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## Backgrounder

### Report on Proposals for a New Society Act

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#### INTRODUCTION

In July 2006, the British Columbia Law Institute commenced a major two-year project to consider reform of British Columbia's not-for-profit incorporation statute, the *Society Act*. The project had two distinct phases. Over the first phase, the major legal issues relating to the *Society Act* and the leading models for reform were studied. This phase culminated in the publication of a consultation paper, which sought the views of the public on 106 tentative recommendations for reform of the *Society Act*. The second phase built on these tentative recommendations and on the responses to them that we received from the public. The culmination of this phase, and the project as a whole, is the publication of this report. This project has been made possible by a grant from the Law Foundation of British Columbia.

#### THE SOCIETY ACT REFORM PROJECT COMMITTEE

Work on this project was carried out by a volunteer project committee. The committee was formed shortly after the commencement of the project. The committee met regularly since its first meeting, which was held in September 2006. The members of the committee are:

Margaret Mason—chair  
(partner, Bull, Housser & Tupper LLP)

Ken Burnett  
(partner, Miller Thomson LLP)

Colleen Kelly  
(executive director,  
Volunteer Vancouver)

Murray Landa  
(associate director, gift & estate planning,  
UBC Development Office)

Mike Mangan  
(barrister & solicitor)

Kim Thorau  
(principal, Perrin, Thorau & Associates)

Bob Kucheran  
(student-at-law & ex-CEO, BC Pharmacy Association)

Kevin Zakreski (staff lawyer, British Columbia Law Institute) is the project manager.

## **THE STRUCTURE OF THE REPORT**

This report comprises two parts. Part One contains background material. It introduces the scope of this project, describes the society as a legal form, briefly discusses the history of the *Society Act*, and explains the reasons why the time is ripe for reform of the law. Part Two, which makes up the bulk of this report, contains the committee's recommendations for reform. These recommendations are embodied in draft legislation. This draft legislation is intended to be a comprehensive model of a new *Society Act*. Part Two also contains commentary on each of the provisions of the new *Society Act*. This commentary contains a brief statement of the policy of each provision, a short description of any changes the provision will make to the law, and a summary of how the provision is intended to operate in practice.

## **BACKGROUND**

### **The Scope of the Project**

Recent studies have pointed to a number of challenges facing the not-for-profit sector. These studies have identified the following as areas of concern: internal governance practices; measurement of program outcomes; fundraising; the definition of "charity" under federal tax legislation; financial reporting and management; and outdated organizational laws. This project focuses strictly on the last topic. This is because the other topics have, comparatively, been the subject of extensive comment elsewhere and because a modern organizational law can provide a firm foundation that will allow for progress to be made on the other fronts. The name of British Columbia's not-for-profit organizational law is the *Society Act*. The *Society Act* provides for the incorporation, organization, governance, financial affairs, amalgamation, and dissolution of societies.

### **What Are Societies?**

A society is an incorporated not-for-profit body. The law recognizes three main units of not-for-profit activity: the unincorporated not-for-profit association; the charitable trust; and the society. Unlike the first two units, a society is formed by incorporation, which requires the filing of certain documents with a government official. Incorporation confers a number of benefits, the most important of which is status as person at law. As a result of this status, the members of a society enjoy limited liability. In this respect, societies resemble for-profit companies. There are a number of core principles that distinguish societies from companies: societies are incorporated primarily to pursue public, not-for-profit purposes; societies are restricted from distributing their assets to their members during their existence; and societies must not have share capital.

### **Brief History of the Society Act**

The British Columbia Legislature enacted the first *Society Act* in 1920. The *Society Act* has been updated approximately every 30 years since then. New Acts appeared in 1947 and

1977. Each time the Legislature has enacted a new *Society Act* the size and scope of the legislation has grown in order to accommodate the increasing sophistication of the not-for-profit sector. The current *Society Act* is largely the 1977 Act, with some miscellaneous amendments in a few areas.

### **Reasons Why Reform of the Society Act is Needed Now**

There are three main reasons why a new *Society Act* is needed now. First, the current *Society Act* was largely based on the 1973 *Company Act*, which was the organizational statute for for-profit companies. In 2004, the *Company Act* was repealed and replaced with the *Business Corporations Act*, which now provides a streamlined and modern legal framework for companies in this province. As a result of the repeal of the *Company Act*, not-for-profit societies are now saddled with some rather onerous provisions that no longer apply to the for-profit companies for which they were originally designed. Second, the not-for-profit sector has grown and developed in ways that could not have been foreseen in 1977. New legislation is needed to establish an adequate legal framework for this increasingly important and sophisticated sector. Third, reform initiatives are underway or have recently been completed in other jurisdictions. This development gives British Columbia an opportunity to enact both modern and harmonized legislation.

### **DRAFT LEGISLATION**

The draft of a new *Society Act* preserves and fine-tunes many of the core elements of not-for-profit law within a structure that is modelled on the *Business Corporations Act*. The draft Act contains 14 Parts. It effects major reforms in the following areas.

#### **Incorporation and Naming**

The new *Society Act* adopts the streamlined incorporation procedure of the *Business Corporations Act*, making electronic incorporation available to societies. Societies incorporated, converted, amalgamated, or continued into British Columbia under the new Act will have to adopt the word “society” as part of their names as a corporate descriptor. (Existing societies are exempted from this requirement.)

#### **Constitution and Bylaws**

Much of the substance of the current law relating to a society’s constitution and bylaws is maintained. In terms of form, the new Act provides for a modified version of the notice of articles used by companies as the model for the society constitution. The new Act continues to require societies to file their bylaws with the Registrar of Companies, which will be maintained by the registrar as a public record.

#### **Capacity and Powers**

Any existing remnants of the old doctrine of *ultra vires* are abrogated. The new *Society Act* embraces the principle that societies are legal persons with the same capacity as an individual of full capacity.

## Offices and Records

The eccentric provisions relating to offices and records currently in the *Society Act* are revamped along the lines of the *Business Corporations Act*. The new *Society Act* contains a stringent procedure for access to a society's list of its members.

## Finance

A number of restrictive, and out of date, rules governing how a society conducts its financial affairs have not been carried forward in the new *Society Act*. In particular, a society will no longer be required to obtain a special resolution in order to issue a debenture.

## Directors and Officers

The new *Society Act* expands and clarifies the rules relating to directors. Examples of such rules include election or appointment of directors, minimum number required, residency, qualifications, vacancies, and removal. Since these rules are fundamentally procedural in nature, they are harmonized with similar rules in the *Business Corporations Act*. In addition, the new *Society Act* provides more clarity on the status of officers.

## Duties, Liabilities, and Conflicts of Interest

The new *Society Act* contains a modern regime to cover the duties, liabilities, and conflicts of interest of directors and officers. As a result, this area sees a number of major changes to the skeletal and outdated rules that currently apply to societies. Among the provisions in the new *Society Act* are:

- comprehensive conflict of interest rules, modelled on those in the *Business Corporations Act*;
- indemnification provisions that no longer require an application to court for approval;
- limitation on liability when reasonably acting on reports prepared by officers and professionals, a dissent procedure, and relief from personal liability on a case-by-case basis by the court (a statutory immunity from personal liability for directors and officers was studied but rejected); and
- after a two-year transitional period, a prohibition on paid staff members serving on the society's board of directors.

## Members

There are few changes regarding members. The most noteworthy is the lowering of the minimum number of members that a society must have to one.

## **Meetings of Members**

The new *Society Act* fills in gaps that have developed in the exiting procedural rules regarding meetings of members. These rules contemplate the use of modern, electronic means of communication.

## **Members' Remedies**

The two major current remedies for aggrieved members—investigation and oppression—are clarified and updated in the new Act. To these remedies the Act adds remedies that have become established across the for-profit and not-for-profit corporate sectors: derivative actions and compliance or restraining orders.

## **Society Alterations**

The new *Society Act* contains modern provisions relating to amalgamations, conversions of cooperative associations into societies, continuation into and out of British Columbia, arrangements, and extraordinary disposals of a society's undertaking.

## **Liquidation, Dissolution, and Restoration**

The new *Society Act* contains a comprehensive regime governing liquidation, dissolution, and restoration. This regime is largely modelled on existing provisions in the *Business Corporations Act*. The new Act does not contain any major departure from the current rules governing the disposal of any remaining assets on a society's dissolution.

## **Miscellaneous and Transitional**

The new *Society Act* does not carry forward the reporting society designation.

Transition to the new Act should be dealt with in a manner similar to the transition from the *Company Act* to the *Business Corporations Act*. Societies should be given a two-year period to make the necessary transitional changes. During this period, they should be given support and assistance from the provincial government.

## **CONCLUSION**

The committee has concluded that the time has come to enact a new *Society Act*, one which better meets the needs of British Columbia not-for-profit organizations and which advances the goal of harmonizing corporate legislation in this province.