



## Notes on Bylaws and Policies

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### BYLAW MUST-HAVES

Bylaws must have provisions respecting the internal affairs of the society, including provisions respecting the following:

- (a) **membership** in the society, including
  - (i) the admission of members and any rights and obligations arising from membership,
  - (ii) if there is more than one class of members, a description of each class and the rights and obligations that apply to each class, and
  - (iii) if members may cease to be in good standing, the conditions under which that may occur;
  
- (b) the society's **directors**, including
  - (i) the manner in which directors must or may be elected or appointed, and
  - (ii) the expiry of directors' terms of office, if other than at the close of the next annual general meeting after a director's designation, election or appointment;
  
- (c) **general meetings**, including
  - (i) the quorum for general meetings, if greater than 3 voting members,
  - (ii) whether proxy voting is permitted, and
  - (iii) if the bylaws authorize indirect or delegate voting or voting by mail or another means of communication, including by fax, email or other electronic means, the rules respecting how that voting is to occur;
  
- (d) any **restrictions** on
  - (i) the activities that the society may carry on, or
  - (ii) the powers that the society may exercise.

Note: it is often advisable to put more than bare minimum such as:



definitions, board meetings, officers, committees, access to records, financial matters, audit, borrowing, execution of documents

### ***SPECIAL RESOLUTIONS DEFINED***

- “Special Resolution” is the super-majority necessary at a meeting of the **members** to pass fundamental changes to the constitution or bylaws of a society, and to make other major changes as well.
- There are, in general, two types of resolutions under the Societies Act: an “Ordinary Resolution”, which is a resolution passed at a members’ meeting by a simple majority of the votes cast by voting members or consented to in writing by 2/3 of the voting members outside of a members’ meeting; and a “Special Resolution”, which is a resolution passed at a members’ meeting by at least 2/3 of the votes cast by voting members, **or** consented to in writing by all of the voting members outside of a members’ meeting. But a Special Resolution is much more than that: it is a procedural device meant to ensure major changes to a society cannot be done without adequate notice to all voting members, something which is often overlooked by many societies and members seeking to bring change.
- Default threshold was lowered to 2/3
  - can be increased to higher threshold by bylaws (up to unanimous consent) (not recommended)
- New Act removed the requirement to obtain a special resolution of members if security required when borrowing and when incorporating a subsidiary
- phases out unalterable provisions

### **Basic Requirements of Special Resolutions**

- The full-text of any Special Resolution to be considered at the meeting must be in the Notice of Meeting (s.78, Societies Act). This is not optional.
- A Special Resolution cannot be raised after the Notice of Meeting of the members’ meeting has been sent.
- A Special Resolution cannot be raised from the floor of a meeting (for example, *Armstrong v Clark*(2002), 26 B.C.L.R. (3d) 130 (BCSC)). This includes all Special Resolution items, such as motions to remove directors, discipline members, or to amend bylaws.
- If bylaw or constitution changes are being considered for a vote by Special Resolution, the text of that item cannot be modified except to correct minor typos and references (see *Armstrong*, above).



- If there is a need to modify the text, the proposed discipline, or the Special Resolution in general, the appropriate procedural step is to adjourn the meeting of the members, send out a new Notice of Meeting, then reconvene to vote on the resolution once all members have notice of the new proposed text.

If a modification is made to a Special Resolution's text, or a vote on a Special Resolution is conducted improperly, the BC Supreme Court has the ability to correct the irregularity, which may include declaring the Special Resolution to be invalid, or validating it, if there was only minor non-compliance (see ss. 102 and 105, *Societies Act*).

Why all the controls around what can be done to Special Resolutions? Well, a Special Resolution can be used to effect fundamental change to the executive, to the membership, to the constitution and purposes of a society, and to the bylaws. If Special Resolutions were allowed without notice, societies would always be at risk of major changes every time a members meeting occurred. This is why members must have notice of major items to be considered at the meeting, so they can decide whether to attend the meeting to debate them and vote on them.

### ***DIRECTOR VOTING BY PROXY***

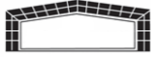
In general, the stance from English corporate law is that directors cannot vote by proxy as they are unable to delegate their individual fiduciary duty to others. They may delegate their powers as permitted to committees of directors or by way of transfers of power until corporate articles (or bylaws, in the case of a society). They may not, on a meeting by meeting basis, assign those powers to other individuals by way of proxy, which is not contemplated in corporate (or societies) legislation. An attempt to do this was called "absurd" in *Re Portuguese Consolidated Copper Mines Co.* [1890] 45 Ch 16 (Trial Decision).

### ***MEMBER VOTING BY PROXY***

Shareholders and members may vote by proxy, **subject to articles or bylaws**, as they do not owe the corporation a fiduciary duty and may delegate expressly under the Business Corporations Act (BC) or The Societies Act (BC).

This practice is also subject to the issues noted above for directors, and in any case, is less necessary when electronic attendance and advance voting is allowed.

In the case of ordinary resolutions, proxies raise the question of whether they are appropriate for voting for amended resolutions (amended from the floor) or new resolutions that are raised at a general meeting without advance notice given to the proxy members to be able to provide instruction to the proxyholders. For this reason unless there is a good reason to have proxy voting, it is not recommended and certainly not universal.



### ***DIRECTOR REMOVAL***

- new legislation will allow special resolution **and** another method, provided in the bylaws (if any)
  - board resolution, ordinary resolution, deemed resignation, etc.
  - consider carefully as it could be abused to silence dissent