

Community Alert

New Societies Act – http://www.bclaws.ca/civix/document/id/complete/statreg/15018_01

What is this about?

We have been alerted to provisions of the new BC Societies Act regarding who is qualified to be a director of a society. These provisions come into effect for pre-existing societies on November 28, 2018. The excerpt with highlights shows the issue. See page 3 for the entire section.

44 (3) Despite subsections (1) and (2), an individual is not qualified to be a director of a society if the individual is
(a) found by any court, in Canada or elsewhere, to be incapable of managing the individual's own affairs,

NOTE: Non-profit organizations are societies incorporated under the BC Societies Act. The BC Cooperative Association Act has the same restriction at section 79 (4) (b) – http://www.bclaws.ca/civix/document/id/complete/statreg/99028_01#section79

Why is this a concern?

The reason for this alert is that we are concerned how non-profit groups may interpret or apply this requirement.

We have heard that some community living agencies are already discussing whether current directors who have a developmental disability (but not a court-appointed committee of estate) might need to be removed from their role as a director and be on an advisory group instead.

This is NOT an acceptable response or the correct application of the law – see box on page 2.

Who may be affected?

This could affect people with:

- A developmental disability – self-advocates;
- An acquired brain injury;
- A diagnosis of dementia or other chronic conditions that have the potential to affect cognitive abilities, for example Parkinson's Disease;
- A psychiatric illness.

It could also affect Microboards and Client Support Groups (under the Ministry of Health Choices in Supports for Independent Living Program–CSIL).

Is the new Societies Act in effect now?

Yes, the new Societies Act is in effect now and applies to new societies. **Pre-existing societies have until November 28, 2018** to make sure they meet the requirements of the new legislation and to file an application with Societies Online - <https://www.bcregistry.ca/societies/>

What does the restriction mean?

In BC, the term ‘affairs’ is associated with financial affairs. **The BC Societies Act says that if an individual has been found by a court (a judge) to be mentally incapable of managing their financial affairs, they are not eligible to be a director of a society** (non-profit organization).

This does not affect a director who is under statutory property guardianship (when the state – the Public Guardian and Trustee – is managing their financial affairs) and does not refer to their capability for other life areas such as health care or personal care.

In BC, the Patients Property Act outlines the procedures for a person (usually a family member but it can also be a corporation such as a Trust Company) to apply to the Supreme Court of BC to be appointed as **committee of estate** for an adult (age 19 or older).

The judge first has to determine that the adult in question is incapable of managing their own finances. If the judge finds this to be true, the judge can appoint the person who applied or the Public Guardian and Trustee (a government official) to take over the adult’s financial affairs.

Under court-appointed or statutory property guardianship (also called Committeeship in BC), an adult loses their rights – sometimes called civil death. Legally, the adult is a non-person.

In BC, adult guardianship/Committeeship is the LAST RESORT. In BC, a Representation Agreement section 7 (RA7) was created as a legal alternative to adult guardianship for adults who need assistance to manage their financial affairs or any life areas.

The law reform that created BC’s Representation Agreement Act and health care consent legislation is built on a set of principles that require ALL adults to be treated equally and with dignity and respect. The United Nations Convention on the Rights of Persons with Disabilities, Article 12, is based on the BC Representation Agreement Act.

Discussions during the law reform (1989 to 2000) focused on the **harm and stigma of labelling people by their disability or diagnosis and equating this with mental incapability**. With a Representation Agreement, there is no need to label someone as incapable – a representative is available to assist when needed.

ACTION:

Non-profit societies who have directors with developmental disabilities or dementia or other disability or diagnosis need **ONLY** be concerned if the director’s own financial affairs are taken over by someone who is appointed as their committee of estate because the director has been found incapable by the Supreme Court of BC (or a court in another province or country – see next page). For a pre-existing society, this applies on November 28, 2018.

It is **VERY IMPORTANT** that non-profit societies, especially those that serve people with disabilities, chronic illnesses or serious injuries and who are leaders in their fields – **such as the Alzheimer Society of BC, Parkinson Society BC, Inclusion BC, Disability Alliance BC, Individualized Funding Resource Centre and others** – speak up for the value, need and rights of the people they support to be included in the governance of their organization.

What if a court in another province of Canada or elsewhere found the individual incapable?

The wording of the BC Societies Act is very problematic. It is contrary to BC's legislation governing guardianship – and to the goals of the law reform (started in 1989) and current practice.

If an adult is found incapable by the court of another province or country and they move to BC, the adult is NOT automatically under guardianship/Committeeship in BC, as the Societies Act implies. These adults may make a Representation Agreement section 7 (RA7), if they need assistance to manage their affairs. The RA7 is a legal alternative to guardianship in BC. With an RA7, the adults retain their rights as equal citizens. The Societies Act seems out-of-step with this.

It is true that BC's Adult Guardianship Act contains amendments – not yet in effect – that would automatically impose BC's guardianship law on people when they move to BC, if they were under guardianship from another province or country.

There is no universal definition of capability or incapability – it depends on many factors and can change. Different provinces and countries have different approaches to guardianship and findings of incapability to manage finances. It is not appropriate for policy or legislation to assume a level playing field. In fact, BC's Representation Agreement Act is a model and many ideas developed during the law reform are now being discussed and tried in other jurisdictions.

Watch for Nidus' policy paper on 'Righting the Balance between Guardianship and Self-Determination' that discusses these and other concerns about BC's current legislation and pending amendments.

What other qualifications must directors meet?

BC Societies Act – Section 44 – Persons qualified to be directors

*(1) A person is qualified to be a director of a society only if the person is an individual who is **at least 18 years of age**.*

*(2) Despite subsection (1), an individual who is **16 or 17 years of age** is qualified to be a director of a society **if provided for in the regulations**.*

(3) Despite subsections (1) and (2), an individual is not qualified to be a director of a society if the individual is

(a) found by any court, in Canada or elsewhere, to be incapable of managing the individual's own affairs,

(b) an undischarged bankrupt, or

(c) convicted in or out of British Columbia of an offence in connection with the promotion, formation or management of a corporation or unincorporated entity, or of an offence involving fraud, unless

(i) the court orders otherwise,

(ii) 5 years have elapsed since the last to occur of

(A) the expiration of the period set for suspension of the passing of sentence without a sentence having been passed,

(B) the imposition of a fine,

(C) the conclusion of the term of any imprisonment, and

(D) the conclusion of the term of any probation imposed, or

(iii) a pardon was granted or issued, or a record suspension was ordered, under the [Criminal Records Act](#) (Canada) and the pardon or record suspension, as the case may be, has not been revoked or ceased to have effect.

Other references to section 44 (director) from the BC Societies Act:

Section 221 – General offences

(2) A person who becomes or acts as a director of a society and who is not qualified under section 44 [persons qualified to be directors] to be a director commits an offence.

Section 232 – References to members, senior managers and filings

(1) A reference in this Act to

(b) a director of a society includes an individual who, immediately before the coming into force of this section, was a director, under the former Act, of a pre-existing society and remains a director of the society,

Section 233 – Application of provisions to directors and senior managers of pre-existing societies

Sections 41 [employment of directors], 42 (4) [designation, election and appointment of directors], 44 [persons qualified to be directors], 46 [remuneration and reimbursement of directors] and 61 (3) [senior managers] do not apply in relation to a pre-existing society until the date that is 2 years after the date on which this section comes into force.

Comments

There appear to be some inconsistencies with the new BC Societies Act and other BC legislation. The Societies Act allows for 18 year olds to be directors and even 16 and 17 year olds as outlined in the regulation. In BC, the age of adulthood is 19 years or older. The court procedure for determining whether an individual can manage their own affairs applies to adults (age 19 or older).

You will notice in section 44 that many of the other ways a director may be disqualified have to do with criminal activities. Surely we do not want to equate disability or diagnosis of a chronic illness with criminality?

The previous Society Act did not include the same kind of restriction on directors - http://www.bclaws.ca/civix/document/id/consol30/consol30/96433_01#part3

Where did this come from?

The BC Law Institute – an academic legal think tank at UBC – wrote a report (2008) for government with recommendations to ‘harmonize the Societies Act with the Business Corporations Act.’

THANK YOU to all who serve as directors on the Board of non-profit societies. Directors take on a financial responsibility and bring valuable skills as well as connections, ideas and experience. But most important is their **HUMANITY!**

RESOURCES FROM NIDUS

Go to www.nidus.ca

Click link for video [Getting Started](#) – just above photos at homepage

Click Information (top blue menu bar) > Adult Guardianship > [AG Overview](#)

Click Registry (top blue menu bar) > click arrow [New to Registry](#) > How-to-Instructions