

to connect the right to elect or appoint certain directors to members with certain specified attributes (see s. 84(4)(b) and “Participation in General Meetings and Voting” in this chapter), permit great flexibility in structuring the composition of society boards.

Another feature of the *Societies Act* is that directors must have consented to their appointment and that their consent must be recorded in writing, either in a separate document or as part of the minutes of the meeting at which the proposed director attended and was chosen without refusing such election or appointment (ss. 42(4) and 20(1)(f) and (i)).

See the Forms and Precedents section for:

- Consent to Act as a Director of a Society

B. MINIMUM NUMBER OF DIRECTORS [§1.75]

A society must have at least three directors, and at least one of the directors must be ordinarily resident in British Columbia (s. 40). These minimum requirements do not apply to MFSs (s. 197(1)).

X. PERSONS QUALIFIED TO BE DIRECTORS [§1.76]

According to s. 44, directors must be individuals and must meet the following statutory qualifications:

- be 18 years or older, unless they are at least 16 and the society’s bylaws permit such younger age for directors and the majority of the society’s directors are at least 18 (see s. 10 of the Societies Regulation);
- not have been found by a court to be incapable of managing their affairs unless a court subsequently finds otherwise;
- not be subject to a certificate of incapability issued under the *Adult Guardianship Act*, R.S.B.C. 1996, c. 6, unless the certificate has subsequently been cancelled under s. 37(4) of that Act;
- not be an undischarged bankrupt;
- not have been convicted in any jurisdiction of an offence in connection with the promotion, formation, or management of a corporation or unincorporated entity unless they have been granted a pardon, the Supreme Court of British Columbia orders otherwise, or five years have elapsed since the imposition of any

fine, conclusion of imprisonment, term of probation, or period of suspension; and

- not have been convicted, in any jurisdiction, of an offence involving fraud unless they have been granted a pardon, the court orders otherwise, or five years have elapsed since the imposition of any fine, conclusion of imprisonment, term of probation, or period of suspension.

Section 45 permits the bylaws to impose additional qualifications for directors. Where bylaws establish such additional criteria, a society does not have the authority to create additional qualifications beyond those explicitly stated and is not permitted to exercise discretion to exclude individuals from standing for election as directors beyond the discretion granted in the bylaws. This is the case even where the society fears that such candidates could cause harm to the society and believes it is acting in good faith (*Singh v. Kalgidhar Darbar Sahib Society*, 2024 BCCA 402).

While an individual who does not meet the qualifications under the *Societies Act* cannot become a director, a director who was appointed without being qualified or who ceases to be qualified does not automatically cease to hold office. Rather, the director must promptly resign. It appears that this approach may be intended to improve certainty with respect to the actions of unqualified directors and when exactly they cease to be directors. Since individuals designated, elected, or appointed as directors will generally know first whether they are qualified to be directors, the onus rests on them to ensure that the statutory qualifications are met before consenting to take office (see s. 43). The same applies to serving directors who are no longer qualified. However, s. 48(1)(b) suggests that a society could, in its bylaws, take an alternative approach and stipulate that a director who is not or is no longer qualified automatically ceases to hold office, rather than waiting for the director to resign in accordance with s. 43(2). Based on s. 47(1), the fact alone that an automatically disqualified director participated in the decision-making of the board or acted on behalf of the society does not invalidate such actions.

Alternatively, if a society learns that a director is no longer qualified, but has failed to resign, it could either remove the director by special resolution or any other mechanism adopted by the society in its bylaws (see s. 50) or apply to the court under s. 104(1)(a) for a compliance order against the disqualified director.

A. DUTIES AND FUNCTIONS OF DIRECTORS [§ 1.77]

Directors must manage, or supervise the management of, the activities and internal affairs of the society subject to the *Societies Act*, its regulations, and the bylaws (s. 52). Section 53 codifies the primary common law fiduciary duties of directors, without limiting any other obligation or duty under common law, equity, or statute. When exercising the powers and performing the functions of a director, an individual must:

- act honestly and in good faith with a view to the best interests of the society (discussed in *Farrish v. Delta Hospice Society*, 2020 BCSC 968 (Chambers), affirmed 2020 BCCA 312, leave to appeal refused 2021 CanLII 26929 (SCC));
- exercise the care, diligence, and skill that a reasonably prudent individual would exercise in comparable circumstances;
- act in accordance with the *Societies Act* and associated regulations;
- subject to the above, act in accordance with the bylaws of the society; and
- act with a view to the purposes of the society when exercising the powers and performing the functions of a director of the society.

These fiduciary duties are owed to the society and not to individual society members (*Canaday v. Promontory Lake Estates Homeowners' Assn.*, 2022 BCCRT 1016 at para. 28, applying *Jaguar Financial Corp. v. Alternative Earth Resources Inc.*, 2016 BCCA 193 at para. 114 and decided under the *BCA*); see also *Y. v. ABC Assn.*, 2025 BCCRT 175 at para. 97 and *Zimmerman v. Museum of the Cariboo Chilcotin Society*, 2025 BCCRT 190 at para. 12).

There is also an overriding duty of society directors to act fairly, flowing from the duty to act in the best interests of the society, whether or not such a duty is expressly stated in the bylaws (see *Basra v. Shri Guru Ravidass Sabha (Vancouver)*, 2017 BCSC 1696 (Chambers)).

The above duties, together with several other obligations, apply to not only directors but also those who exercise their functions without being directors (see s. 55).

Section 53(1)(d) creates a hierarchy of duties for directors. They must first comply with their statutory fiduciary duties and the *Societies Act* and its regulations generally. Only in the second place must they follow the society's bylaws. That is to say, where the bylaws are

inconsistent with any of the foregoing duties, they cannot bind the directors (see s. 11(3), which states that bylaws that are inconsistent with enactments of British Columbia or Canada are ineffective). Further, directors cannot ignore internal society rules that were validly adopted by its members and that are not otherwise inconsistent with the *Societies Act* or its bylaws (see *Dauphinee v. White Rock Harbour Board*, 2018 BCSC 1286).

Inherent in the directors' power to manage or supervise the management of the activities and internal affairs of the society is the power to manage the board's own affairs. This is acknowledged in s. 54(1), which authorizes the directors to meet at any location or in an electronic meeting on any notice and in any manner convenient to them, unless the society's bylaws provide otherwise. The bylaws may, and often do, provide further rules for the governance of the board. Where this occurs, these procedural rules must be followed. (See, for example, *Brown v. Brousseau*, 2021 BCSC 151, where the society's bylaws provided that Robert's Rules of Order governed the procedures for conducting board meetings. The court found that a motion to remove directors was presented and voted upon contrary to the procedural requirements in Robert's Rules and was therefore invalid.)

The *Societies Act* also recognizes consent resolutions by directors, and the bylaws may provide for consent "in writing or in any other manner". This means consent could be expressed by email, fax, SMS, or many other means of electronic communication, as long as such means are generally or specifically permitted in the bylaws. Further, the bylaws may reduce the number of directors required to adopt a consent resolution (see s. 54(2)). Section 54(2) requires that the following procedures be followed:

- a copy of the resolution be sent to all directors; and
- all directors, or, if the bylaws provide for a lesser number of directors, that lesser number, consent to the resolution in writing or in the manner provided for in the bylaws.

Section 54(3) codifies the common law rule that a director's right to vote is personal and cannot be exercised by proxy at a meeting (see also, for example, s. 126(3) of the *Canada Not-for-profit Corporations Act*).

Nothing in a contract or the bylaws of a society can relieve a director from the duty to act in accordance with the *Societies Act* and associated regulations. Nor can anything in a contract or the bylaws of a society

relieve a director from liability that, by any other enactment or legal rule, would otherwise attach to the director in respect of negligence, default, breach of duty, or breach of trust. A director may, however, seek relief from the Supreme Court of British Columbia in legal proceedings against the director in appropriate circumstances where the director acted honestly and reasonably and might fairly be excused (s. 106). The court order under s. 106 has the advantage of providing full relief to the director with respect to the subject matter of the legal proceedings where other solutions may not be available (such as a waiver or release from the claimant in the proceeding) or may be incomplete (such as relief authorized by a members' resolution, which could become subject to oppression allegations or a potential application for a derivative action against the director by dissenting members).

See the Forms and Precedents section for:

- Consent Resolution of the Directors of a Society

B. CONFLICTS OF INTEREST [§ 1.78]

Sections 56 to 58 apply conflicts of interest rules to directors and senior managers. A conflict exists only if the director has a "material interest". Conflicts may exist not only as a result of an interest in a proposed or actual contract or transaction, but also, under s. 51(1) (b), with any matter that is or is to be the subject of consideration by the directors, if that interest could result in the creation of a duty or interest that materially conflicts with that director's duty or interest as a director of the society. This ground, which was not present in the former *Society Act*, could capture a wide array of conflict scenarios, including potential or future conflicts. The key question is that of materially conflicting duties.

A director with a conflict that is known by the director, or reasonably ought to have been known, must also meet expanded standards of conduct. Consistent with widely adopted best practices, it is not enough for a director to disclose the conflict and abstain from voting. Rather, a director's duties comprise the following:

- disclose fully and promptly to the other directors the nature and extent of the director's interest;
- abstain from voting on a directors' resolution or consenting to a consent resolution of directors in respect of the contract, transaction, or matter;