

The Proposed BC Societies Act: Strengths and Weaknesses

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Overview

1. Proposed Act
2. Positive Changes
3. Problematic Changes
4. Implementation Process



Background to Proposed Act

27,000 BC societies

- 1977 – Current Act introduced
- 2004 – Significant amendments made
- 2008 – BC Law Institute report calling for reform
- 2011 – Provincial discussion paper issued
- 2014 – New draft Act released in August
- 2014 – Feedback period concluded in October
- 2015 – Adoption by Legislature in April?
- 2016 – Start of transition period?



Positive Developments

- Providing for incorporation by one person
- Requiring a consolidated, current set of bylaws, available online
- Providing for amendment of currently unalterable constitutional provisions

Positive Developments, cont.

- Allowing for online filing of annual reports
- Resolving ambiguity regarding *ultra vires* issues
- Eliminating the requirement for member special resolutions for borrowing
- Clarifying record-keeping requirements

Positive Developments: Directors

- Preserving option for remuneration for directors, subject to certain requirements
- Providing for appointment of *ex officio* directors
- Providing for the removal of directors via a mechanism to be set out in the bylaws
- Clarifying director qualifications

Positive Developments: Directors

- Strengthening indemnification for directors
- Limiting director liabilities via the good faith reliance defence

Positive Developments: Members

- Permitting membership classes
- Eliminating the cap on non-voting members
- Removing the requirement for registrar approval of out-of-province general meetings for members
- Permitting participation in meetings via electronic means

Positive Developments: Reorganizations

- Setting out a stronger amalgamation process
- Allowing for continuance of special Act corporations
- Providing a framework for corporate arrangements

Positive Developments, cont.

- Expanding member remedies
- Carrying forward the permissive audit regime
- Clarifying the extra-provincial registration requirements for foreign societies

Potential Issues with the Proposed Act

- While the proposed Act is still under development, some aspects are problematic
- Government received submissions regarding the proposed Act
- Many of the public submissions, including the CBA Subsection submission, refer to these issues
- Remains to be seen how the legislators will deal with the comments received

Prohibiting Unalterable Sections

- Some organizations want to “lock in” foundational principles in perpetuity
- The new special resolution threshold of 2/3rds makes it too easy to change foundational principles
- CRA likes to see that certain provisions be unalterable (such as “activities will be carried on without purpose of gain for members”)
- Some organizations are required by external parent or funding organizations to lock in the transfer of assets on a dissolution or wind up

“Offensive” Purposes & Limited Constitutions

- Section 2(3) of proposed Act gives the Registrar authority to order amendments to a Purpose if it is found to be “offensive” or “unlawful”
- What about controversial but legal purposes?
- Constitution to contain only the Name and Purposes
- Problematic for organizations having relationships with national organizations where constitutional provisions required (such as core principles, asset lock or statements of faith)

Section 53 – Deemed Directors

- Applies to a person who is not a director but who “manages or supervises management of the society”
- Effectively a “puppeteer provision” intended to make persons who are essentially directors subject to the director obligations of the Act
- Current language is too broad and arguably may include persons acting under the direction of other society managers and external professional advisors

Senior Manager Requirements

- Definition of “Senior Manager” is quite broad and includes persons overseeing the activities of society as a whole or of “a principal unit of the society”
- Includes persons who “perform a policy making function... with the capacity to influence the direction of the society”
- These persons are subject to director requirements, director liabilities and fiduciary obligations
- Employees and volunteers are not traditionally seen as fiduciaries – their duties are governed by contract

Section 35 – Salary Disclosure

- Under the proposed Act, members of the public will have a right to inspect financial statements
- Financial statements must disclose the top 10 salaries (over a base amount to be set by regulation)
- Identity of recipient and privacy “protected” by referring to employees’ position and not their name
- Charities already have (less intrusive) salary disclosure requirements
- Accountability to funders and donors can be addressed adequately without this

Section 98 – Oppression Remedy

- This legal remedy arises out of the for-profit corporation context to protect minority shareholders
- Members of a society do not have a financial interest in a society so what will constitute “oppression” in the not-for-profit context?
- Defending nuisance claims and even dealing in the first instance with claims that fail to become court cases can be time-consuming and expensive
- CAREFULLY CONSIDER YOUR MEMBERSHIP!

Section 99 – Public Interest Remedy

- New provision that allows members of the public to apply to Court to complain that a society is “conducting its activities or internal affairs **unlawfully**” or carrying on activities that are “**detrimental to the public interest**”
- Trumpeted as “unique in corporate law”
- Implies that societies have a duty to “act in the public interest”

Section 99 – Public Interest Remedy

- Currently the duty in non-profit corporations is to act in accordance with society purposes and in the best interest of the society and its members
- Does your organization do *anything* that a member of the public might say is “not in the public interest”?
 - Homelessness and addiction treatment programs
 - Environmental advocacy
 - Promoting religious beliefs and practices
 - Advocating for refugees, prisoners, the unborn

Section 99 – Public Interest Remedy

- Courts would decide what applications will move forward and be heard
- Courts are always in the position of having to balance rights
- Significant risk of nuisance claims
- Well-financed complainants could “chill” not-for-profit organizations
- Costly even if NFP organization “wins”

Implementation: Process

- Proposed Act provides for two-year transition period, starting once the Act comes into force
- All societies will need to transition
- Requires amendments to bylaws and constitution
- Online filing process

Recent Developments

- Public feedback to Ministry on the draft
- Pending revisions
- Minister's presentation
- Expected introduction in spring session of 2015

Opportunities to be Involved

- Comments to your MLA
- First Reading bill is unlikely to be altered significantly
- Planning for implementation



Questions or comments?

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