

**BCCPAC Fall 2007 Conference
Plenary Presentation
Friday, November 16, 2007
10:30 a.m. – 12:00 noon**

Working Together to Make the BCCPAC Strong

**Understanding How it is Structured
and Operates, & How Member PACs &
DPACs Can Contribute to Its Success**

Presenters: Anders Ourom & Donald Golob

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Objectives

To outline

How the BCCPAC is structured & required to operate

How the member PACs & DPACs can contribute to its success

To provide an opportunity for questions

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Agenda

10:30 a.m. Welcome, Introductions, Session Overview

10:40 a.m. Presentation

11:40 a.m. Questions

12:00 noon Session Concludes

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How the BCCPAC is structured & required to operate

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BCCPAC is both an Incorporated Society and a Registered Charity

**Both determine how it is structured, governed,
& must operate**

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Distinction & Comparison

Incorporation as a Society

Under the BC Society Act

Establishes the BCCPAC as a separate, independent legal entity

This defines its corporate structure

Registration as a Charity

Under the Canada Income Tax Act

Establishes BCCPAC as a type of taxpayer

These statuses are distinct & serve completely different purposes

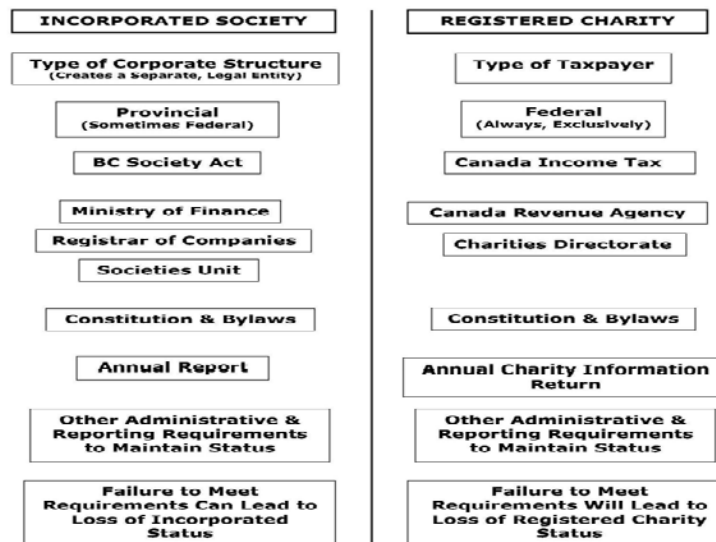
Each status confers specific rights & responsibilities & limitations on the BCCPAC

Both statuses can be taken away if the BCCPAC does not meet certain requirements

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BCCPAC: INCORPORATED SOCIETY & REGISTERED CHARITY STATUS

Distinction & Comparison



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**To maintain its dual status as an
Incorporated Society and as a
Registered Charity, BCCPAC must
comply with both the BC Society
Act & the Canada Income Tax Act
(as it relates to charities)**

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**The Focus of this Presentation is
on BCCPAC's Status as an
Incorporated Society under the BC
Society Act, since it has an most
influence on BCCPAC's
Governance Structure & Operation**

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The BC Society Act Incorporates a Number of Important Democratic & Common Law Principles

**These principles in turn are reflected in how
the BCCPAC is structured, governed, &
operates**

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The Democratic & Common Law Principles Underlying the BC Society Act

**The Society as a Separate, Independent Legal Entity
Societies as Miniature Democracies**

The Rule of Law

The Hierarchy of the Law

The Hierarchy of Decisions and Decision Makers

Ultimate Control of the Society by the Members

Governance by the Directors

Due Process

The Right of the Majority to Make a Decision

The Right of the Minority to Be Heard

**The Right and Responsibility of Societies to Govern
Themselves**

Societies as Imperfect Democracies

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The BCCPAC is as a Separate, Independent Legal Entity

The BCCPAC is a legal person, separate from & independent of its members and directors

It is nominally immortal & has the right of perpetual succession

The Members of BCCPAC cannot personally benefit in the financial sense from the society

However, it is the members & directors at any point in time that decide on the actions of the BCCPAC & how they will be carried out

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The BCCPAC is a Miniature Democracy

The BCCPAC has

A constitution & bylaws, that must abided by & adhered to

Members, most of whom have the ability to vote on matters fundamental to the BCCPAC

Directors, who are elected by the members at regular intervals, who manage the affairs of the BCCPAC between meeting of the members

A structure & process in place that determines the relationship between the members and the directors, their rights & responsibilities, their power & authority, and how each is exercised

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The BCCPAC & The Rule of Law

As a democracy, the BCCPAC is governed by the Rule of Law

This means that its incorporating statute (The BC Society Act), the society's incorporating documents (constitution and bylaws), and any applicable laws, always apply

There may be disagreement on what they are or mean

There can be no disagreement that they govern

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The BCCPAC & The Hierarchy of the Law & Governing Documents

The BCCPAC is governed

- First by what is required under the Act, and any other applicable laws
- Second by its constitution and bylaws, and
- Third by policies

This means that the BCCPAC's

- Policies are always subject to, superseded by, & cannot be in contravention of its bylaws
- Bylaws are always subject to, superseded by, and cannot be in contravention of the Act, and any other applicable laws

This means that the BCCPAC

- First has to be aware of & understand what the Act & other applicable laws require it to do
- Second has to ensure that it has a constitution & bylaws in place that meets its needs & is not in contravention of the Act, or any other applicable laws
- Third has to ensure that it has the policies in place that elaborate on but are not in contravention of its constitution and bylaws

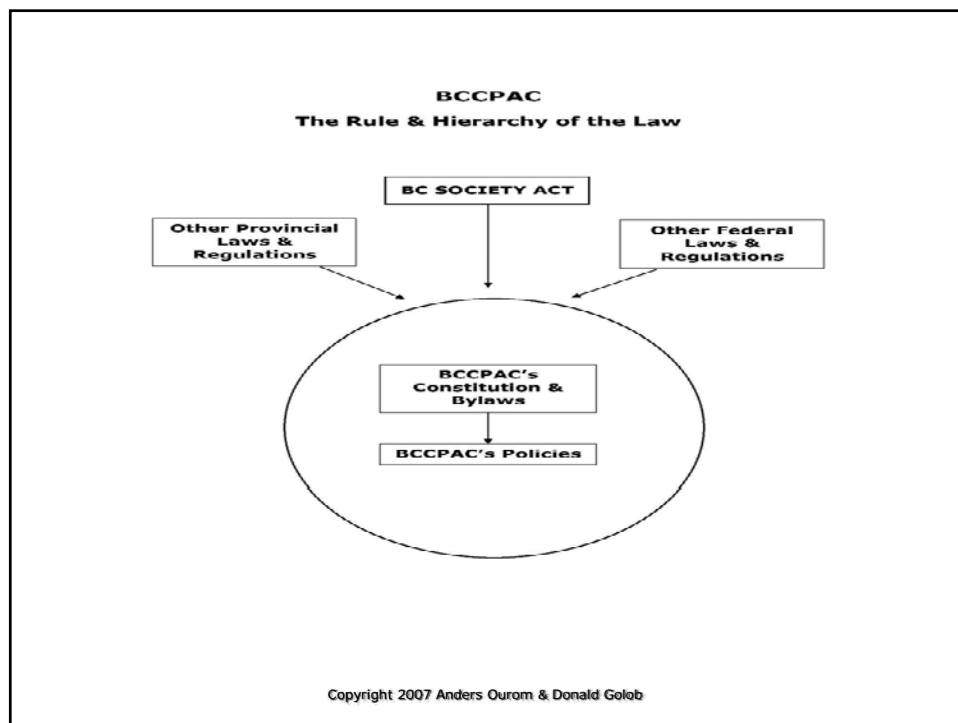
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It is not unusual for societies to have an inadequate understanding or appreciation of this hierarchy

Many have the hierarchy reversed & inappropriately place the majority of focus and emphasis on policies

This is not good governance & can have potentially severe, unintended consequences for the society

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The BCCPAC & Its Relationship to the BC Society Act

The BC Society Act

Is the piece of BC legislation that allows for the creation of societies as separate, independent legal entities, and
Governs the structure & operations of groups that incorporate under the Act

The Act stipulates

The things that are common to all societies under the Act
What all societies under the Act must do to incorporate & maintain their status, and
Where individual societies have flexibility & the opportunity to tailor certain aspects of their constitution & bylaws to meet their specific circumstances & needs

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The BCCPAC's Constitution & Bylaws

BCCPAC's constitution sets out:

The society's legal name, which is unique to the society
The society's purposes, which are specific to the society
Other ancillary clauses related to its overall structure

For example, as a registered charity BCCPAC has additional clauses required of charities

The Bylaws set out:

How the society is structured & how it will operate
Those aspects that the Act requires the bylaws of all societies to address
Those aspects that the society wishes to add that are specific to its own circumstances

They are separate but complementary documents & all incorporated societies must have a constitution & bylaws

BCCPAC's constitution & bylaws are and must be treated as

- A contract that it has made with the Province of BC that it will restrict its activities to certain areas and structure & operate itself in certain ways
- A contract that exists between its members that restricts its activities to certain areas and states it will structure & operate itself in certain ways

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The BC Society Act provides a great deal of flexibility in terms of the purposes BCCPAC can pursue and how it can structure itself & operate

The Income Tax Act limits BCCPAC's purposes and activities to those that are considered charitable under the law, and how it may pursue them

Parts of the constitution & and, in most cases, all of the bylaws can be amended

The process is not easy and it is very specific and legal in nature

Since the BCCPAC can only do those things stated in its purposes, and can only be structured and operate according to its bylaws, it is imperative that they be reviewed and amended, to the extent they can be, on a regular basis to ensure they meet the ongoing requirements of the society

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The BCCPAC's Policies

BCCPAC's Policies

- Elaborate on, support, & must be consistent with the bylaws
- Are procedural and substantive decisions made by the members or directors as applicable
- Can be changed much more easily than bylaws

What should be in the bylaws and what should be in the policies is an ongoing debate

As a general rule, anything that is of major significance to the members and the society should be in the bylaws

Many societies focus an inordinate amount of time on policies and little on bylaws

A balance is required between the two

Over time, policies can also become overly complex & restrictive if societies are not careful

Outdated, inappropriate, or gaps in policies can be detrimental to the ability of the BCCPAC to perform, just as outdated, inappropriate, or gaps in bylaws can be

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The BCCPAC & The Hierarchy of Decisions & Decision-Makers

In the BCCPAC there is a hierarchy of decisions and decision makers

The hierarchy starts from the external & moves to the internal

The BC Society Act sets out and stipulates specific decisions that specific groups of internal decision-makers can make, the process for doing so, & the effects of those decisions on the society

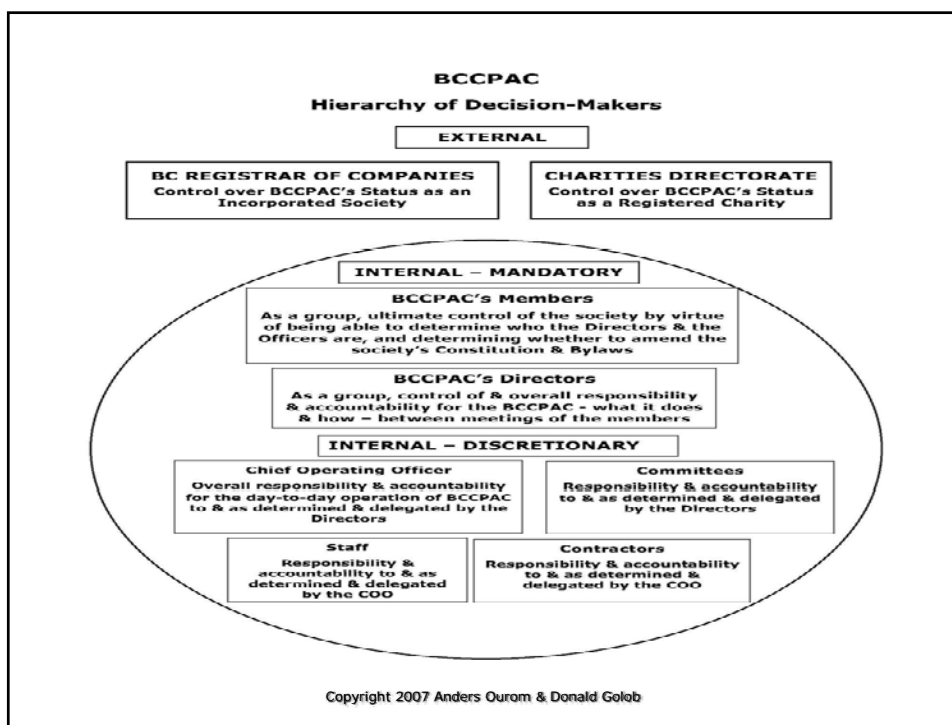
It is imperative for the BCCPAC to clearly understand

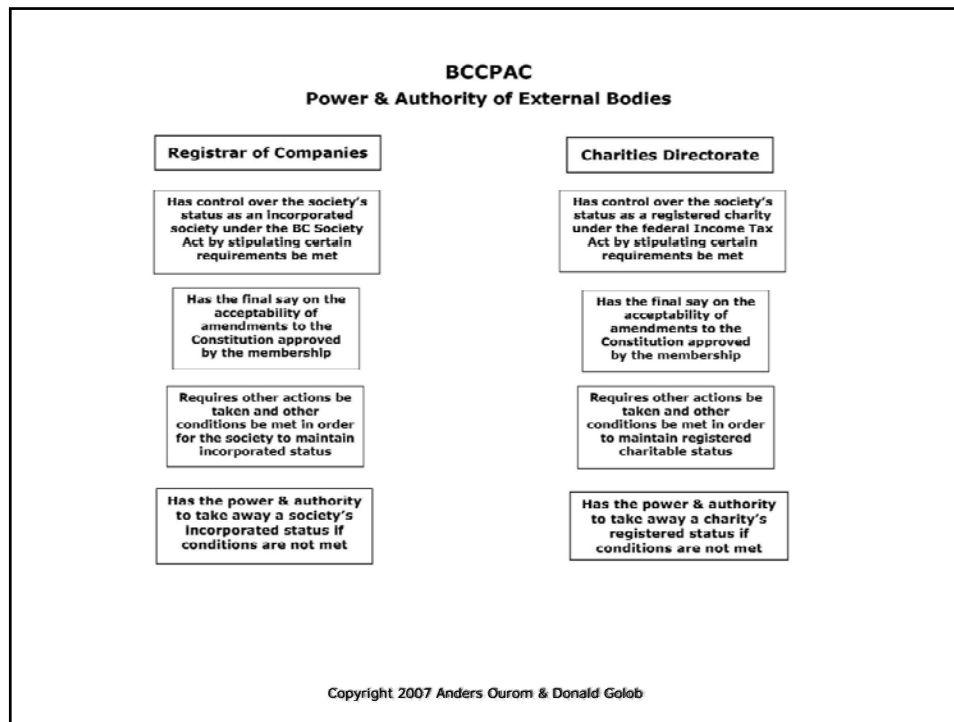
The hierarchy of decisions & decision-makers in relation to the society, and

The power & authority of the decision-makers & the effects of their decisions on the BCCPAC

How their power & authority is exercised & the limitations

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BCCPAC's Internal Decision-Making Groups

Mandatory

- The BC Society Act identifies two
 - The Members
 - The Directors
- The BCCPAC must have both & cannot exist or operate without the minimum number of each

Discretionary

- The BC Society Act allows societies to choose to have
 - Employees
 - Contractors
 - Committees

Our focus is on the Mandatory Groups

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The Duty & Responsibilities of BCCPAC's Members & Directors

Members

- The duty to uphold & adhere to the constitution & bylaws of the BCCPAC

Directors

- The duty to (among others)
 - Manage or supervise the management of the BCCPAC's affairs in accordance with the BC Society Act & the constitution & bylaws of the society
 - To act honestly, in good faith, and in the interest of the society in exercising the powers & performing the functions of a director
 - To exercise the care, diligence & skill of a reasonably prudent person in exercising the powers & performing the functions of a director
- Individual directors who are also Officers (President, Vice-President, Secretary, Treasurer, etc.) have additional specific responsibilities & powers as set out in BCCPAC's bylaws or by directors' resolution

It is important for members & directors to keep in mind that the directors can be held personally liable in some instances for their actions & the actions of the BCCPAC - with the additional responsibility comes additional accountability

Members cannot be held accountable for the debts & liabilities of the society

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BCCPAC Power & Authority of the Two Mandatory Internal Groups

Members	Directors
Ultimate control of the BCCPAC by virtue of being able to determine who the Directors & the Officers are, and determining whether to amend the society's Constitution & Bylaws	Control of & overall responsibility & accountability for the BCCPAC - what it does & how - between meetings of the members
The power & authority of the Members is vested in & exercised by the Members collectively as a group	The power & authority to exercise all of the powers of the BCCPAC, which are the powers & capacity of a natural person of full capacity as may be required to pursue its purposes
No Individual Member has any power or authority	The directors generally have unlimited power to govern the affairs of the BCCPAC as they see fit between meetings of the members, subject only to the Act, the constitution, the bylaws, and other applicable laws
Members are only able to exercise their power & authority at a duly constituted & conducted meeting of the Members	The power & authority of the Directors is vested in & exercised by the Directors collectively as a group
Members exercise their power & authority by voting on special and ordinary resolutions	No Individual Director has any power or authority unless it is specifically delegated in the bylaws of the society or by Directors' Resolution
Members who can vote have equal power when voting since they all have one vote	Directors, as a group, are only able to exercise their power & authority at a duly constituted & conducted meeting of the Directors
The BC Society Act stipulates that minutes of members' meetings must be taken & kept	Directors exercise their power & authority by voting on Directors' resolutions
This ensures that the decisions of the members are recorded	Directors have equal power when voting since they all have one vote
	The BC Society Act stipulates that minutes of directors' meetings must be taken & kept
	This ensures that the decisions of the directors are recorded

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Types of Resolutions

Members & Directors make their collective decisions by passing resolutions

There are two types of Members' Resolutions

- Special
- Ordinary

There is one type of Directors' Resolution

- Directors'

It is important for BCCPAC members & directors to understand the distinction between them, the types of decisions each are used to make, & the effect the passing of each type of resolution has on the BCCPAC

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Special Resolutions

Special Resolutions are defined in the BC Society Act, and were previously called Extraordinary Resolutions

They are the most important resolutions considered by the Members, and the society for that matter, and are reserved for decisions that are of fundamental importance to the society

The BC Society Act sets out those issues that must be considered as a Special Resolution by all societies

They most commonly deal with amendments to the society's Constitution & Bylaws

Amendments to a society's Constitution & Bylaws, the expulsion of members, or the dismissal of a Director can only be done by Special Resolution

Special Resolutions are almost always considered and voted on by the members at a general meeting

They can also be approved by the members outside of a general meeting by unanimous consent in writing of 100% of the society's voting members

Special Resolutions must be passed by at least a 75% majority of all voting members present at a general meeting. There is some debate about whether a higher percentage can be required under the bylaws

An abstention is a vote against, as it is not a vote in favour

At least 14 days written notice must be given to all members prior to the meeting when it will be considered; the bylaws of a society may require more

The notice must state that the resolution is a Special Resolution, and include the text of the resolution

The notice must be sent by mail or delivered by hand, unless a society's bylaws permit notice to be given by other means; for example, e-mail or fax

They must be either adopted or defeated as worded in the Notice of Special Resolution; they cannot be amended

They cannot come from the floor of a general meeting

They are legally binding on the society, directors, and members once they are filed by the Registrar of Companies

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 BC Society 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

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Ordinary Resolutions

Ordinary Resolutions are considered by and voted on at a general meeting of the members

They usually address issues of general importance to the society and the membership

They are usually not legally binding on the society or the directors

The exception is the election of directors, which is done using an Ordinary Resolution

They have moral and perhaps ethical weight, but are in almost all cases considered advisory

'Advisory' means that the directors take them under advisement, but have the power, authority, and duty to determine whether to carry them out and in what way since they are legally charged with the management of the affairs of the society, are required to act in the best interests of the society, and must ensure the society is always acting & operating within its legal parameters

They are passed by a simple majority of members in attendance at the meeting who are eligible to vote - 50% plus one

They can be sent ahead of time to the members to alert them that Ordinary Resolutions will be considered at a general meeting

They can come from the floor of a general meeting

They can be amended

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Directors' Resolutions

Directors' Resolutions are resolutions passed by the directors at a duly constituted meeting of the directors, by the majority required by the bylaws or the BC Society Act

They are used to make decisions that fall within the authority of the directors

The BC Society Act stipulates certain items must be considered & passed by directors of all societies by a Directors' Resolution

An example is the ability of directors 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 in the best interest of the society and the directors that all significant decisions of the directors are by resolution, and clearly recorded in the minutes of directors' meetings

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Due Process

In societies, following proper and due process is mandatory

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 can't 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's going on, allowing them to participate in debate and decisions, knowing what is required by the Act, constitution and bylaws, and so on

There are often disagreements on what should be done

There shouldn't 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's probably some procedural problem with it

Ultimately, it is the responsibility of the directors to ensure that due and proper process & procedures are followed by the BCCPAC at all times and as required in all instances

It is the responsibility of members to uphold & respect due process as a democratic principle in a democracy

It is the collective responsibility of the directors & the members to ensure they and the BCCPAC adhere to the process & procedures as stipulated under the Act and other applicable laws, and to ensure those the BCCPAC has discretion over meet the test of due process and are clearly articulated in BCCPAC's constitution and bylaws and policies

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The Right of the Majority to Make a Decision & the Right of the Minority to Be Heard

Societies are structured to

- Allow the majority to make a decision, or in the case of major decisions a super majority – for example, to amend the constitution or bylaws
- Allow the minority to be heard
- Require the majority to comply with the limits and processes in the governing statutes and documents, and
- Ensure there is procedural fairness

Therefore, it is important for societies, the members, & directors to

- Know what the rights of the majority & minorities are within their organizations & within their specific decision-making spheres
- Know how these rights may be exercised & their limitations, and
- Ensure due process is adhered to in the exercise of these rights

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The Right and Responsibility of the BCCPAC to Govern Itself

The BCCPAC, as democracy, has the right and responsibility to govern itself as set out in the laws that govern it

If a dispute arises, it is important for the BCCPAC to get good advice on what to do, and be careful to comply with the procedural requirements in the Act and the bylaws

The courts tend to be reluctant to interfere in the substantive affairs of societies – they won't decide what a society will 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'll refer it back to the members – with clear directions on procedure

The Registrar of Companies 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 themselves

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The BCCPAC is an Imperfect Democracy

Democracy is as much organization and process as result oriented, and is necessarily imperfect

Consequently, the BCCPAC is an imperfect democracy

What is important is that the BCCPAC recognizes & accepts that

It is a democracy

It is an imperfect one

Its members & directors have to work collectively and collaboratively, within the scope of their respective decision-making responsibility and authority, on an ongoing basis to ensure they have the form of democracy that meets BCCPAC's changing needs over time

Its requires constant vigilance, effort, and resources

No one else has the ability to or is going to do it for them, nor should they

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How the PAC & DPAC Members Can Contribute to BCCPAC's Success

Understand, respect, & uphold

- The democratic principles that underlie the way the way it is structured, governed, & operates
- The distinction & relationship between the duties, responsibilities, power & authority of the members & the directors in this structure
- How the members & the directors must work together
- BCCPAC's constitution & bylaws

Actively participate in the governance of the BCCPAC as members
Work to ensure that it has the constitution, bylaws, and policies in place that are able to meet the changing needs of the organization

Work to ensure the BCCPAC is the form of democracy its members and directors want and need it to be

Never lose sight of the reasons why the BCCPAC was formed, why it exists, and what it is wants to achieve

Never lose sight of why the BCCPAC chose to incorporate as a society and become a registered charity, and not be some other type of organization

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A Governance Audit of BCCPAC is Underway

In mid-October a Governance Audit of the BCCPAC got underway
The purpose of the Governance Audit is to:

1. Assess the current governance structures and processes of BCCPAC and analyze their alignment with the Mission, Values, Purposes and Strategic Vision Plan of the organization.
2. Analyze the alignment between governance structures and organizational processes and identify where challenges currently exist or may potentially arise.
3. Make recommendations with respect to the governance processes and structures appropriate for the future of BCCPAC in order to achieve its mission and goals.

Anders Ourom & Donald Golob are conducting the audit, with the input of the members, Board of Directors, staff and contractors

The audit is being managed by a committee of the Board of Directors

A notice of the Governance Audit is being sent to members

Up-to-date information on the Governance Audit and regular progress reports will be available on the BCCPAC website and sent to the members

Carla Giles, BCCPAC Chief Operating Officer, is the office contact for the audit

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Modifications to BCCPAC Resolution Process for the 2008 AGM

The Governance Audit has identified that the BCCPAC resolution process leading to the 2008 AGM requires modification to bring it into alignment with the BC Society Act

BCCPAC members are being sent a notice of modification and the information will be posted on BCCPAC's website

It is expected that the recommendations from the Governance Audit will lead to further modifications to maintain alignment with BCCPAC's statutory obligations and to tailor the resolution process to suit BCCPAC's requirements where possible

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Questions

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About the Presenters

Anders Ourom

Anders is a Vancouver-based lawyer who has been providing legal advice and legal consulting services to societies, charities, and other not-for-profit organizations in BC since 1995. He is one of the few lawyers in BC whose practice focuses on this area, and he is one of the most experienced. He has helped a wide variety of organizations incorporate under the BC Society Act, register as charities and foundations under the federal Income Tax Act, and maintain and restore their status. He has also provided specific advice to societies and charities on a wide range of important topics such as revising constitutions and bylaws. He has written materials for and been a presenter of sessions on societies and charities for the Continuing Legal Education Society. Anders can be contacted at 604 228 1798, or through <http://www.donaldgolobconsulting.ca/itoolkit.asp?pg=Associates>.

Donald Golob

Donald is a Vancouver-based consultant who has specialized in providing strategic planning and organizational development services to not-for-profit organizations since 1995. Donald has presented at other BCCPAC conferences & has provided organizational development assistance to BCCPAC over the years. Donald has been involved in the not-for-profit sector in BC since the mid 1980's. Donald can be contacted at 604 988 3273 or through www.donaldgolobconsulting.ca.

Seminars for Not-For-Profit Organizations

Anders and Donald offer a series of seminars for not-for-profit organizations on a range of topics, including how to become and maintain status as a society or charity; records & information management, access, and privacy for BC charities and societies; and how to amend constitutions and bylaws. A schedule of upcoming seminars can be found at http://www.donaldgolobconsulting.ca/itoolkit.asp?pg=Upcoming_Seminars.

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