

SOCIETY RESTORATION PACKAGE

NOTICE TO APPLICANT

Sections 158 to 166 of the *Societies Act* deal with restorations of a society and read as follows;

Division 11 — Restoration of Dissolved Society

Definition of "applicant" and application of Division to society dissolved under former Act

158 (1) In this Division, "**applicant**", in relation to an application under section 160 [*application to registrar for restoration*] or 162 [*application to court for restoration*] respecting a society that is dissolved, means,

(a) in the case of an application to the registrar under section 160, a person

(i) who, at the time of the dissolution, was a member or director of the society, or

(ii) who is the heir or personal or other legal representative of a person who, at the time of the dissolution, was a member of the society, or

(b) in the case of an application to the court under section 162, a person

(i) referred to in paragraph (a) (i) or (ii) of this subsection, or

(ii) whom the court considers to be an appropriate person to make the application.

(2) This Division applies to a society under the former Act that was dissolved under the former Act as if it were a society that was dissolved under this Act.

Prerequisites to application for restoration by registrar or court

159 (1) An application under this Division for restoration of a dissolved society may be

(a) filed with the registrar under section 160, or

(b) made to the court under section 162 [*application to court for restoration*].

(2) Before filing or making an application under subsection (1) (a) or (b), a person must

(a) publish in the Gazette notice of the application,

(b) mail a notice of the application to the last addresses shown in the register of societies as

(i) the address or mailing address, as the case may be, of the registered office of the society, and

- (ii) the address of each of the individuals who were the directors of the society at the time of the dissolution, and
- (c) reserve a name under section 9 *[name]* for the society to be restored.

Application to registrar for restoration

160 (1) To apply to the registrar for the restoration of a society, an applicant must file with the registrar

- (a) a restoration application, and
- (b) any other records the registrar may require.

(2) A restoration application referred to in subsection (1) (a) must contain the following information:

- (a) the date on which the notice required under section 159 (2) (a) was published in the Gazette;
- (b) the latest date on which a notice required under section 159 (2) (b) was mailed in accordance with that provision;
- (c) the name reserved under section 9 *[name]* for the society and the reservation number given for that name;
- (d) the delivery address and mailing address of the registered office proposed for the society;
- (e) if the restoration is for a limited period, a statement specifying the proposed limited period of the restoration.

(3) In respect of applications to the registrar under this section for restorations for a limited period, the registrar may establish the maximum period of restoration that may be specified in a statement referred to in subsection (2) (e).

(4) If a society was dissolved before the coming into force of this section, a restoration application in respect of the dissolved society may not be submitted for filing with the registrar more than 10 years after the date of the dissolution.

Restoration by registrar

161 (1) Unless the court orders otherwise in an entered court order of which a copy has been filed with the registrar, after the restoration application is filed with the registrar under section 160, the registrar must, on any terms and conditions the registrar considers appropriate, restore the society or restore the society for the limited period set out in the application, as the case may be.

(2) Despite subsection (1), the registrar may not restore a society under that subsection until 21 days after the later of

- (a) the date shown in the restoration application as the date on which notice of the application was published in the Gazette in accordance

with section 159 (2) (a) [*prerequisites to application for restoration by registrar or court*], and

(b) the date shown in the restoration application as the latest date on which a notice of the application was mailed in accordance with section 159 (2) (b).

(2.1) Subsection (2) does not apply to the restoration of a society if

(a) the society was dissolved under section 214 [*involuntary dissolution by registrar*] for one or more of the reasons set out in section 214 (1)

(a) to (d), and for no other reason under that section, and

(b) the application for restoration is filed no later than one year after the date of dissolution.

(3) Despite subsection (1), the registrar may not restore a society under that subsection unless the reservation of a name under section 9 [*name*] for the society remains in effect on the date of the restoration.

(4) Subject to section 165 [*corporate property to be returned to restored society*], a restoration under subsection (1) of this section is without prejudice to the rights acquired by persons before the restoration.

Application to court for restoration

162 (1) Before making an application to the court under this section for the restoration of a society, an applicant must

(a) provide to the registrar notice of the application and a copy of any record proposed to be filed in the court registry in support of the application, and

(b) obtain the registrar's written consent to the restoration.

(2) An applicant may apply to the court for the restoration of a society and must, on making an application, provide to the court

(a) the information described in section 160 (2) (a) to (e) [*application to registrar for restoration*],

(b) the registrar's written consent to the restoration, including any terms and conditions the registrar considers appropriate, and

(c) any other information and records the court requires.

(3) If, on an application under subsection (2), the court is satisfied that it is appropriate to restore the society, the court may make an order that the society be restored and, in that order, may

(a) set out any terms and conditions the court considers appropriate, and

(b) give directions and make provisions the court considers appropriate for placing the society and every other person in the same position, as nearly as may be, as if the society had not been dissolved.

(4) Subject to section 165 [*corporate property to be returned to restored society*], unless the court orders otherwise, an order under subsection (3) of this section is without prejudice to the rights acquired by persons before the restoration.

(5) A court order under subsection (3) must reflect any terms and conditions referred to in subsection (2) (b).

Filing of restoration application with registrar in court-ordered restoration

163 (1) Promptly after a court order is made under section 162 (3), the applicant must file with the registrar

(a) a restoration application that complies with section 160

(2) [*application to registrar for restoration*], and

(b) concurrently with that application, the following:

(i) a copy of the entered court order;

(ii) any other records the registrar may require.

(2) Subject to subsection (3), when the restoration application is filed with the registrar under this section, the registrar must restore the society, or restore the society for the limited period set out in the application, as the case may be.

(3) The registrar may not restore a society under subsection (2) unless the reservation of a name under section 9 [*name*] for the society remains in effect on the date of the restoration.

Effect of restoration

164 (1) A society that is restored under this Division is restored with the name reserved under section 9 [*name*] for the society.

(2) Subject to subsection (1), a society that is restored under this Division is restored

(a) with the constitution and bylaws it had immediately before its dissolution, and

(b) with the statement of directors and registered office that it had immediately before its dissolution except that the delivery address and mailing address of the registered office for the society are the addresses shown for that office in the restoration application,

unless, in the case of a restoration under section 162 [*application to court for restoration*], the court orders otherwise.

(3) A society that is restored under this Division is deemed to have continued in existence as if it had not been dissolved, and proceedings may be taken as might have been taken if the society had not been dissolved.

(4) Subject to subsections (5) and (6), if the restoration of a society is for a limited period, the society is dissolved on the expiration of the limited period.

(5) If the restoration of a society is for a limited period, on the application, within that limited period, of the applicant who filed the restoration application,

(a) in the case of a society that was restored under section 161

(1) [*restoration by registrar*], the registrar may extend the period to a later date that the registrar considers appropriate, or

(b) in the case of a society that was restored under section 161 (1) or 163 (2), the court may extend the period to a later date that the court considers appropriate.

(6) If the limited period of the restoration of a society is extended under subsection (5), the society is dissolved on the expiration of the extended period.

(7) Section 153 (1) [*registrar's duties after dissolution*] does not apply in respect of the dissolution of a society under subsection (4) or (6) of this section.

Corporate property to be returned to restored society

165 (1) If money or other property of a society, other than property described in subsection (4) or (5), vested in the government under section 154 (3) [*effect of dissolution*] as a result of the society's dissolution, on the restoration of the society,

(a) any of that property that has not been disposed of by the government vests in the society without any deed, bill of sale or other record from the government or any action by the government, and

(b) subject to subsection (3) of this section, the government must,

(i) in the case of property that remains in the government's custody, return all of that property to the society,

(ii) in the case of property that has been disposed of by the government, pay to the society, out of the consolidated revenue fund, the amount of money realized by the government from the disposition of that property, and

(iii) in the case of money that has been received by the government, pay to the society, out of the consolidated revenue fund, the amount of that money.

(2) A payment under subsection (1) (b) may be made without an appropriation other than that provision.

(3) The government need not comply with subsection (1) (b) in relation to money or other property of a restored society unless and until the government has been reimbursed, out of the money or other property, or otherwise, for the government's costs of

(a) obtaining, retaining, maintaining and disposing of the money or other property, and

(b) paying the money, and returning the other property, in accordance with that provision.

(4) Subject to subsection (5), title to, or an interest in, land of a society that has escheated to the government under section 4 [*escheat of land on dissolution of corporation*] of the *Escheat Act* is not, except as provided in section 4 of that Act, affected by a restoration of the society.

(5) Title to, or an interest in, water system property of a society that

(a) has escheated to the government under section 4 of the *Escheat Act*,

or

(b) has vested in the government under this Act

is not, except as provided in section 4.1 [*disposal of escheated water system property*] of the *Escheat Act*, affected by a restoration of the society.

Registrar's duties after restoration

166 (1) After a society is restored under this Division, the registrar must

(a) issue a certificate of restoration in which is recorded

(i) the name of the society,

(ii) the date and time of the restoration, and

(iii) in the case of a restoration for a limited period, the date on which the limited period of restoration expires,

(b) furnish to the society

(i) the certificate of restoration,

(ii) a certified copy of the statement of directors and registered office modified in accordance with section 164 (2) (b) [*effect of restoration*], and

(iii) a certified copy of the restoration application filed with the registrar under section 160 [*application to registrar for restoration*] or 163 [*filing of restoration application with registrar in court-ordered restoration*],

(c) furnish to the applicant who filed the restoration application a copy of the certificate of restoration, and

(d) publish notice of

(i) the restoration, and

(ii) the date on which any limited period of restoration expires.

(2) Whether or not the requirements precedent and incidental to restoration have been complied with, a notation in the register of societies that a society has been restored is conclusive evidence for the purposes of this Act and for all other purposes that the society has been duly restored with the name, and on the date and time, shown in the register of societies.

Rule 17-1 — Requisitions

Proceedings to which this rule applies

- (1) A proceeding referred to in Rule 2-1 (2) may be brought under this rule if
 - (a) all persons affected by the orders sought within the proceeding consent, or
 - (b) the proceeding is one of which notice need not be given.

Filings required

- (2) A proceeding referred to in subrule (1) may be brought by filing
 - (a) a requisition in Form 31,
 - (b) a draft of the proposed order
 - (i) if the order is by consent, in Form 34, or
 - (ii) in any other case, in Form 35,
 - (c) in the case of a proceeding referred to in subrule (1) (a),
 - (i) evidence that the order sought is consented to, and
 - (ii) any consent or comments of the Public Guardian and Trustee required under section 40 of the *Infants Act*, and
 - (d) in the case of a proceeding referred to in subrule (1) (b), evidence in support of the order sought

If proceeding is by consent

- (3) On being satisfied that a proceeding referred to in subrule (1) (a) is consented to and that the materials appropriate for the order sought have been filed in accordance with subrule (2), a registrar may,
 - (a) if the registrar is satisfied that none of the parties applying for or consenting to the order sought is under a legal disability or that, if a party is under a legal disability, section 40 (7) of the *Infants Act* applies,
 - (i) enter the order, or
 - (ii) refer the documents filed under subrule (2) to a judge or, if the order sought is within the jurisdiction of an associate judge, to a judge or associate judge, or
 - (b) in any other case, refer the documents filed under subrule (2) to a judge, or, if the order sought is within the jurisdiction of an associate judge, to a judge or associate judge.

If no notice is required

- (4) On being satisfied that the documents appropriate for a proceeding referred to in subrule (1) (b) have been filed in accordance with subrule (2), a registrar may refer those documents to a judge, or, if the order sought is within the jurisdiction of an associate judge, to a judge or associate judge.

Disposition of referred documents

- (5) If documents filed under subrule (2) are referred by a registrar to a judge or associate judge under subrule (3) or (4), the judge or associate judge to whom the documents are referred may
 - (a) make the order sought, or
 - (b) give directions respecting the proceeding.

When making an application to the Registrar of Companies for restoration there are fees payable to the Registrar.

When making the application to the court, court filing fees are payable in addition to those required by the Registrar of Companies. The court fees include \$200.00 to open the Supreme Court file, \$40.00 for any affidavit that needs to be sworn at the court registry and \$40.00 for a certified copy of the entered order that is required for the Registrar of Companies.

Section 160(2)(e) authorizes the court to order the society to be restored for a limited period. If you are applying for a limited restoration the order included in this package will need to be modified to reflect the limited restoration. For example;

1.
[name of society]

is restored to the Register of Companies as a limited restoration for a period of years commencing on the date of the filing of a certified copy of this order with the Registrar of Companies;

The order will also need to be modified to include any terms and conditions made by the Registrar of Companies in their letter of consent pursuant to section 162(5) of the *Societies Act*.

Further information on restoring societies may be found on the following website:

https://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/registries-packages/reg32_restoration_of_a_society.pdf

The majority of applications for restoration of a society may be made directly to the Registrar of Companies. Information about when a court order may be required to restore a society is available on their website at the following link;

<https://www2.gov.bc.ca/gov/content/employment-business/business/not-for-profit-organizations#restore>

Form 35 – Order Made After Application that is included in this package is a template that may be used as a guide when preparing your order. When you are ready to submit the order to the court registry for processing the instructions that appear in italics throughout the order must be

removed and any paragraphs that are not applicable to your application must also be removed. It is not acceptable to draw lines through the instructions or through the paragraphs that do not apply. You must prepare a clean order (one with no strike outs or italics) for filing. The Ministry of Justice website includes forms that may be filled out online for your convenience. The Supreme Court Civil online forms may be found at the following link;

<http://www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/sup-civil-forms>

Included in this package are the following documents:

- 1) Requisition to commence the proceeding – Form 31
- 2) Affidavit (at time of commencement)
- 3) Affidavit (at time of filing order)
- 4) Sample Notice
- 5) Order Made After Application – Form 35
- 6) Practice Direction 52 – Restoration of Dissolved Society pursuant to *Society Act*.

Form 31

No.
.....Registry

In the Supreme Court of British Columbia

IN THE MATTER OF THE *SOCIETIES ACT*, [S.B.C. 2015], c. 18
AND IN THE MATTER OF THE RESTORATION OF

REQUISITION FOR CONSENT ORDER OR FOR ORDER WITHOUT NOTICE

Filed by:
[party(ies)]

Required: An order without notice

1. The rule or other enactment relied on is section 162 of the *Societies Act* and Rule 17-1(4) of the Supreme Court Civil Rules.
2. A draft of the order required will be subsequently filed with the second affidavit.
3. The evidence in support of the application is

[Check whichever one of the following boxes is correct and complete any required information.]

4. No party is under a legal disability.
- is under a legal disability, namely
[name of party] [set out legal disability]
.....

This requisition is filed by, the applicant in this proceeding,
whose address for service is as follows:

[Set out the street address of the address for service. One or both of a fax number and an e-mail address may be given as additional addresses for service.]

Fax number address for service (if any):

E-mail address for service (if any):

Date:

Signature of filing party

.....
[type or print name]

This is the Affidavit
of in this case
and was made on

No.
.....Registry

In the Supreme Court of British Columbia

IN THE MATTER OF THE *SOCIETIES ACT*, [S.B.C. 2015], c. 18
AND IN THE MATTER OF THE RESTORATION OF

AFFIDAVIT

I,, of,
[name] [address]

....., SWEAR (OR AFFIRM) THAT:

[occupation]

1. I am an applicant as defined by section 158 of the *Societies Act*. I am a (*set out relationship to the society*) and as such have personal knowledge of the matters hereinafter deposed.
2. The society was incorporated in the Province of British Columbia on the day of, 20....., under certificate of incorporation No.
3. The society was dissolved on the day of, 20....., pursuant to section 150 of the *Societies Act* because
.....
.....
.....
4. The society *has continued/has not continued* to conduct business in the Province of British Columbia since the date it was struck from the Registrar of Companies.
5. The society should be restored to the Registrar of Companies as though it had never been

struck because
.....
.....
.....

6. Attached hereto and marked as Exhibit "A" to this my affidavit is a copy of page of the British Columbia Gazette issue dated the day of, 20....., in which notice of the herein restoration application was published and has been marked for identification.

7. Attached hereto as Exhibit "B" to this my affidavit is a copy of the notice dated the day of, 20....., which was forwarded by mail on the day of, 20..... to the last address shown in the register of societies as the address or mailing address of the registered office of the society and each of the directors of the society at the time of the dissolution as shown on the corporate search.

8. Attached hereto and marked as Exhibit "C" to this my affidavit is a copy of the corporate search conducted in the Corporate Registry showing the registered office within the Province of British Columbia of the society as

.....
.....
.....

9. Attached hereto and marked as Exhibit "D" to this my affidavit is a copy from the Registrar of Companies of the name that has been reserved under section 9 of the *Act* for the society and the reservation number given for that name.

10. The proposed delivery address and mailing address of the registered office for the society is;

.....
.....
.....

11. (if applicable), the restoration of the society is for a limited period and the proposed limited period of the restoration is

12. I know of no reason why the society should not be restored to the Registrar of Companies as though it had never been struck.

SWORN (OR AFFIRMED) BEFORE)
ME at, British Columbia)
on)
)
)
)
)
A commissioner for taking affidavits)
for British Columbia)

ME at , British Columbia)
on)
.....)
.....)
A commissioner for taking affidavits)
for British Columbia)

[print name or affix stamp of commissioner]

No.
.....Registry

In the Supreme Court of British Columbia

IN THE MATTER OF THE SOCIETIES ACT, [S.B.C. 2015], c. 18
AND IN THE MATTER OF THE RESTORATION OF

NOTICE

Take notice that a restoration application will be made to the Registrar of Companies to restore:

.....,
[insert name of society]

.....
[insert incorporation number].

Dated at, B.C., this day of,
20.....

.....
[insert name of person applying]

.....
[insert relationship to company]

Note: Notice of the application must be mailed to the last address shown in the register of societies as the address or mailing address of the registered office of the society, to the address of each of the individuals who were the directors of the society at the time of dissolution and to the Registrar of Companies.

No.
.....Registry

In the Supreme Court of British Columbia

IN THE MATTER OF THE SOCIETIES ACT, [S.B.C. 2015], c. 18
AND IN THE MATTER OF THE RESTORATION OF

ORDER MADE AFTER APPLICATION

BEFORE) A JUDGE OF THE COURT)day, the
) or) day of
) or AN ASSOCIATE JUDGE OF THE COURT)
20.....

ON THE APPLICATION of
[party(ies)]

without a hearing and on reading the materials filed by;
[name of party/lawyer]

THIS COURT ORDERS that:

1.
[name of society]

is restored to the Register of Companies commencing on the date of the filing of a certified copy of this order with the Registrar of Companies;

2. the society shall be deemed to have continued in existence as if it had never been struck off, without prejudice to the rights of any parties which may have been acquired before the date on which the society is restored to the register.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

.....
Signature of party

.....
[type or print name]

By the Court.

.....
Registrar



SUPREME COURT OF BRITISH COLUMBIA

Effective Date: 2017/03/01

Number: PD - 52

Title:

Practice Direction

Restoration of Dissolved Society pursuant to *Societies Act*

Summary:

The process for applying to court for the restoration of a dissolved society involves a number of steps. This Practice Direction describes the steps in the process and the information required by the court on such applications.

Direction:

1. Practice Direction 41 - Restoration of Companies and Societies (*Business Corporations Act* and *Society Act*) dated July 1, 2010 is rescinded.
2. The process for applying to court for the restoration of a dissolved society has a number of requirements which must be met. Some of the requirements are prescribed by the *Societies Act*, S.B.C. c. 18 and some by the Supreme Court Rules.

Step One: Complete Requirements of s. 159(2) of the *Societies Act*

3. Before an application to court for the restoration of a dissolved society is made, a person must complete the prerequisite steps set out in s. 159(2) of the *Societies Act* as follows:
 - a. publish notice of the application in the Gazette
 - b. mail a notice of the application to the last addresses shown in the register of societies as
 - i) the address or mailing address or the registered office of the society, and
 - ii) the address of each of the individuals who were directors of the society at the time of the dissolution, and
 - c. reserve a name for the society to be restored.

Step two: File requisition and Initial Affidavit

4. After completing Step one, the applicant must file a requisition in Form 31 and an initial affidavit which sets out the following information:
 - a. the identity of the applicant and his/her reasons for or interest in seeking restoration of the society
 - b. the date the society was incorporated
 - c. the date the society was dissolved and the reason for the dissolution
 - d. whether or not the society has continued to conduct business since the date it was struck from the register of companies
 - e. the date on which the notice required under s.159(2)(a) of the *Societies Act* was published in the Gazette. (Attach as an exhibit to the affidavit a copy of the page from the Gazette showing the date of publication of the notice.)
 - f. the latest date on which the notice required under s. 159(2)(b) of the *Societies Act* was mailed in accordance with that provision. (Attach as an exhibit to the affidavit a copy of the notice.)
 - g. the name reserved for the society and the reservation number given for that name
 - h. the delivery address and mailing address of the registered office proposed for the society
 - i. the reason(s) why it is just that the society be restored to the register
 - j. if the application is for a limited restoration under s. 160(2)(e) of the *Societies Act*, a statement specifying the proposed limited period of the restoration.

Step Three: Complete Requirements of s. 162(1)(a) and (b) of the *Societies Act*

5. After completing Step two, the applicant must complete the requirements set out in s. 162(1)(a) of the *Societies Act* as follows:
 - a. provide the registrar of companies (“the registrar”) with a copy of the requisition and initial affidavit, and
 - b. obtain the written consent of the registrar to the restoration.

Step Four: File Subsequent Affidavit and Draft Order

6. After completing Step three, the applicant must file:
 - a. a subsequent affidavit
 - b. a draft form of order to restore the society, or to restore the society for a limited period.
7. The subsequent affidavit must contain the following information:
 - a. a statement that the registrar was provided with notice of the application and a copy of the requisition and the initial affidavit
 - b. a statement that the registrar has consented to the restoration and any terms and conditions the registrar considers appropriate. (Attach as an exhibit to the affidavit a copy of the written consent of the registrar.)
 - c. any other information the applicant considers relevant or necessary for the court's consideration.

Step Five: Court may make an order for restoration

8. Pursuant to s. 162(3) of the *Societies Act*, if the court is satisfied that it is appropriate to restore the society, the court may make an order to restore the society, or to restore the society for a limited period.

Step Six: File Restoration Application and copy of entered Order with the Registrar

9. Pursuant to s. 163(1) of the *Societies Act*, promptly after the court makes an order under s. 162(3), the applicant must file with the registrar:
 - a. a restoration application that complies with s. 160(2) of the *Societies Act*
 - b. a copy of the entered court order
 - c. any other records the registrar may require.

Chief Justice C.E. Hinkson