of ensuring that you have clearly defined the person's role, have the needed resources, and have recruited the best candidate.
- Ensure that the person's title, role, responsibilities and authority are consistent with the job, and that the job description reflects this. PSOs, and societies generally, often over-manage their executive directors, or engage in petty squabbling with them. Good delegation is a fine art, and takes work and consistency.
- Have consistent and workable personnel policies, for the Executive Director to apply to the other employees.
- Make sure that the person understands what it means for the PSO to be a society incorporated under the Act, and how your particular PSO is governed, structured, and operates (Give them this handout); and, what this means to their job and how they carry it out.

6. Bylaws – Key Issues

- Clearly defining the relationship with national, international, regions, clubs etc.
- Defining the classes of members, their respective rights and responsibilities, and the application and renewal process.
- Ensuring there is a sound basis for the PSO to set the rules for the sport, and conduct and disciplinary processes.
- Avoiding an overemphasis on policies.
- Clearly defining the roles of directors and officers.

- Provide provisions with regard to access to the PSO's information – the default under the Act is that members and directors nominally have access to everything.
- Ensuring that they are clearly written and practicable – idealistic bylaws are pointless if they do not work in practice.

7. Contracts

PSOs make a variety of legal commitments, some of which are contractual in nature. The two main ones are those with the Executive Director, and perhaps a lease for an office. Others may be in relation to competitions and events, fundraising, and promotions. As any lawyer will tell you, having such contracts in writing, with the contract at least vaguely resembling what the parties have agreed to, is a good start. It is better still if the terms are carefully considered and drafted, and reflect accurately the rights and responsibilities of the parties, and what will happen if there is a problem.

8. Insurance, Loss Prevention, Disclosures & Waivers

Loss prevention is a fancy way of saying that your organization has a pervasive culture of ensuring that all risks are identified, and wherever reasonably possible are eliminated, minimized, or managed. Given that all sports pose physical risk to participants and others, every PSO should have a loss prevention program. It amounts to due diligence. The elements might include:

- Regular thorough review of all programs and activities, and identification of risks, particularly in light of any change.
- Eliminating such risks as can reasonably be eliminated, and minimizing those that can be minimized. Instill a culture through the whole PSO, emphasizing this.
- Never downplay the risks involved in your sport. Be blunt, with the public, members, new media, governments, and others.
- Requiring every single participant and member to sign a comprehensive disclosure of risks and waiver, at least annually, and keeping those waivers in a safe place. This should be part of the membership process – no waiver, no membership.
- Participants who are under 19, or have a legal disability, bring special risks. A person under 19 probably cannot sign a legally-binding disclosure and waiver. The parent or guardian of such a person cannot sign a disclosure and waiver on her/his behalf. Apart from clear disclosure of the risks, all you can do is have the parent/guardian sign a disclosure form which includes an indemnification agreement. Essentially, the parent/guardian agrees that if the child was ever to sue the PSO, the parent/guardian would indemnify the PSO for the defence and judgment, having been the person who consented to the participation.

- Obtain commercial general liability and comprehensive liability insurance from a knowledgeable broker who is familiar with PSOs. Ensure that there is full and clear disclosure of all your activities. Sport B.C. can provide some support and guidance in this area, but ultimately it is up to you to ensure that the policy reasonably covers what you do, within your means.
- Most policies will also include directors & officers (D&O) insurance, perhaps for an additional fee. Directors of non-profits generally, and of PSOs, are unlikely to be found to be personally liable for whatever the PSO did or did not do, unless it was something outside the scope of their and the PSO's authority. However, you may still have to pay to be defended, which is why D&O insurance is helpful.
- For anyone working with persons under 19 years of age, or a legal disability (mental, physical, age), you need to take extra care, for example through obtaining consent to a criminal records check (and getting one), checking references, and ensuring that all reasonable precautions are taken.
- Providing guidance to members and member clubs about risk management – they have even fewer resources than you.

9. Privacy & Access to Information

PSOs are generally covered by the Personal Information Protection Act, which often will override the access to information provided by section 37 of the Section Act. (The Freedom of Information and Protection of Privacy Act applies for the most part only to public bodies, and may tangentially affect PSOs. Its requirements are parallel to but more stringent than PIPA.)

Section 37 refers to “the documents of a society”; very often, documents are not solely those of the society, but are as it were shared. In any event, under PIPA, all societies must now have a privacy officer and policies regarding access to and management of information. Given that PSOs may hold a great deal of personal and sometimes sensitive information about individuals, such as medical records, its common sense to ensure that information is properly handled. It is not just the information of the society – it is also owned by the individual, who gave it to you only for the purposes you requested it for.

There is quite a lot of helpful information about PIPA, how it applies, and what you need to do on the Information & Privacy Commissioner's website, at http://www.oipc.bc.ca/sector_private/resources/index.htm.

Apart from having a privacy officer, and a privacy policy, there are some simple things to remember:

- Only collect that personal information about members, volunteers that you truly need.

- When collecting the information, make sure you fully disclose the reasons why you are collecting it.
- Ensure that the information is only used as you said it would be, and that it is generally kept safe and secure.

J. FILINGS REQUIRED AS CHANGES OCCUR OR ARE DESIRED

The following summarizes filings that are required upon certain actions being taken or events occurring. It includes common filings, but not all. Refer to the section of the Act for more detail. A society should also consult its constitution and bylaws, as they may limit or expand on what is needed.

1. Those requiring a Special Resolution, Ordinary Resolution, or Directors' Resolution to be filed with the Registrar (sections 66, 67)

- Change does not take effect until Registrar has not only received the document, but actually filed it. (Or when specified in the resolution itself.)
- Obtain a certified copy of every filed resolution. A copy of every special resolution a society files, and of every ordinary or directors' resolution that it must file under the Act, is returned to it.
- A "Notice, Societies" is issued when a document is rejected by the Registrar, to tell you why it could not be filed. It often contains helpful information on what needs to be changed or added.

2. Amendments to Constitution (sections 20, 22)

- The constitution cannot be rescinded and changed in its entirety.
- The Registrar must ensure that the constitution, and any amendments to it, comply with the Act before they can be filed.
- A certified copy of any change is returned to the filer.
- Unalterable clauses cannot be amended in any way.
- The constitutional purposes cannot be unalterable.
- If you are drafting a constitution and bylaws, or amendments to them, you should consider seeing a lawyer. Only lawyers are permitted to do this work and charge a fee for it. Consultants, who are not practicing lawyers, cannot draft constitutions and bylaws for legal purposes

3. Change of name (section 20 (1)(a))

- Requires reservation and approval of new name.
- Name should be reserved before special resolution is passed.
- Name reservation form required; three choices allowed.

- Special resolution required.
- Registrar issues a certificate under seal upon approval.

4. Change of purpose (section 20(1)(b))

- Special resolution required, to amend constitution.
- Purposes can be amended, deleted, or added.
- Registrar issues a certificate under seal upon approval.
- Approval of Registrar does not imply approval by the Charities Directorate; if society is a registered charity, obtain consent from Charities Directorate before amending purposes. (It may take some months.)
- Also, ensure that changing your purposes does not affect agreements or contracts you may have with other groups, organizations, or funders.

5. Amendments to the Bylaws (section 23)

- Bylaws can be rescinded and replaced in part or in whole, unless parts are unalterable.
- A special resolution is required. It is clearer to replace sections, parts, or the entire bylaws, than to make piecemeal changes.
- The resolution must still be filed with the Registrar, but is no longer reviewed for compliance with the Act. That is now a society's sole responsibility, and that of its advisors.
- The Registrar issues a certified copy of the resolution.

6. Amalgamation of Two or More Societies (section 17)

- Requires a special resolution from each amalgamating society.
- Consult Societies Unit on process, filings and fees.
- Each society must be in good standing – current annual report filed, and all other mandatory documents.
- Incorporation documents for the new society must be signed by all the directors of the amalgamating societies.

7. Subsidiaries - Acquisition, Incorporation, Disposal (section 34)

- A society can have a wholly or partly owned subsidiary company, but cannot have a subsidiary society. (There can be 'related' societies, e.g. societies with overlapping or identical directors, or a 'captive' foundation to support a charity with parallel objects.)
- Special resolution required.
- Must also file notice in form set by Registrar, and must separately incorporate company.

8. Borrowing and Debentures (section 35(3))

- Usually required by financial institution to secure loan, e.g. for line of credit, purchase of real property.
- Special resolution required.

9. Approval of Director's Conflict of Interest (section 28(b)(ii))

- The members can, by special resolution, and in limited circumstances, approve a director's actions, even though the director was in a conflict of interest.

10. Dissolution by Request (section 71)(Part 9, Company Act)

- A society can by ordinary resolution request that it be struck from the register. Resolution must be filed with the Registrar.
- Also requires an affidavit sworn by two directors, stating that society has no remaining debts or liabilities, and outlining how assets have been or will be disposed of.

11. Change of Location of Registered or Records Office (section 11)

- Done by directors' resolution, which must then be filed with the Registrar.
- Required if a society wants to change the location of its records office or its registered office.
- Address must be in British Columbia, and must be physical address.
- Takes effect the day after notice is filed.

12. Change in Directors (section 24(7))

- Changes at the AGM can be reported on the annual report – a separate form is not needed.
- Changes between AGMs must be separately reported.
- The filing should be immediate, and takes effect as soon as filed.
- It is in the interests of a director who ceases to be a director that a notice be filed immediately.

13. Removal of Directors (section 31)

- Governed by both Act and bylaws, but usually requires a special resolution, unless the director's term has ended.
- Uniquely, a special resolution removing a director takes effect as soon as it passes, not upon filing. This allows a new director to be elected at the same general meeting.

- There is legal authority for the principle that directors can only be removed by the body that elected or appointed them, usually only by special resolution of the members. Bylaws that claim to give the Board the power to remove a director are probably ultra vires.

14. Notice Establishing/Dissolving a Branch Society (section 18)

- Powers of branch cannot exceed those of the society itself.
- Must give notice without delay to Registrar.

15. Incorporation of Branch Society (section 19)

- Incorporation process is similar to that followed by a new society, but consent of parent society is required.

16. Application to hold AGM outside B.C. (section 57)

- Send letter to Registrar requesting permission, and providing particulars as to location, date, and reason.
- Registrar responds in writing.

17. Application to Extend Time Within Which to Hold AGM (section 56(1))

- Send letter to Registrar requesting permission, and providing particulars as to location, date, and reason.
- Registrar responds in writing.

18. Forms and Filing (General)

- The forms set out in Schedule A of the pre-2004 Act have been rescinded, but may still be used pending establishment of electronic filing, or other forms.
- Almost all the forms are now on the Registry's website, in 'fillable' format. You simply get the form on your screen, type in all the required information, print it out, sign it, and send it in with the fees. For all the forms, see:
<http://www.fin.gov.bc.ca/registries/corppg/crsocieties.htm>
- All forms and other correspondence must clearly identify the society (full name, incorporation number), and its address.
- Complete all forms in every applicable particular.
- Forms must be signed in ink by someone authorized to sign on behalf of the society – lawyer, officer (including executive director), other.
- There may be penalties for knowingly certifying a false or misleading form.

19. Other Approvals and Filings

- The foregoing lists many common changes in societies, and the processes required to complete them under the Act. Many of them require the approval of the members, directors, Registrar, or some combination of them. Other approvals or consents may be required, and should not be forgotten.
- Some of the key concerned agencies include the Charities Directorate, B.C. Housing, Canada Mortgage and Housing Corporation, HOMES B.C., and the Gaming Policy and Enforcement Branch. This is particularly so with regard to amendment of your constitutional purposes, and perhaps your bylaws. Before considering any change to these documents, make sure you have all necessary consents.

K. CORPORATE REGISTRY

1. Contact Information

Address: Societies Unit
Corporate and Personal Property Registry
Ministry of Finance and Corporate Relations
2nd Floor – 940 Blanshard Street
P.O. Box 9431, Station Provincial Government
Victoria, B.C., Canada V8W 9V3

Telephone: (250) 356-8673 (direct dial)
(604) 775-1046 (toll free, from Vancouver)

Enquiry B.C. (604) 660-2421 (Vancouver)
387-6121 (Victoria)
(800) 663-7867 (elsewhere in B.C.)

Call the appropriate number and ask to be connected to the Corporate Registry at (250) 356-8673. The Enquiry B.C. service is provided by the provincial government and is provided free of charge from anywhere in B.C.

Hours: 8:30 – 4:30, Monday – Friday. Closed statutory holidays.

Website: <http://www.fin.gov.bc.ca/registries/corppg/crsocieties.htm>

2. Society Act On Line

- The BC Society Act is on-line at <http://www.bclaws.ca/Recon/content/site?id=freeside&xsl=/Recon/template/toc.xsl/group-A/>
- B.C. OnLine records the status of every society – names and addresses of directors, registered and records office address(es), date last annual report filed. It is accessible for a fee through anyone who has a B.C. OnLine account – title search companies, many lawyers, accountants and notaries. It is also accessible at any government agent (www.governmentagents.gov.bc.ca).

3. Society Act Forms

- Society Act forms (annual reports ,etc) must still be submitted in hard copy by mail, courier, or in person.
- However, all Society Act forms can be downloaded as fillable PDFs on-line from:
<http://www.fin.gov.bc.ca/registries/corppg/crsocieties.htm>.

4. Society Act Fees

- A current schedule of fees for filings under the Society Act is at <http://www.fin.gov.bc.ca/registries/corppg/CRFees.htm>
- Many but not all fees are also on the Registry's general webpage - <http://www.fin.gov.bc.ca/registries/corppg/crsocieties.htm>

5. Other Services Available from the Registrar

- Priority service, where available - \$100.00. One business day turn around.
- Pre-vetting documents - \$100.00. Usually constitutional amendments. Ensures they will be acceptable for filing.
- These fees are in addition to any other fees associated with forms and filings under the BC Society Act
- The Registrar no longer pre-vet bylaws, or special resolutions to amend bylaws.
- Special resolutions passed on different dates must be submitted separately, with separate fees.
- To reduce filing fees, structure resolutions so that the number of resolutions is minimized.
- Checks and money orders payable to Minister of Finance.

6. Purchase Act and Regulations

Crown Publications Inc.

106 Ontario Street, Victoria, B.C. V8V 1M9

Tel: (250) 386-4636 Website: www.crownpub.bc.ca

<http://www.crownpub.bc.ca/pubdetail.aspx?nato=7691000310>.

L. PROPOSED CHANGES TO THE ACT

In 2008, the BC Law Institute (BCLI) completed a Society Act Reform Project that resulted in a *Report on Proposals for a New Society Act*, including a proposed new Act. The report contains 106 recommendations for reform of the Act. The Institute presented the report and recommendations to the Ministry of Finance. The review and amendment process is just beginning.

The Ministry has now called for public comment, with a deadline of April 1st, 2010. (See http://www.fin.gov.bc.ca/society_act_review.htm). Whether an amended Act will be proposed by government, and when, is not known at this time. The earliest likely date appears to be spring 2012. However, a new Act which contains many proposed changes will eventually appear, and you should check the Registrar's website occasionally, although it seems fairly likely that currently incorporated societies will be notified.

The report and recommendations are at <http://www.bcli.org/bclrg/publications/51-report-proposals-new-society-act>
It is a very long and complex document of over 400 pages.

Further Information

BC Law Institute: www.bcli.org.

BCLI Society Act Reform Project and Reports:
<http://www.bcli.org/bclrg/projects/society-act-reform-project>.

M. REFERENCES

Bourinot's Rules of Order. Stanford, Geoffrey. May 1995. Toronto: McClelland and Stewart Limited.

Continuing Legal Education Society of B.C. Vancouver, 1992 - 2004. Numerous course materials from CLE programs for lawyers and others. Available at law libraries and elsewhere, and through the CLE website at www.cle.bc.ca.

Duties and Responsibilities of Directors of Non-Profit Corporations. Kelly, Hugh M., QC, and Frederick, Mark. R., Toronto, 1999. Canadian Society of Association Executives (CSAE) (Highly recommended, can be ordered directly from CSAE toll free at 1-800-461-3608. Website: www.csaecan.com).

Law of Charitable and Non-profit Organizations. (Third Edition.) Bourgeois, D., Toronto, 2003.

Mina's Guide to Minute Taking. Principles, Standards and Practical Tools. Mina, Eli. 2004. Vancouver, BC: Eli Mina Consulting. (www.elimina.com)

Primer for Directors of Not-For-Profit Corporations: Rights, Duties and Practices. Industry Canada, Ottawa, 2002. (Highly recommended. Downloadable from the Industry Canada website: http://strategis.ic.gc.ca/epic/site/cilp-pdci.nsf/en/h_cl00688e.html).

Society Act. RSBC Chapter 433, as amended in 1999 and 2004 (three times). Province of B.C., Victoria, 1996 - . (Available for review at any public or law library in B.C., or viewing on-line as the government's website at http://www.qp.gov.bc.ca/statreg/stat/S/96433_01.htm, or for purchase from Crown Publications www.crownpub.bc.ca. Make sure you are viewing or using the current version of the Act, including all amendments.)

Volunteers and the Law: A Guide for Volunteers, Organizations and Boards (Third Edition). People's Law School, Vancouver, 2000. (Highly recommended). The publication can be downloaded from the following website:

http://www.publiclegaled.bc.ca/snapfiles/Volunteers_the_Law_book.pdf.

Printed copies can be ordered from

<http://www.publiclegaled.bc.ca/section.asp?catid=139andpageid=75>.

N. BASIC RULES OF ORDER

The following is a set of basic rules of order, suited to smaller and less sophisticated organizations incorporated under the Society Act which do not already provide for standard rules of order in their bylaws – which is the case for most societies. Despite myths to the contrary, Robert's Rules of Order do not automatically apply, and indeed are overkill for many organizations. The following rules should not be used without consideration as to their suitability, checking your bylaws, and appropriate advice. If they are used, they should be approved by ordinary resolution at the start of the meeting.

1. The meeting will be run in accordance with, in order: the Society Act; the constitution and bylaws; any other applicable statutory or common law; and the following rules.

Democratic principles, the rule of law, and common courtesy are at all times paramount.

2. Only members, the auditor and other professional advisers, and guests invited by the directors, are permitted to attend the meeting. Other persons are permitted to attend only by ordinary resolution.
3. Only voting members in good standing have the right to speak, to make motions, and to vote. Other persons present may speak, at the discretion of the chair.
4. A member who wishes to speak should hold up a hand or approach a microphone (as appropriate), wait to be acknowledged by the chair, and begin by stating her/his name.
5. A motion or resolution must be seconded before it can be debated.

6. The person moving a motion or resolution has the right, except for undebatable motions, to speak for up to five minutes at the start of debate on it, and for up to two minutes at the close of debate on it.
7. Each member has the right to speak twice, for no longer than three minutes each time. A member may only speak a third time, or for longer than three minutes, if approved by ordinary resolution.
8. A member can only speak a second time on a motion or issue when all members who wish to speak to it a first time have spoken.
9. Discussion, comments and questions must relate to the pending motion, report or issue. All other matters will be referred to new business.
10. Debate on a motion may be closed by general consent, or by a motion to close debate. Such a motion is not debatable, and must be approved by a 2/3 majority.
11. A special resolution has the effect of amending the constitution or bylaws, and so is binding on the organization and the directors. Such resolutions cannot be amended, and must be approved by 75% of all the members present. There must be at least 14 days' written notice of all special resolutions to all members
12. Ordinary resolutions include all resolutions notice of which has not been given. They cannot change the constitution or bylaws, and apart from procedural matters and elections, may not be legally binding on the society. Ordinary resolutions will be addressed under new business. They must be passed by a simple majority – more members vote in favour than are opposed. The chair may require that the mover of an ordinary resolution write it down before it can be debated.
13. A motion to adjourn is always in order, and is not debatable.
14. The meeting is for the purpose of transacting the business of the general membership. It is not an appropriate forum to address issues of a personal nature, and such matters will be referred to the directors, or to management, for consideration.

O. CHECKLISTS

Governance Documents

1. We have our certificate of incorporation, our original filed constitution and bylaws, and copies of each annual “certificate of good standing”, and keep them in a safe place, with other important legal and financial documents. We also keep scanned backups of these documents in protected electronic formats.
2. We keep copies of all filed special resolutions amending the constitution and bylaws, stamped by the Registrar, with other important documents, and also have scanned, protected versions.
3. We limit access to and use of original legal and financial documents.
4. We prepare a consolidated constitution and bylaws that is exactly the same as all the documents on file with the Registrar, and annotate it as to its provenance. That consolidation is used for all purposes except those requiring the originals or copies of the documents listed in 1 and 2.
5. We have an up-to-date copy of the Society Act (Act).
6. Copies of the Society Act, and the consolidated constitution and bylaws (in file-protected format), are provided to all directors, available to members on request, and on the website.
7. The constitution and bylaws are regularly reviewed and as necessary amended, to ensure that they meet continuing legal, governance, and structural needs, clearly state how the PSO is organized and the relationships between it and its members, and among members.
8. We ensure that the constitution and bylaws conform to any requirements of our national organization and the rules of our game.
9. We keep reasonable minutes of meetings of the directors (board meetings) and the members (annual general meetings), with both paper and electronic copies.
10. We have appropriate policies to “flesh out” the constitution and bylaws, and define the details of how the PSO will be governed, and ensure that they are consistent with the Act, the constitution, and the bylaws.

Society Maintenance

1. We give notice of and hold the annual general meeting in accordance with the Act, the constitution and bylaws, and natural justice – fairness and reasonableness.
2. We file our annual report within 30 days after the annual general meeting, using the required form and with the required fees. When filing the annual report, we also request a certificate of good standing, for Sport B.C.

3. We immediately inform the Registrar, using the required form, of any change in the registered and records address of the society.
4. We file all other documents and information as required under the Act, and other statutes, and keep appropriate records.
5. We orient all new directors, staff, and volunteer to the governance, structure, and operation of our society as set out in the Act and our constitution and bylaws. This may include preparing and regularly updating a directors' manual, and holding board orientation and training sessions.
6. We occasionally review the Act and any other laws that apply to our society, to determine whether there are any changes or opportunities that we need to be aware of, determine what if any changes are required to the structure, governance, and operation of our society, and then enact them.