

# LAW REFORM COMMISSION OF BRITISH COLUMBIA

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## Backgrounder

### LRC 140—Report on Recreational Injuries: Liability and Waivers in Commercial Leisure Activities

Date: August 1995

An inquiry into the awarding of contracts by the Victoria Commonwealth Games Society raised public concerns about the conduct of directors of societies in the province. The conflict of interest rules for directors of societies in British Columbia were seen to be deficient, and the great importance of societies warranted a more sophisticated regime. The thrust of this report following an extensive consultation is to ensure that the rules are not so onerous as to discourage volunteers, but not so slack as to endanger the integrity of the important work done by societies.

Basic duties and responsibilities placed on directors of societies, such as the duties of loyalty and care as set out in the *Society Act* and the common law, are examined. The duties that developed from the initial conception of the director as a trustee are also scrutinized, as well as how statutory requirements may lead to personal liability for directors. The current regime in place to deal with conflicts of interest is critiqued as lacking guidance on how directors should use their discretion in these contexts. Inconsistency between the common law duty of loyalty and the comparatively loose requirements of the *Society Act* is also identified. The report lists several possible scenarios in which directors' fiduciary obligations under the *Society Act* would be compromised, and discusses the legal position of directors in these contexts.

A series of recommendations to revise the conflict of interest rules relating to directors of societies are set forth. These include restricting the range of acceptable conflicts of interest, and stating potentially allowable conflicts. Further recommendations are also made specific to issues such as stakeholders' representatives, and whether the society's chief executive officer can be a member of the board. Draft legislation entitled the *Standards of Conduct Act*, which would outline rules for a board of directors regarding conflicts of interest, is included. Appointing a commissioner to provide advice and potentially exempting societies from statutory requirements in certain cases are recommended. The final section of the report summarizes important features of the *Director Transaction Rules* that board mem-

bers should consult when asked to approve a transaction that would confer a private benefit on a director.

The consultation phase of this project was very successful, and attracted responses from many interested commentators. Many of them were concerned with the ability of directors to profit from their association with the society, particularly in situations where the society is funded with public money. The consultation paper suggested that directors, their extended families, and their business associates should never be allowed to enter into business transactions with the society, unless the benefit of the transaction would result in a significant benefit to the company. Some correspondents also wanted the rules to be somewhat flexible, as they feared strict rules might hamper not-for-profit organizations, become an impediment to finding directors, increase the liability of volunteers, and lead to expense. The Commission suggests that a key consideration in determining the appropriate rules is whether or not public funds are being given to the society.

### **Further Developments**

The Report's recommendations have not been implemented by legislation. Anecdotal information indicates lawyers who regularly advise not-for-profit organizations on questions of conflict of interest use the *Report on Conflicts of Interest: Directors and Societies* extensively as a reference source.