



BRITISH COLUMBIA LAW INSTITUTE

1822 East Mall, University of British Columbia
Vancouver, British Columbia V6T 1Z1
Voice: (604) 822 0142 Fax: (604) 822 0144 E-mail: bcli@bcli.org
Website: www.bcli.org

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Society Act Reform Project

INTRODUCTION

In July 2006, the British Columbia Law Institute commenced a major project to consider reform of British Columbia's not-for-profit incorporation statute, the *Society Act*.¹ Over the course of the next two years, a volunteer project committee will study the major legal issues related to the Act, examine the leading models for reform, and make recommendations for a new *Society Act*. The project is funded by the Law Foundation of British Columbia.

MEMBERS OF THE PROJECT COMMITTEE

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)
Kevin Zakreski—reporter
(staff lawyer, British Columbia
Law Institute)

BACKGROUND

The *Society Act* provides for the incorporation of not-for-profit bodies. The Act also sets out the legal framework for the organization, governance, financial affairs, amalgamation, and termination of societies.

British Columbia has had legislation of this nature since 1891.² The current version of the *Society Act* was enacted in 1977.³ Since that date, the legislation has been amended in a noteworthy way only three times. In 1985, a new Part was added dealing with occupational titles protection.⁴

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1. R.S.B.C. 1996, c. 433.
 2. *Benevolent Societies Act, 1891*, S.B.C. 1891, c. 41.
 3. *Societies Act*, S.B.C. 1977, c. 80.
 4. *Society Amendment Act, 1985*, S.B.C. 1985, c. 84.

In 1999, several procedural changes, particularly in connection with meetings, were made.⁵ And in 2004, a few of the Act's reporting requirements and incorporation procedures were amended.⁶

DEVELOPMENTS IN THE LAW SINCE THE LAST REVISION OF THE SOCIETY ACT

The law, both in British Columbia and elsewhere, has not stood still since 1977. In British Columbia, the most significant development was the enactment of a new statute governing for-profit corporations—the *Business Corporations Act*.⁷ The advent of a new for-profit incorporation statute is important because many of the legal issues facing not-for-profit and for-profit corporations are substantially the same. Other Canadian jurisdictions have reformed or considered reforming their laws governing not-for-profit corporations. In 1995, Saskatchewan enacted a new statute that aligned its not-for-profit and for-profit corporate statutes.⁸ The federal government has recently published a major study of its not-for-profit corporate law.⁹ This study, and series of consultations with the public undertaken after its publication, led to the introduction of a bill in Parliament that establishes a new federal legislative framework for not-for-profit corporations.¹⁰

DEVELOPMENTS IN THE NOT-FOR-PROFIT SECTOR SINCE THE LAST REVISION OF THE SOCIETY ACT

The not-for-profit sector has also changed significantly since 1977. Participants in the sector and their advisors have always appreciated that the range of activities taken on by societies rivals those of for-profit corporations in scope and complexity.¹¹ But, over the course of the last 30

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5. *Finance and Corporate Relations Statutes Amendment Act, 1999*, S.B.C. 1999, c. 33, sections 52–54. These changes allowed societies to adopt a system of delegate voting, voting by mail, or any other means of voting approved by the registrar, altered the procedure for changes of name, and permitted societies to hold directors' meetings by teleconference.
 6. *Society Amendment Act, 2004*, S.B.C. 2004, c. 27; *Finance Statutes Amendment Act, 2004*, S.B.C. 2004, c. 62, sections 42–44. The changes brought in by these statutes included discontinuation of the practice of having corporate registry staff examine bylaws upon incorporation or on a change of bylaws, repeal of the requirement to file annual financial statements with the corporate registry, establishment of a new scheme for public access to annual financial statements, lifting of the requirement to obtain an order from the corporate registry approving the method of notifying members of a meeting, discontinuation of the need to obtain consent from the Ministry of Finance in order to incorporate a society that will operate as a social club, and repeal of the forms that were set out in Schedule A to the Act.
 7. S.B.C. 2002, c. 57.
 8. *The Non-profit Corporations Act, 1995*, S.S. 1995, c. N-4.2.
 9. Industry Canada, *Reform of the Canada Corporations Act: The Federal Nonprofit Framework Law* (Ottawa: Industry Canada, 2000).
 10. Bill C-21, *An Act respecting not-for-profit corporations and other corporations without share capital*, 1st Sess., 38th Parl., 2004 (1st reading 15 November 2004).
 11. See, e.g., Peter A. Cumming, "Corporate Law Reform and Canadian Not-for-Profit Corporations" (1974) 1.3 *Philanthrop.* 10 at 20 ("... the uses to which not-for-profit corporations as a group are being put are considerably more varied than the uses for business corporations").

years, the not-for-profit sector has grown and expanded into new areas.¹² When the Law Institute began this project in summer 2006 there were 24 421 societies active in British Columbia.¹³ They represent a significant presence in both the social and the economic life of this province.

WHY IS REFORM OF THE SOCIETY ACT NEEDED NOW?

There are three main developments in the law and the not-for-profit sector that make reform of the *Society Act* a pressing concern today. First, the *Society Act* is no longer in harmony with the legislation governing for-profit corporations in British Columbia. Second, many of the substantive rules and procedures contained in the *Society Act* fail to respond to the needs of the not-for-profit sector. And, third, reform (or the prospect of reform) of not-for-profit legislation elsewhere in Canada provides models and challenges for British Columbia.

Disharmony between the Society Act and the Business Corporations Act

In view of the close relationship between not-for-profit and for-profit corporations, it has always been important to ensure that the *Society Act* and the major for-profit corporate statute do not diverge too greatly. In fact, the government in power in 1977 explained the need for enacting a new *Society Act* solely by reference to this reason.¹⁴ Unfortunately, the same divergence that occurred in the 1970s has appeared again. The *Business Corporations Act* effected a sweeping and far-reaching revision of corporate law in the province. In comparison with that Act, some of the rules and procedures in the *Society Act* now appear cumbersome and out of date. An obvious example appears in section 71, which preserves Part 9 of the old *Company Act*¹⁵ as the governing law for dissolution and restoration of societies. Another example is section 30, which sets out the rules for indemnification of directors and officers of societies. In both cases the procedures made available to societies are considerably more onerous¹⁶ than those extended to for-profit corporations.¹⁷ In addition, the *Society Act* also contains a number of provisions that appear to have been

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12. See, e.g., Statistics Canada, *Cornerstones of Community: Highlights of the National Survey of Nonprofit and Voluntary Organizations* (Ottawa: Minister of Industry, 2004).
 13. Telephone call with Ruth McIver, manager, registries programs—societies and cooperatives (31 August 2006). This figure represents a notable increase from the total of “about 20 000 societies” cited in a paper on the not-for-profit sector for December 1998. See Anders I. Ouum, “Introduction, Overview of the Broadbent Commission,” in Continuing Legal Education Society of British Columbia, *Charities, Cooperatives, and Not-for-Profits—2000 Update* (Vancouver: Continuing Legal Education Society of British Columbia, 2000) 1.1.01 at 1.1.03.
 14. See Bill 50, *Societies Act*, 2d Sess., 31st Parl., British Columbia, 1977 (explanatory note) (“The purpose of this Bill is to replace the *Societies Act*, last revised in 1947, to make it more consistent with the 1973 *Companies Act*.”).
 15. R.S.B.C. 1996, c. 62.
 16. Under the current rules applicable to societies, both indemnification and restoration require applications to court. Court applications for these procedures are not required under the *Business Corporations Act*.
 17. *Business Corporations Act*, *supra* note 7, sections 159–65 (indemnification of directors and officers); Part 10 (liquidation, dissolution, and restoration).

enacted for no reason other than to ensure harmonization with the *Company Act* and which now have no equivalents in the *Business Corporations Act*.¹⁸

The Society Act Is an Outdated Legal Framework

As noted above, the 30 years since the last major revision of the *Society Act* has been a time of great change in the not-for-profit sector. While these changes have brought opportunities for not-for-profit bodies, they have also caused difficulties and challenges. And a prevailing opinion among those involved in the not-for-profit sector is that the legal framework that governs not-for-profit bodies is exacerbating rather than remedying these difficulties and challenges.¹⁹ The Law Institute has received a number of informal comments that support this prevailing view. In one case, for instance, representatives from two societies that wished to merge were put to considerable frustration and expense when they realized that the *Society Act*'s amalgamation provision deemed the amalgamating societies to "form a new society."²⁰ This result could have the effect of imperilling gifts—particularly those made in wills—to the two amalgamating societies. It necessitated additional planning, which would not be required under modern not-for-profit legislation.

Reform in Other Jurisdictions

At the federal level, and in many provinces, distinct not-for-profit incorporation legislation does not exist.²¹ But this situation may be changing; as noted above, a bill creating a new federal Act was introduced in the last Parliament, dying on the order paper when the former minority government fell. If this bill, or a substantially similar bill, is taken up and passed in the new Parliament, then several provinces will likely follow the federal government's lead, in the same way that many provinces have modelled their for-profit corporate legislation on the *Canada Business Corporations Act*.²² Although British Columbia is not among this group of provinces that has followed the federal government's lead in the for-profit corporate sphere, developments at the federal level and in other provinces may provide useful models for reform in the not-for-profit realm, and may also provide opportunities for harmonization, even if word-for-word uniformity

18. See, e.g., *Society Act*, *supra* note 1, section 24 (8) (if society has fewer than 3 members for more than 6 months, directors personally liable for debts of society incurred after expiration of 6 months and for so long as society has fewer than 3 members). This provision parallels *Company Act*, *supra* note 15, section 14, but has no equivalent in the *Business Corporations Act*.

19. See, e.g., Panel on Accountability and Governance in the Voluntary Sector, *Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector* (Ottawa: The Panel, 1999) at vii–viii ("The unequivocal message from our consultations was that this legal mess needs to be cleaned up."); 74 ("There are a number of problems with the existing laws in Canada that set out available organizational forms. First, most of the legislation is old, predating the formation of the modern corporation and the laws governing it. The legislation has not kept up with the contemporary needs and realities of voluntary organizations. . . .").

20. *Society Act*, *supra* note 1, section 17 (1).

21. A number of Canadian jurisdictions have merely preserved part of their old for-profit corporate statute (which no longer applies to business corporations) in force for not-for-profit corporations. See, e.g., *Canada Corporations Act*, R.S.C. 1970, c. C-32, Part II; *Corporations Act*, R.S.O. 1990, c. C.38, Part III.

22. R.S.C. 1985, c. C-44.

is not the result. Conversely, inactivity in British Columbia coupled with reform in other jurisdictions could induce not-for-profit bodies to forsake incorporation under the *Society Act* for incorporation in a jurisdiction that has a more modern legal framework, so long as those involved in the not-for-profit body were willing to register as an extra-provincial society in British Columbia and pay the fees associated with maintaining that registration.

ISSUES

At this initial stage in the project, the project committee has identified a number of issues to focus on:

- (1) amalgamation provisions.
- (2) the ability to abandon a purpose in a society's constitution.
- (3) the requirement to have a minimum of three directors.
- (4) residency of directors.
- (5) branch societies.
- (6) corporate records.
- (7) indemnity provisions.
- (8) access to financial records.
- (9) the one person–one vote principle.
- (10) the requirement to have more voting than nonvoting members.
- (11) expulsion of members.
- (12) standard bylaws.
- (13) liability of directors.
- (14) the reporting society concept.
- (15) audits.
- (16) conflicts of interest.
- (17) plain language drafting.

Over time, items may be added to or taken away from this list.

EARLIER LAW REFORM WORK

Law reform bodies, both from British Columbia and elsewhere, have produced a number of reports bearing on reform of not-for-profit legislation.

- (1) Law Reform Commission of British Columbia, *Report on Conflicts of Interest: Directors and Societies* (LRC 144), 2 vols. (Vancouver: The Commission, 1995).

- (2) British Columbia Law Institute, *Study Paper on the Personal Liability of Society Officers and Directors* (2004), online: British Columbia Law Institute <http://www.bcli.org/pages/projects/directors/Liability_Directors_Officers_SP.pdf>.
- (3) Alberta Law Reform Institute, *Proposals for a New Alberta Incorporated Associations Act* (ALRI Rep. No. 49) (Edmonton: The Institute, 1987).
- (4) Law Reform Commission of Saskatchewan, *Report on the Liability of Directors and Officers of Not-for-Profit Organizations* (2003), online: Law Reform Commission of Saskatchewan <<http://www.lawreformcommission.sk.ca/directorsfinal.htm>>.
- (5) Ontario Law Reform Commission, *Report on the Law of Charities*, 2 vols. (Toronto: The Commission, 1996) (*see especially* 2d vol., ch. 15, pp. 451–506).
- (6) Revised Model Nonprofit Corporation Act (American Bar Association, 1987).

NEXT STEPS IN THE PROJECT

Consultation Paper and Formal Consultation

A consultation paper setting out arguments for reform and the project committee's tentative positions will be published in April 2007. A formal consultation will be held over the spring and summer of 2007.

Canadian Conference on Elder Law

The project will be the subject of a presentation at the 2007 Canadian Conference on Elder Law.

Final Report and Draft Legislation

The final report, including a draft *Society Act*, will be published in August 2008.

TOPICS NOT COVERED IN THIS PROJECT

- (1) The definition of "charity."
- (2) Taxation of not-for-profit organizations under the *Income Tax Act*.
- (3) Fundraising activities.

CONTACT

Kevin Zakreski
Staff Lawyer, British Columbia Law Institute
1822 East Mall, University of British Columbia
Vancouver, BC V6T 1Z1
Tel.: (604) 827-5336 Fax: (604) 822-0144 Email: kzakreski@bcli.org

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