

## Director Compensation – Application of the BC Societies Act

### Background

The facility engagement society bylaws allows for directors to be paid for acting as a director, and for the reimbursement of reasonable expenses. Under the *Societies Act*, a **majority** of the directors of a society must not be remunerated by the society for *non-director work* (see definition below). While this rule is not in effect until November 28, 2018, directors of MSA societies are advised to adopt guidelines and internal control procedures to promote compliance with the rule.

### Director Work

Under the Act, the directors of a society must manage, or supervise the management of, the activities and internal affairs of the society. Director work (which is not subject to the *Societies Act* restriction) **typically** includes:

- Preparing for and attending meetings of the board, its committees and the society's annual and special meetings;
- Activities related to the board's financial oversight of the society, such as reviewing, approving and monitoring the society's budget, approving contracts and ensuring funds are spent in accordance with the stated purposes and objectives of the society; and
- Activities related to governance of the society, such as establishing policies and procedures, evaluating, approving and monitoring initiatives, ensuring the society complies with the society's constitution and bylaws, applicable laws and regulations.
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### Examples of Director Work for which all directors can be paid

- A. Attending a working group meeting that is a committee of the society's board of directors.
- B. Spending 10 hours preparing for a working group meeting that is a committee of the society's board of directors.
- C. Meeting with health authority administration in their capacity as directors of the society to present results of a specific initiative approved and carried out by the society, or to problem solve and co-develop solutions for issues common to both.
- D. Meeting with the medical staff or MSA's support staff to discuss an engagement initiative authorized by the society. The purpose of the meeting is to go over the progress of the initiative and/or to monitor whether it is achieving its desired results (and not to implement or carry out the initiative, per se). The director can be paid because he/she is exercising his/her duty to manage the affairs of the society.

## Non-Director Work

This is work done by the director relating to the implementation or day-to-day operational work of the society's engagement initiatives. It is important to note that this non-Director work relates to the type of work and not the specific initiative.

### Examples of non-Director work for which less than a majority of the directors can get paid

The "hands on" work of specific society's engagement initiatives will fall under this category. For example:

- A. The board, on a recommendation from the working group, approves an engagement initiative to reduce surgical wait times. One director spends 20 hours designing a plan, testing software, and implementing the plan with physicians and administration. **That director can only be compensated for the 20 hours of work if less than 50% of the directors are being compensated for non-Director work.**
- B. The board, on a recommendation from the working group, approves an engagement initiative for the development of a notes dictation template. All three directors of the society spend time developing and testing the template. **Only one of the directors can be compensated for the time spent on development and testing.**

If several engagement initiatives are underway, it is important to note if the society has 3 or 4 directors, only 1 director can be paid at a time for non-Director work regardless of which initiative. If the society has 5 directors, only 2 directors can be paid at a time for non-Director work regardless of which initiative.

### Recommendations for application of the Societies Act's Director Compensation rule

- A. Set up a control procedure. As a part of the initiative approval process, evaluate the work proposed to be done by directors to determine whether such work is outside the scope of Director Work before such work begins. If a determination is made that some of the work proposed is non-Director Work, ensure that no more than 50% of the directors will be doing this type of work. See Appendix A for further details.
- B. Revise the working group terms of reference/board terms of reference or individual director position descriptions to include more responsibilities for directors. Directors have general powers to manage the affairs of a society: if more of the initiative implementation work is specifically included here, then more work can be considered Director Work.
- C. Rotate non-Director Work. For each financial year, select one (or two, if there are five directors on that board) director that will be remunerated that year for non-Director work.

## APPENDIX A – Control Procedure Guidelines

### Scope

These control procedures apply to members of an MSA society who are undertaking authorized work on behalf of the MSA society, either in their capacity as a director or in their individual capacity as a MSA member.

### Guidelines

The following guidelines are intended to assist MSA societies to ensure that less than a majority of directors receive remuneration for non-director work undertaken on behalf of the society.

#### 1. Recruitment

- ✓ Inform individuals on the role of a director and limitations on director remuneration, when recruiting potential MSA society directors.

Prospective directors should be made aware of the limitation on the number of directors who can be remunerated for non-director work and, should not expect to do (or be paid for) the implementation or “operational” work of their society’s engagement initiatives. This work should be carried out by other members of the society, most often under the direction of a society’s working group. As a general rule, members of the society that want to do, and be paid for, the hands-on work for engagement initiatives should not be directors.

#### 2. Establish Categories of Director Work and Non-Director Work

- ✓ Establish categories of Director Work and Non-Director Work, what is work eligible for remuneration and the amount or any limits on such remuneration. Incorporate these categories into any general policy on remuneration and into any reporting system, such as FEMS.

Below sets out the typical tasks that would be classified as director work or non-director work. A key question to ask: *“Is this high-level oversight and leadership work, or is this operational or implementation work.”* The former is generally director work; the latter is generally non-director work.

Director Work	Non-Director Work
<ul style="list-style-type: none"><li>• Attending board meetings</li><li>• Preparing for board meetings</li><li>• Strategic planning</li><li>• Preparing for and participating in working group meetings</li><li>• Work in respect of time spent on officer duties (e.g. treasurer, Board Chair agenda meeting preparation, etc.)</li><li>• Preparing for and attending the AGM</li><li>• Managing the affairs of the society with MSA support staff</li><li>• Meetings with health authority when serving in the capacity of a director</li></ul>	<ul style="list-style-type: none"><li>• Participation on non-board related committees, e.g. other working groups where any member could serve in the capacity is outside directors duties</li><li>• Designing a work plan for an engagement initiative</li><li>• Implementing and tracking of an engagement initiative</li></ul>

### 3. Implement Control Procedures for MSA Society Boards and Working Groups

The following control procedures should be followed by all MSA engagement society boards and working groups.

- A. At a Board Meeting that occurs in the fourth quarter of the fiscal year (i.e. between January and end of March), **discuss and determine who on the Board will be eligible to do non-director work in the coming fiscal year.** Recall that this has to be less than a majority of directors (i.e., 1 of 3 or 4 directors, or 2 of 5 directors). Additionally, recall that this consideration takes into account all initiatives that have been approved and are currently ongoing, not just specific initiatives (i.e., if there are 3 directors and director X is getting paid for non-director work on initiative A, director Y can't get paid for non-director work on initiative B). **Pass a resolution at the meeting** that documents this decision in writing.
- B. At a Board Meeting before the society AGM, **review the financial statements** prepared by the society's accountant to confirm that remuneration paid to directors is accurately disclosed. The financial statements should set out what director work and non-director work was paid to directors<sup>1</sup>. It is this disclosure that will demonstrate whether the society is in compliance with section 41 of the *Societies Act* (i.e., Director Compensation rule). Directors should also review the financial statements in their entirety and pass a resolution confirming that their contents accurately reflect the society's financial position.
- C. **Ensure** that the working group terms of reference indicate it is a committee of the board of the society.
- D. At working group meetings throughout the year where engagement initiatives are approved:
  - **Ensure conflict of interest considerations are reviewed.** When a proposed engagement initiative is discussed and is in the process of being approved by the working group, working group members, including Board directors, that are in an actual or perceived conflict of interest (e.g., they will be getting compensated from the MSA society for doing work on that initiative) should abstain from voting to approve that initiative.
  - **Identify director work and non-director work in the engagement initiative's work plan.**
    - a) The work plan for an initiative should list the specific tasks involved, as well as an indication of the specific people that will take on the tasks and an estimate of how much time they will spend on it.

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<sup>1</sup> According to Section 8 of the *Societies Regulation*:

**Reporting on remuneration of directors**

8 The information that must, under section 36 (1) [*reporting on remuneration of directors, employees and contractors*] of the Act, be provided in a note in the financial statements of a society in respect of the remuneration, if any, paid by the society to the directors is the following:

- (a) a list of all of the directors to whom the society paid, during the period in relation to which the financial statements are prepared,
  - (i) remuneration for being a director, or
  - (ii) remuneration for acting in another capacity,

which list must include the position or title of each director and may include, but is not required to include, the directors' names;

- (b) the amount of remuneration, if any, described in paragraph (a) (i) paid to each director;

- (c) the amount of remuneration, if any, described in paragraph (a) (ii) paid to each director and a description of the capacity in which each such director acted.

- b) Each task in the work plan should also be categorized into director work or non-director work.
- c) Review the work plan to confirm whether any directors will be carrying out and getting paid for non-director work on this initiative.
- d) Confirm who is eligible amongst Directors to receive payments for non-director work, based on the resolution passed by the board at a previous board meeting.