**Preamble**

In August 2014, British Columbia’s Ministry of Finance launched the latest phase of its revision of the province’s Society Act. According to Society Act review webpage, the ministry wishes “to modernize and update” the laws regulating the incorporation and governance of not-for-profit organizations in the province. This review began in 2009 with a letter to stakeholders seeking general input on what should be done with the current Act, followed in 2011 by a Discussion Paper inviting public comment on specific proposals for reform.

The Society Act White Paper released in August 2014 sets out specific policy recommendations and a draft version of the legislation. One of the overarching concerns of the ministry is that the new Act must balance the needs of societies “for flexibility with broader concerns for accountability.”

It is impossible to know exactly how closely the final bill presented by the government to the Legislature will resemble the proposal contained in the White Paper. It is safe to say, however, that the bill will most likely contain most if not all of the changes proposed. Nevertheless, the ministry still welcoming feedback on the draft version of the Act. The deadline for submissions is October 15, 2014.

The tables below highlight the sections of the proposed Act that are most likely to have an impact on the AMS. It breaks down these selections into various areas of concern and identifies the responsible permanent staff member to make it easier to navigate the new act. Please note that the “Change?” comment will include either a “Yes” answer, which means that the provision existed before, but has been modified or “New,” which means that the provision does not exist at all in the current Act.

**NOTE:** A few of the Act’s provisions listed below have an additional impact on our human resources department, in which case they are shaded in red. The responsible staff member in this case is Ken Yih.

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**Area of concern:** Privacy  
**Responsible staff:** Sheldon Goldfarb

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<tr>
<th>Section/ Page(s)</th>
<th>Quote or Summary</th>
<th>Change?</th>
<th>White Paper Commentary</th>
<th>Observations and Concerns for the AMS</th>
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</table>
| S. 23/ pp. 17-18 & S. 24/ pp. 18-19 | Inspection of records  
Section 23 allows society members to inspect certain records, including the register of members and their contact information. This section also allows the general public to inspect those same records, except for the register of members.  
**For privacy reasons, even our members should not be allowed to access the contact information of other members:** Given that we have 50,000 members, a right granted to the whole membership is akin to a right granted to the general public – if the public cannot consult the registry of members, members at large should not be able to, either.  
In any event, UBC’s administration (in the document “Privacy Fact Sheet: What is Personal Information?”) clearly states that “All information about students, |
| | | New | This new section clearly sets out who has the right to inspect various records required to be kept by the society. It is proposed that different people be given different inspection rights. For example, directors may inspect all records, without restriction. In contrast, members may be restricted, by bylaw, from inspecting certain directors’ decision documents and accounting records.  
Previous consultations showed that there was a fair amount of confusion over the meaning of the access provisions of the |

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**Highlights of the Societies Act White Paper**
current Act, as well as some disagreement as to what kind of inspection rights members should have. On one hand, some have argued that members should have a generally unrestricted right to see all corporate documents, including minutes of directors’ meetings and accounting records. However, others feel that such broad access is unnecessary and inappropriate, could hamper full discussion by the board, and would impair administrative efficiency.

The proposed section is intended to resolve the ambiguities of the current Act, while balancing rights of access and transparency with competing claims to corporate efficiency and personal privacy. The section favours member access over efficiency concerns – that is, members will be given a clear statutory right to view records relating to the directors and the accounting records of the society. However, societies can, by bylaw, narrow these rights of access.

The section also provides that a society, by bylaw, could broaden access rights to make some or all of their records available to persons who are not directors or members. There is one exception: in order to protect the privacy interests of members, the bylaws cannot provide public access to the members’ register.

### S. 35/24

<table>
<thead>
<tr>
<th>Reporting on remuneration of directors, employees and contractors</th>
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<tr>
<td><strong>1.</strong> There must be included in the financial statements of a society required under section 34 [regarding financial statements] a note setting out</td>
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<td>(a) the remuneration, if any, paid by the society to each of the directors in the period in relation to which the financial statements are prepared, and</td>
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<td>(b) the remuneration paid by the society in that period</td>
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<td>(i) to each of the employees of the society, and to each person under a contract for services with the society, whose remuneration was at least the amount specified in the regulations [AMS Code], or</td>
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<td>(ii) if there are more than 10 persons described in subparagraph (i) whose remuneration was at least the amount specified in the regulations, to the 10 most highly remunerated persons.</td>
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<td><strong>2.</strong> A note in the financial statements referred to in subsection (1) must identify each director, employee or other person referred to in that subsection by the person’s position or by the nature of the services</td>
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<th>Yes</th>
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This new provision requires disclosure of the remuneration, if any, paid by the society to its directors and to its 10 highest paid employees and contractors earning over a certain amount (for example, this amount could be set at $75,000/year as is the case with Community Contribution Companies under [part 2.2 of the BCA [Business Corporations Act]]). The disclosure must be made in the society’s annual financial statements, which are available to society members and to the public (see sections 23(1) and 27).

It is recognized that many stakeholders will not support the requirement that remuneration be publicly disclosed. Disclosure of what people are paid can be uncomfortable both for the society and for the individuals involved. However, public disclosure of director and executive pay is increasingly seen as an important accountability measure, meant to promote both members’

### Section 18(1)(o)

- Although the commentary claims that privacy concerns should be protected, the proposed Act’s requirement that an employee’s title or the nature of the services rendered be identified (but not their names) still makes it fairly easy for our members to figure out who gets paid how much
- Having said this, unless we can demonstrate that this provision actually breaks another law, it is unlikely that the government will back down, given the current pressure on “public” organizations to reveal how much they compensate their top-paid employees
- It seems this provision does not violate the Personal Information Protection Act, since section 18(1)(o) of that Act states that “An organization may only disclose personal information about an individual without the consent of the individual, if the disclosure is required or authorized by law,” which would be the case if the
provided under the contract of services, as the case may be, but need not identify the person by name.

and donors’ confidence and trust. The disclosure requirement is consistent both with the treatment of Community Contribution Companies under the BCA and with Canada Revenue Agency requirements respecting Canadian charities. Because the salaries of only the highest paid employees and contractors earning over a prescribed amount are required to be disclosed, and individuals need not be named, the provision reflects a balance between promoting accountability and transparency and protecting individual privacy.

proposed Act was passed as is.

- At the very least, we should ask that the new Act (or its attending regulations) provide two clarifications: 1) Does an employee’s remuneration include the salary only or all benefits and bonuses as well? 2) Guidelines on setting the minimum remuneration per employee that must be reported annually, either in the Act itself or appended regulations (currently, the $75,000 amount suggested in the White Paper commentary does not appear in the Act itself).

### Area of concern: Financial

**Responsible staff:** Keith Hester

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| 5. 36/ pp. 24-25 | **Reporting on financial assistance**  
(1) In this section, “financial assistance” means financial assistance by means of a loan, a guarantee, an indemnity agreement, the provision of security or another transaction prescribed by regulation.  
(2) There must be included in the financial statements of a society required under section 34 a note setting out the details of any financial assistance given by the society to any person in the period in relation to which the financial statements are prepared.  
(3) Subsection (2) does not apply to financial assistance given by a society to a person in the ordinary course of the society’s activities if the society has as a purpose the provision of financial assistance. | **New** | This is a new provision that is also intended to promote accountability and transparency by requiring disclosure in annual financial statements of any loans, guarantees or other financial assistance given by the society. The current Act’s silence on the subject of financial assistance has been criticized as providing no direction to society directors as to whether offering this type of benefit is permissible or not. The Discussion Paper’s proposal to prohibit financial assistance altogether was criticized as being too restrictive, as it would preclude such things as ordinary employee benefits (e.g. salary advances, training loans) as well as mutually beneficial financing arrangements with similarly purposed organizations. On the other hand, allowing financial assistance to be provided without limitation could defeat the normal restrictions on a society’s ability to distribute its assets (see section 4).  
The provision proposed above is intended to provide both balance and certainty by explicitly recognizing that financial assistance may be given, but only if it is disclosed in the society’s annual financial statements. (This disclosure obligation is important since financial assistance that does not involve an actual payment may not otherwise show up financial statements.) Requiring disclosure of any financial assistance will ensure that members are aware of any benefits of this nature being provided by their society. As well, since the disclosure is to be made as part of the | **This new provision will affect the reporting practices of the society by requiring the AMS to publish all of the guarantees it has issued (such as those made to the EUS, AUS and CUS for the construction of their student spaces)  
**These new reporting requirements may require additional resources on our part to accurately track various guarantees  
**We would need to seek clarification on the materiality level: Must every instance of a particular type of assistance be reported (including, for instance, training loans for staff) or can we only report assistance that is over a certain figure (for instance, $50,000 annually)? Or perhaps we could separately report assistance that is over a certain amount and lump together the smaller amounts consented to a fairly large number of individuals.** |
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| S. 107/ pp. 69-70 | **Appointment of auditor**  
If, for any reason, a society that is required under subsection (1) (a) to have an auditor does not have an auditor, the court, on the application of a member of the society or another person whom the court considers to be an appropriate person to make an application under this section, may (a) appoint an auditor to hold office until the close of the next annual general meeting, and (b) set the remuneration to be paid by the society for the auditor’s services. | Yes | This section clarifies that auditors are optional for societies. A society must have an auditor if required to do so by its bylaws, but the bylaws can always be amended (by special resolution) to remove the requirement.  
The section does, however, allow for further regulations to be made to require societies to produce audited statements in certain circumstances. For example, it might be considered appropriate at some point to require an auditor for societies that receive significant or mandatory public funding (such as student societies) or that perform particular public services (such as housing assistance).  
The procedural rules regarding the appointment and replacement of auditors and their terms of office are based on provisions of the BCA. | In essence, this provision creates a formal mechanism so that a member of a society or other interested party (as deemed appropriate by the courts) can oblige the society to appoint an auditor.  
The section should not have any impact on the AMS, since our financial records have been thoroughly audited for many years and the financial statements published as a result of this audit is published online. |
| S. 115/ pp. | **Right of auditor to attend meetings**  
The auditor of a society is entitled, in respect of a general meeting,  
(a) to receive each notice and other communication relating to the meeting that a member is entitled to receive,  
(b) to attend the meeting, and  
(c) to be heard at the meeting on any part of the business of the meeting that deals with  
(i) matters with respect to which the auditor has a duty or function, or  
(ii) the financial statements of the society. | No | This section carries forward the existing rules that give an auditor the right to attend a general meeting and address the members on the society’s financial statements and auditor’s report. | Currently, our auditor is not formally invited to attend our AGM; in the future, we will have to amend procedures to ensure that this is done. |

Area of concern: Constitution or by-laws  
Responsible staff: Sheldon Goldfarb

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| S. 1/ pp. 1-4 | **NOTE** – New or modified definitions include:  
- **Consent resolution of directors** means a directors’ resolution passed in accordance with section 55 (2) [proceedings of directors], that is without a meeting of the board of directors  
- **Director** means an individual designated, appointed or elected to the position (see also section 53, which provides for duties and liabilities of an individual who takes on the duties of a director)  
- **Qualified recipient** means a charity or other asset-locked entity, to which any society, either on its dissolution or as a going concern, may distribute | Yes | Most of the defined terms in this section are included only for drafting and reading convenience of later sections. Substantively new or amended definitions include the following:  
- "consent resolution of directors" – a directors’ resolution that may be passed without a meeting  
- "director" – an individual designated, appointed or elected to the position (see also section 53 which provides for duties and liabilities of an individual | Some of these issues are discussed at greater length in the sections included in this table, but all of the modified definitions will require that changes be made to our bylaws or regulations (Code) |
its assets

- **Senior manager** means an individual who runs the society or influences its policy, and who is therefore made subject to similar qualifications and liabilities as directors (see section 62)
- **Special resolution** means any of the following:
  (a) a resolution passed at a general meeting by not less than 2/3 of the votes cast by the voting members, whether cast in person or by proxy or another method permitted by the bylaws;
  (b) a resolution consented to in writing by all of the voting members;
  (c) if the bylaws authorize indirect or delegate voting or voting by mail or other means of communication, including by delivery or by fax, email or other electronic means, a resolution passed by at least 2/3 of the votes cast, in accordance with the bylaws, on the resolution;

The most important change contained in the definitions concerns the threshold for passing “special resolutions” under the Act. Currently, a special resolution requires a 3/4 vote. The new Act will lower this threshold to 2/3, consistent with more modern corporate legislation such as the BCA. The lower threshold is intended to provide societies with slightly more flexibility to adapt to changing times, and was widely supported in earlier consultations. The Discussion Paper proposal to continue to apply the higher threshold to pre-existing societies is not, however, included in these proposals in an attempt to avoid a patchwork of different rules for older versus newer societies.

Persons may rely on authority of societies and directors, senior managers and agents

(1) Subject to subsection (2), a society may not assert against a person dealing with the society that
  (a) the bylaws of the society have not been complied with,
  (b) the individuals who are shown as directors in the register of societies are not the directors of the society,
  (c) a person held out by the society as a director, senior manager or agent
     (i) is not, in fact, a director, senior manager or agent, as the case may be, of the society,
     (ii) has no authority to exercise the powers and perform the duties that are customary in the activities of the society or usual for such director, senior manager or agent, or
     (iii) acts contrary to a limitation or restriction on the person’s powers or functions,
  (d) a record issued by a director, senior manager or agent of the society who has actual or usual authority to issue the record is not valid or genuine, or
  (e) a record kept by the society under section 19 [records to be kept] is not accurate or complete.

Yes

This section expands on the current Act and provides societies with an “indoor management” rule that is standard in other corporate law statutes. This rule precludes a society from arguing that a person that the society has held out as a director, senior manager or agent in fact had no authority. Persons dealing with a society through its agents are entitled to rely on their apparent authority, unless they have actual knowledge of some limitation.

- In other words, this modified provision gives certainty to outside persons dealing with the AMS that they may rely on the fact that its directors, senior managers or agents are authorized to speak on the society’s behalf.
- If passed, the AMS will have to review its Code, internal policies and employee handbook to ensure that we are complying with the society act and expectations are clearly communicated to employees.

S. 47/ p. 31
(2) Subsection (1) does not apply in respect of a person who has knowledge, or, by virtue of the person’s relationship to the society, ought to have knowledge, of a situation described in paragraphs (a) to (e) of that subsection.

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<tr>
<td>S. 67/ p. 43</td>
<td>Discipline and expulsion of member</td>
<td>New</td>
<td>The current Act is silent on the discipline and expulsion of members. This new section provides a legislative default rule for expelling members (a special resolution is required) and some procedural rules for any disciplinary action (the member must be given notice and a chance to be heard). Societies will continue to be able to set out their own rules, if so desired, for the discipline and removal of members in their bylaws.</td>
<td>• This new provision lays out how a member may be expelled and will apply unless the society’s bylaws provide an alternative expulsion procedure</td>
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<td>S. 188/ pp. 113-114</td>
<td>Statement in constitution that member funded society exists primarily for members</td>
<td>Yes</td>
<td>The commentary specifies that “certain types of societies – e.g. student societies and societies that have a charitable purpose – cannot be member funded societies.”</td>
<td>• This provision, if adopted in its current form, should not materially alter the status of the AMS</td>
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### Area of concern: Governance/Student government

**Responsible staff:** Daniel Levangie

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<tr>
<td>S. 19/ pp. 14-15 &amp; S. 41/ pp. 27-28</td>
<td>Records to be kept</td>
<td>Yes</td>
<td>Section 41 “essentially maintains the policy of the current Act with two main differences. First, the provision expressly allows the bylaws to provide for ‘ex officio’ directors – that is, directors who become directors because of a particular attribute or position they have or hold, and not as a result of an election…. The second difference is that the section now requires prospective directors to expressly consent to being elected or appointed as directors.”</td>
<td>• The Statement of Office currently signed by AMS Councillors should hopefully suffice to meet the requirements enumerated in these two sections – otherwise, this provision might be somewhat onerous.</td>
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| S. 43/ pp. 28-29 | Individuals disqualified as directors | Yes | Summary:  
- The current Society Act is silent on the question of the age of directors; the White Paper’s commentary cites the lack of liability associated with underage directors as one of the main reasons this new provision has been introduced.  
- This provision goes against one of the central recommendations the AMS made in the two previous rounds of consultations and means that a small number of our members would not be able to run for office at the AMS.  
- However, it should be noted that it is an improvement over the suggestion that directors be of the age of majority in British Columbia, which is 19 |

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**DRAFT VERSION – September 30, 2014**
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<tr>
<th>Section</th>
<th>Description</th>
<th>Notes</th>
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<tbody>
<tr>
<td>5.50/32-33</td>
<td>Removal of directors</td>
<td>- In November 2013, only 204 students at UBC Vancouver were under 18 (Source: UBC PAIR, &quot;UBC-Vancouver Median and Age Range for all students&quot; table) - Nevertheless, this provision creates yet another barrier with respect to increasing youth participation in the non-profit sector and, more generally, in civil society.</td>
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<tr>
<td>5.50/34-35</td>
<td>Duties of directors</td>
<td>- As it is currently written, this provision seems to imply that a society can alter its bylaws any way it sees fit with respect to removing directors - In reality, this section probably means that <em>at the very least</em>, a director must be removed by a special resolution at a general meeting (which must also respect the 5% quorum), but that bylaws can actually increase what is required to remove a director</td>
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<tr>
<td>5.55/35</td>
<td>Proceedings of directors</td>
<td>- This provision essentially allows AMS's directors (Councillors) to conduct business and even pass motions in writing or by any other means deemed valid</td>
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</table>
(2) A directors’ resolution may be passed by the directors without a meeting if all of the directors, or, if provided for in the bylaws, a lesser number of those directors, consent to the resolution

(a) in writing, or
(b) in any other manner provided for in the bylaws.

state otherwise, the directors can set the procedure for meetings as they see fit. Second, the section follows the BCA and provides the ability to pass directors’ resolutions without meetings (that is, “by consent”).

in the by-laws
• In other words, this section allows the AMS to write its by-laws to provide a framework for conducting official society business through electronic communications.

S. 56/ pp. 35-36

Disclosure of director’s interest

Summary:
This section provides a framework to manage the potential conflicts of interests of the directors of a society by asking them to declare these conflicts when they arise. They are also asked to withdraw from any discussions over these matters and abstain from taking or even influencing decisions on these matters. Conflicts must be disclosed in writing, which may include the minutes of meetings. In closing, the section states that being compensated for acting as a director does not constitute a conflict of interest.

(Sections 56 and 57 deal with the question of director accountability and validity of contracts if a conflict of interest was not properly declared.)

New

This section requires disclosure of directors’ interests in contracts, transactions or other matters that may conflict with their duties to act in the best interests of the society.... The provisions presented here are intended to offer a clearer but more robust approach to conflict disclosure than the current Act, while still offering a model that is less complicated than the BCA.

... The new Act proposes to carry forward the current Act’s disclosure requirements with two changes. First, the new section clarifies that only interests “material” to a director need be disclosed. This is intended to preclude the need to disclose minor, fleeting or insignificant matters. However, unlike the BCA, the director must disclose all contracts in which the director has a material interest, regardless of whether the contract is material to the society. Second, the section requires disclosure not only of a director’s interest in a contract or transaction, but also in any matter that could affect the director’s ability to act in the best interests of the society. This latter requirement is found in the BCA, as well as in the Strata Property Act, and is intended to ensure that directors reveal any non-commercial concerns that could potentially interfere with their fiduciary duties.

The section also sets out what a director must do to make, and after making, a disclosure.... First, in order to provide certainty, the disclosure must be evidenced – either in the minutes of a directors’ meeting, in a consent resolution of directors, or in a separate written document. To ensure greater accountability, members will have access to these disclosures. Second, the conflicted directors must leave the meeting during any vote on the contract or matter, and must not do anything to influence the discussion or vote.

Finally, the current Act’s rule, that prohibits a conflicted director from being counted for the purposes of quorum, has been removed (but societies can retain this rule,

Although these conflict of interest provisions are meant to be less complex than in the legislation of other organizations, they nevertheless present a more stringent set of rules.

• Our regulations currently require our Councillors to leave the room when a conflict of interest arises, when a meeting goes in camera.
• Since our directors’ meetings (i.e., Council meetings) are public, it would be odd to allow the rest of the world into the room, but not one of our Councillors.
• A compromise that would still respect the spirit of this provision would be to require Councillors to 1) declare any potential conflict of interest and 2) refrain from discussing or voting on the issue at hand. They would, however, be able to remain at the meeting.

• Sections 57 and 58 are essentially the same as before, but make it somewhat easier to continue honouring a contract, even if the conflict of interest disclosure rules are breached.
<table>
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<tr>
<th>S. 62/ pp. 40-41</th>
<th>Senior managers</th>
<th>New</th>
<th>This provision would only have an impact on the society if its current internal policies and organizational charts do not reflect this new legal requirement</th>
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<tbody>
<tr>
<td>(1) Subject to any restrictions in the bylaws and in accordance with any requirements in the bylaws, the directors of a society may appoint and remove senior managers of the society and may specify their duties.</td>
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<td>(2) The appointment of a senior manager does not of itself create any contractual rights, and the removal of a senior manager is without prejudice to any contractual rights, or rights under law, of the senior manager.</td>
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<td>(3) An individual who is not qualified under section 43 [individuals disqualified as directors] to be a director of a society is not qualified to be a senior manager of the society.</td>
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<td>(4) Unless the bylaws provide otherwise and subject to section 40 [employment of directors], a director may be a senior manager.</td>
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<td>(5) Sections 46 (1) [validity of acts], 54 [duties of directors], 60 [limitations on liability], 61 [directors’ indemnification and insurance] and 103 [relief in legal proceedings] apply in relation to a senior manager as if the senior manager were a director.</td>
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<tr>
<th>S. 63/ pp.</th>
<th>Disclosure of senior manager’s interest</th>
<th>New</th>
<th>The AMS’s internal policies and employee manual would have to be modified to reflect this new legal requirement (as appropriate)</th>
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<tbody>
<tr>
<td>1. This section applies to a senior manager of a society who has a direct or indirect material interest in</td>
<td>This section essentially makes the conflict of interest rules in sections 56 to 58 applicable to senior managers. Although senior managers do not have a director’s “vote” on transactions or matters, by virtue of their role they may exert significant influence on decision-making, and should therefore be required to disclose any personal interest in a contract or matter that may be considered by the directors.</td>
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<td>(a) a contract or transaction, or a proposed contract or transaction, of the society, or</td>
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<td>(b) a 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 senior manager’s duty or interest as a senior manager of the society.</td>
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<tr>
<td>2. A senior manager referred to in subsection (1) must fully and promptly disclose the nature and extent of the senior manager’s interest to both the society and a director of the society.</td>
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<td>3. The disclosure to the society under subsection (2) must be made in a written record that is</td>
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<td>(a) mailed by registered mail to the mailing address of the registered office, or</td>
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<td>(b) delivered to the delivery address of the registered office.</td>
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<td>4. (4) Sections 57 [accountability] and 58 [validity of contracts] apply to a senior manager as if the senior manager were a director except that, in addition to any other necessary changes, references in section 57 to section 56 are to be read as references to subsections (1) to (3) of this section.</td>
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<tr>
<th>S. 78/</th>
<th>Right to submit proposal</th>
<th>New</th>
<th>Aside from the governance implications, this provision</th>
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</table>
(1) In this section:
“proposal” means a notice sent under subsection (2) to a society;
“proposal threshold” means 5% of the voting members of a society unless the bylaws
(a) specify a lower percentage for the proposal threshold, or
(b) provide for the calculation of the proposal threshold on another basis, and, based on that calculation, the proposal threshold is less than 5% of the voting members.
(2) Voting members of a society may send to the society a notice of a matter, including a special resolution, that the members wish to have considered at an annual general meeting.
(3) A proposal must contain the names and contact information of, and be signed by, not fewer than the number of voting members that constitutes the proposal threshold for the society.
(4) If a society receives a proposal at least 7 days before notice of the annual general meeting is sent, the society must include, with that notice,
(a) the proposal,
(b) the names and contact information of the members submitting the proposal,
and
(c) one statement in support of the proposal, if the members submitting the proposal request that the statement be included with the notice.
(5) A proposal, or, if a statement is provided under subsection (4) (c), the proposal and statement together, must not exceed 200 words in length.
(6) No society, or person acting on behalf of a society, incurs any liability merely because the society or person complies with subsection (4).

proposals for consideration at the next annual general meeting (AGM). The requirements are similar to those for requisitioning meetings, although a minimum of only 5% of voting members is required to make a proposal.

The proposal record must not exceed a certain size. If the society receives the proposal at least 7 days before the notice of the AGM is sent, the proposal must be included in the meeting notice. The proposal provision is intended to enhance democratic participation in societies by ensuring that issues of concern to members can be discussed and voted upon at an AGM.

The appropriate level of member support that should be required to make a proposal is a matter of some debate. Some have argued for a threshold of 10% of members, the same as the threshold required for requisitioning a general meeting. However, there is considerable expense and inconvenience involved in the calling and holding of a special members’ meeting, and it is therefore appropriate that a significant proportion of members should feel that such a meeting is necessary. In contrast, the proposal process only requires that the society include a new item on the agenda of an AGM that is already in the planning.

To others, the 5% threshold proposed may seem high, especially when compared to the thresholds for making proposals found in other corporate statutes (for example, a proposal under the BCA requires the support of shareholders holding only 1% of shares, and the new federal non-profit statute provides that a single member may make a proposal). However, these other statutes also provide a number of potentially broad grounds that allow directors to refuse to include a proposal on the meeting agenda (e.g. if it does not relate significantly to the affairs of the company or society, or appears to be intended to secure publicity or to pursue a personal grievance).

These grounds for refusal may be necessary to balance a very low or one-member threshold for making proposals, in order to prevent the hijacking of meetings by the inappropriate agenda items of single members. However, because the grounds for refusal are inherently subjective and open-ended, society directors could have trouble interpreting

will require the AMS to re-write its bylaws
them, and ultimately this could defeat the democratic enhancements intended by the new proposal provisions. The proposed 5% member support requirement makes it less likely that AGM agendas can be hijacked for personal grievances, and therefore, no listed grounds for refusing to process a proposal are included in this draft. This approach is consistent with the current Act’s treatment of requisitioned meetings, which also (unlike most other corporate statutes) provides no grounds for refusal. It is recognized that, in some cases, this may allow a small minority of members to take over meeting agendas for inappropriate purposes, but this risk is of less concern than the risk that members could be effectively silenced by providing a high threshold or grounds for refusal.

<table>
<thead>
<tr>
<th>S. 80/ p. 51</th>
<th>Participation in meeting by telephone or other communications medium</th>
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<tbody>
<tr>
<td>(1) Unless the bylaws of a society provide otherwise, a person who is entitled to participate in a general meeting may do so by telephone or other communications medium if all persons participating in the meeting, whether by telephone, by other communications medium or in person, are able to communicate with each other.</td>
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<tr>
<td>(2) Nothing in subsection (1) obligates a society to take any action to facilitate the use of any communications medium at a general meeting.</td>
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<tr>
<td>(3) If one or more members of a society vote at a general meeting in a manner contemplated by this section, the vote must be conducted in a manner that adequately discloses the intentions of the members.</td>
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Yes

This section adopts, for societies, the standard corporate law rules regarding electronic participation at general meetings. Unless the bylaws provide otherwise, participation by telephone or other electronic means is permitted, but this does not create an obligation on a society to provide or facilitate the communications medium.

- If adopted, this provision would not require the AMS to re-write its bylaws, unless we wanted to block or regulate the practice of participating in general meetings by telephone or electronically.

<table>
<thead>
<tr>
<th>S. 82/ p. 52-53</th>
<th>Proxies</th>
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<tbody>
<tr>
<td>(1) If permitted by the bylaws of a society, a voting member may appoint a proxy holder.</td>
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<tr>
<td>(2) An appointment of a proxy holder</td>
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<tr>
<td>(a) must be in writing and be signed by the voting member appointing the proxy holder,</td>
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<tr>
<td>(b) is valid, unless the bylaws provide otherwise, only at the time for which the appointment is given or at any adjournment of that meeting, and</td>
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<tr>
<td>(c) may be revoked at any time.</td>
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<tr>
<td>(3) Unless the bylaws provide otherwise, a proxy holder must be a member of the society and may be an individual under the age of 19 years.</td>
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<tr>
<td>(4) Unless limited in the appointment, a proxy holder stands in the place of the voting member appointing the proxy holder and can do anything that member can do, including vote, propose and second resolutions, and participate in the discussion.</td>
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</table>

Yes

This section clarifies that proxy holders can be appointed if allowed by the bylaws (this is merely implied by current Act) and sets out rules for these appointments – e.g. proxies must be in writing and signed, and can be revoked at any time. The current Act’s restriction on “permanent” proxies has been removed – that is, if the bylaws allow, a proxy may be validly given for more than one meeting. Some new defaults have been added (i.e. the proxy holder must a member and can be under 19 years) but again, these defaults can be overridden by the bylaws.

- Our by-laws currently do not allow for proxy voting at general meetings and the new legislation does not oblige us to change our by-laws.
### S. 98/ pp.

**Complaints by members and other interested persons**

1. In this section, “interested person”, in relation to a society, means
   - (a) a member of the society, or
   - (b) another person the court considers to be an appropriate person to make an application under this section.

2. An interested person may apply to the court for an order under this section on the grounds that
   - (a) the activities or internal affairs of the society are being or were conducted, or the powers of the directors are being or were exercised, in a manner oppressive to one or more interested persons, including the applicant, or
   - (b) an act of the society was done or is threatened, or a resolution of the members or directors was passed or is proposed, that is unfairly prejudicial to one or more interested persons, including the applicant.

3. On an application under this section, the court, with a view to remedying or bringing to an end the matters complained of, may make any interim or final order it considers appropriate, including an order
   - (a) directing or prohibiting any act,
   - (b) regulating the conduct of the society’s activities or internal affairs,
   - (c) removing a director or appointing a new director,
   - (d) varying or setting aside a transaction to which the society is a party and directing any party to the transaction to compensate any other party to the transaction,
   - (e) varying or setting aside a resolution,
   - (f) requiring the society, within a period specified by the court, to produce to the court or to a specified person financial statements or an accounting in any form the court may determine,
   - (g) directing the society to compensate an aggrieved person,
   - (h) directing correction of the records of the society,
   - (i) appointing a receiver or receiver manager,
   - (j) directing that the society be liquidated and dissolved and appointing one or more liquidators,
   - (k) appointing an investigator to conduct an investigation of the society, providing directions in relation to that investigation and setting the investigator’s remuneration.

4. If the court makes an order under subsection (3) (k), section 210 (4) and (5) [investigation of society by minister] applies.

### New

This section gives members, usually representing the voice of the minority, the right to go to court if they think they are oppressed or have been treated unfairly by the society, its directors or other members. The court has a wide selection of possible orders to remedy the situation – everything from directing the society’s activities to ordering the society to liquidate and dissolve. It is the same remedy as that provided to shareholders under the BCA, and was recommended by the British Columbia Law Institute in its 2008 Report.

Concerns have been raised that the oppression remedy may not be appropriate in the non-profit context, given that oppression is a remedy designed to protect minority interests which don’t arise in a one member/one vote context. Moreover, members of societies, unlike shareholders in companies, usually do not have direct financial interests in society decisions.

Some suggest that even if there is a need for such a remedy, it should not be available where the directors are acting in furtherance of the society’s purposes. This type of limitation would recognize that a society, in fulfilling its purposes, may routinely have to prefer some interests over others, or apply the society’s funds for one purpose over another. This limitation could severely restrict the usefulness of the remedy, and therefore is not proposed for the new Act.

- This section has potentially very important implications for the AMS, especially the portion that allows “interested persons” to file formal complaints against a society, even if they are not members or even have financial or material interests in the society.
- The AMS should oppose this provision of the Act in the strongest possible terms, on the grounds that would open the gates to any number of frivolous or vexatious law suits.
- We should also point out that the second paragraph of the commentary explains very well why this provision should not be included and presents no argument to counter the need for this kind of remedy.
Area of concern: **Membership**  
Responsible staff: **Uncertain**

<table>
<thead>
<tr>
<th>Section/ Page(s)</th>
<th>Quote or summary</th>
<th>Change?</th>
<th>Commentary in White Paper</th>
<th>Observations and concerns</th>
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</thead>
</table>
| S. 65/ p. 42     | **Classes of membership**  
If the bylaws of a society provide for more than one class of membership,  
(a) the rights and obligations that apply to each class must be set out in the bylaws, and  
(b) at least one of those classes must consist of voting members. | New | This section expressly allows for the creation of different classes of membership, which is only indirectly alluded to in the current Act. Classes can now be structured, under the bylaws, in whatever way the society chooses, but there must always be one class whose members have the right to vote.  
The current Act allows for both voting and non-voting members, but requires registrar approval if a society has a majority of non-voting members. Removal of this restriction reflects the reduced oversight role of the registrar under the new Act and, more importantly, the fact that the registrar is not well placed to determine the fairness or appropriateness of a society’s voting structure. Earlier consultations showed overwhelming support for providing societies with the ability to determine, through their bylaws, their own membership structures. | • Does the AMS want to consider providing different classes of membership? |
| S. 66/ pp. 42-43 | **Termination of membership**  
A member’s membership in a society is terminated when the member resigns or dies. | New | This section is for clarity. It lists the circumstances in which a member ceases to be a member, and clarifies the legal results of termination. Unless the bylaws provide otherwise, all rights of membership – including any rights in the property of the society – cease upon termination. | • This section specifically states that members can resign their membership in a society and does not exempt any society from this rule  
• Having said this, section 27.1 of the University Act compels the university board of directors to collect and remit fees to student unions, as long as certain basic conditions have been met  
• Furthermore, the “Student Declaration” signed by all students upon admission states: “I hereby accept and submit myself to the statutes, rules and regulations, and ordinances (including bylaws, codes, and policies) of The University of British Columbia, and of the Faculty or Faculties in which I am registered, and to any amendments thereto which may be made while I am a student of the University, and I promise to observe the same.”  
• UBC’s Academic Calendar not only requires students to acquire all fees (including AMS fees) in order to enrol and continue enrolling in courses, not to mention graduate and receive transcripts, but they must do so |
by a certain date to remain in good standing. If this is not done, the university administration may take action against these students by suspending them from the university and may even subject them to further action to ensure payment of the debt. These rules are also governed by UBC’s Policy 67.