

**MINISTRY OF FINANCE REQUEST FOR CONSULTATION  
ON BRITISH COLUMBIA'S SOCIETY ACT**

**RESPONSE  
March 5, 2010**

This collective response to the request for consultation (the "Consultation") issued by the Minister of Finance is provided by the following initial list of organizations:

- United Community Services Cooperative
- Vancity Community Foundation
- Greater Vancouver Alliance for Arts & Culture
- Catholic Health Association of BC
- Planned Lifetime Advocacy Network
- Developmental Disabilities Association
- BC Civil Liberties Association
- Tides Canada Foundation
- Pivot Legal LLP
- Burnaby Association for Community Inclusion
- Fraserside Community Services Society
- BC Social Venture Partners
- Neil Squire Society
- BC Non-Profit Housing Association
- United Way of the Lower Mainland
- Vantage Point (Volunteer Vancouver)
- Social Planning & Research Council of BC
- YWCA Vancouver
- Coast Mental Health
- Family Services of Greater Vancouver
- Katherine Sandford Housing Society
- Endswell Foundation
- PLEA Community Services Society of BC
- Ecotrust Canada
- Enterprising Non-Profits
- Ecojustice Canada Society

**A. INTRODUCTION**

The organizations providing this response are leaders in the not-for-profit sector. A number of the organizations are significant grant makers and are very aware of the issues which plague smaller grant-reliant charities. Many of the organizations are umbrella organizations, including arts, cultural and faith-based organizations, and they are responding on behalf of themselves and their membership. The responders wish to ensure that any new legislation proposed for not-for-profit entities in British Columbia resolves the current issues with the *Society Act* but does not create new issues, most particularly with respect to increased regulation of the not-for-profit sector. There is grave concern that legislating to the lowest common denominator will create increased regulation and increased costs with the attendant impact on organizations already stressed to the maximum. There is considerable concern that an approach similar to that taken by Industry Canada in the *Canada Not-for-Profit Act* might be taken. The federal approach has been almost universally rejected by federally incorporated not-for-profits as inappropriate, most particularly with respect to substantially increased regulation and compliance that is all form and no substance.

The Ministry of Finance cannot help but be aware of the current economic climate and the serious and likely prolonged impact this has and will have on the financial stability of the organizations in the not-for-profit sector. Nor can the Ministry help but be aware of the very considerable proportion of British Columbia's economy driven by, and services provided by, the not-for-profit sector. We note that in rural areas of British Columbia virtually all local health care delivery is provided by societies. We further note that two-thirds of the Ministry of Children and Family Development's services are contracted out to British Columbia societies.

The fundamental issue for organizations in the sector is one of capacity, in terms of both financial and human resources. Sector organizations stretch every dollar as far as possible but the needs they serve vastly outstrip their capacity to provide desired services. Salaries paid to staff are substantially below market which leads to high turnover. The suggestion which occasionally surfaces from sector “watchdogs” or other commentators regarding the “acceptable” level of administrative cost for not-for-profit organizations is, to be blunt, naïve. In the discussions leading to this response, the comment was made that the organizations scarcely have the capacity to respond to the Ministry’s request.

It is also important to note that the not-for-profit sector is extremely diverse – it includes health and housing agencies with budgets in the millions of dollars, small animal welfare groups, social services agencies which rely exclusively on the Province or Canada for their funding, organizations which do not receive any governmental or external funding, religious groups of all kinds including churches, foundations which rely on donations from private individuals and private golf and country clubs.

## **B. ISSUES WITH CURRENT *SOCIETY ACT***

Generally speaking the current *Society Act* serves the not-for-profit sector reasonably well but it does require modernization. Most significantly it is very flexible in terms of the manner in which an organization can establish its governance structure.

There are a number of issues with the *Society Act* that create difficulties for not-for-profit organizations as follows:

1. **Requirement for Special Resolution to Approve Security for Financing.** The *Society Act* provides that the issuance of a “debenture” requires a special resolution of the membership of a society. Financial institutions interpret the meaning of “debenture” to include the provision of virtually any kind of security, such as a simple mortgage or a line of credit secured against the assets of a society. Large, well-established societies with significant assets and cash flow and sustainable service delivery over decades are required to go to their membership in order to enter into any type of financing. This creates significant practical difficulties for societies, including delays and extra costs. The requirement is archaic and unlikely to have been intended to apply to the types of financings to which it is applied - the directors are responsible for making these decisions and a membership vote should not be required.

For example, the directors may, in furtherance of the expansion of the society’s facilities, enter into a binding contract of purchase and sale for a piece of property. On the eve of the closing of the transaction the directors will generally be surprised by the request of the financial institution that a special resolution of the members be produced. A special resolution requires 14 days’ notice in writing and a meeting; presuming the special resolution is passed, it is not in force until filed with the Registrar of Companies. This can mean delays of weeks, if not months in some circumstances.

2. **Restorations.** Given the capacity issues in the sector, it is not unusual that societies fail to file their Annual Report with the Registrar of Companies and are eventually dissolved and struck. At present a court application is required for restoration. By contrast a corporation incorporated under the *Business Corporations Act* need only make a simple electronic filing to be restored.

3. **Amalgamations.** At present section 17 of the *Society Act* provides that on amalgamation a “new” society is created. This unfortunate language has been interpreted by the Canada Revenue Agency to mean a third organization has been created (rather than a single organization formed from the two amalgamating entities) which requires the “amalgamated” society, if intended to be a registered charity, to initiate a new application for charitable registration and therefore a requirement to open new payroll, Worker’s Compensation, PST and GST accounts. Legally speaking it is unclear whether the new entity is the successor to the prior entities – in many situations those societies which anticipate gifts in wills do not amalgamate but incorporate a new society and maintain the old societies as “shells” to ensure that there is no legal dispute regarding the proper recipient regarding future gifts in wills naming the “old” societies.

4. **Limitation on the Number of Non-Voting Members.** Many societies would like to create a class of non-voting members who support the organization but are not involved in the governance of the society in the way a voting member would be. The limitation in the *Society Act* which requires the number of voting members to always outweigh the number of non-voting members hinders the ability of societies in British Columbia to use this structure. We note that it is a very common structure in other jurisdictions.

## C. REPORT OF THE BRITISH COLUMBIA LAW INSTITUTE

During 2006 – 2008, the British Columbia Law Institute (“BCLI”) produced a Consultation Report and eventually a final Report on the Modernization of the *Society Act* which included a proposed draft act. BCLI engaged in significant and meaningful consultation with the not-for-profit sector during this process and the sector’s response is evidenced by the ultimate result. We commend the Report to you and the conclusions reached as truly representative of the requests of British Columbia’s not-for-profit sector.

## D. WHAT IS NOT NEEDED BY THE NOT-FOR-PROFIT SECTOR

There are a number of concerns raised by the tenor of the Stakeholder Letter that are best described as legislative decisions that are neither needed nor helpful to the not-for-profit sector, as follows:

1. **Classification System.** There is no need in the responders’ view for any distinction to be made amongst different types of societies, such as those that are registered charities and those that are not. For those that are registered charities, a comprehensive and complex regulatory scheme is found in the *Income Tax Act* (Canada) with the Canada Revenue Agency as the very capable regulator. To impose additional requirements for charities over and above those required in the *Income Tax Act* is unnecessary.

We also note that for those organizations which are not registered charities which receive public funding, the often very onerous requirements in Contribution or Grant Agreements which required detailed programmatic and financial reporting and generally require audited financial statements is more than sufficient in terms of ensuring accountability to funders.

2. **Mandatory Audit or Appointment of Accountant.** At present there is no requirement in the *Society Act* that societies be audited. The responders are very strongly of the view that this should be carried forward in any new legislation.

Auditing costs are substantial and beyond the reach of many societies. Auditors specifically note in their audit opinions that the purpose of an audit is not to find fraud but exclusively for the purpose of ensuring that the financial statements appropriately reflect the financial position of the organization, a standard which is arguably more of interest to shareholders who have personally invested in a for-profit corporation. The recent change in the CICA auditing standards has led the auditors of many societies, both those that are registered charities and otherwise, to recommend that either a notice to reader or review engagement be utilized given the substantial cost and the limited usefulness of a full audit to the society.

For many organizations receiving global funding from the Province or which receive grants of a significant size, an audit requirement is built into the funding documentation. The responders assert that the level of financial review of a society should be something that the members of each society decide for themselves; it should not be imposed by legislation.

At the present time the *Society Act* does not require the filing of financial statements with the Registrar of Companies. If a decision is made that an audit may be required in certain circumstances and presumably the filing of the audited financial statements with the Registrar – what purpose would be served unless the Registrar is actually reviewing the financial statements for issues of concern?

## E. WHAT IS NEEDED BY THE NOT-FOR-PROFIT SECTOR

1. **Governance Flexibility.** There is an enormous range of governance structures in the not-for-profit sector. In some societies, all directors are elected by the members; in others, some directors are elected by the members, other directors are appointed by external bodies, such as the Archbishop of the Roman Catholic Church, or the City of Vancouver, or the Province of British Columbia. In some societies the members and directors are the same individuals – for those societies, typically those which provide no services to members and in which there is little to engage a member from a governance standpoint (for example, a hospital foundation with the exclusive purpose of raising funds for a hospital/Health Authority). All of these structures serve their purpose and that flexibility should not be lost.

2. **Members' Remedies.** The terms upon which members can take issue with decisions of the directors should be clarified. For example, if a member wishes to bring a complaint against a decision of the directors, it would be useful for a new act to describe the manner in which such individual is entitled to obtain a copy of the membership list, the manner in which a claim could be asserted and the possibilities of the resolution of such a claim.

3. **Simpler Incorporation and Restoration.** Electronic incorporation and restoration in the manner provided by the *Business Corporations Act* would be of assistance. An incorporation package including up-to-date compliant bylaws would also be useful to those incorporating without professional assistance.

4. **Education and Sector Support.** Compliance with legislation is a function of understanding the legislative regime. The more complex the regime, the more difficult the compliance and more so in the not-for-profit sector where a substantial number of organizations do not have access to professional advice and have a limited ability to engage senior experienced employees.

5. **Social Enterprise Organizations.** Many organizations have been exploring the use of social enterprises to drive revenue and to achieve a public good at the same time. Such organizations and their objectives do not fit easily into the *Society Act*, the *Business Corporations Act* or the *Cooperative Association Act*. The issue of the tax treatment of such organizations is however the most problematic issue. We are not of the view that this consultation concerning issues arising under the *Society Act* is the most appropriate venue for such discussion as the issues are very different in substance.

## F. ADDITIONAL CONCERNS

Of significant concern recently and certainly for many years has been the policies of the Gaming Branch with respect to the governance structure of organizations which seek grant funding. The required governance structure to meet the policy is, in essence, two-fold – all directors must be elected by the members and there must be a pool of members approximately double the number of directors. This is a governance structure which is only sensible in certain situations and is certainly not appropriate for all societies. It also leads to the “sham” bolstering of the register of members with employees, family and other individuals related to the directors which is inappropriate by any standard.

We note that typically there is a single membership meeting a year – the annual general meeting. The fact that an organization may, on paper, have 25 members and 8 directors is meaningless if only the 8 directors attend the annual general meeting because the members (as is typically the case) have no interest in the governance of the society. A policy which can be so easily circumvented cannot be a good one in our view. The responders suggest that the Ministry establish a legislative approach for regulating societies which would hopefully avoid the creation of *ad hoc* policies relating to governance from various funding ministries which do not give due consideration to the complexities of the not-for-profit sector.

Another difficulty arises with respect to filings made with the Registrar of Companies. The practices and policies of the Registrar should, in our view, be made publicly available and consistently applied to ensure that organizations are not faced, for example, with the possibility (and expense) of convening a second membership meeting to pass a special resolution because the Registry staff requires an alteration in the wording of the resolution.

## G. CONCLUSION

The responders wish to work collaboratively with the Ministry of Finance to ensure that the issues raised by the consultation can be resolved in a manner which achieves the objectives of the Ministry but which correspondingly does not impose undue hardship on a sector which continues to struggle with the weight of the responsibilities it has undertaken on behalf of British Columbians and for its own viability and sustainability.

In terms of the specific questions posed, the responders are of the view self-enforcement by members is the most effective way to achieve the appropriate governance of societies; directors are more inspired to greater accountability to funders than a regulator which is unlikely to have the resources to achieve any meaningful oversight of any increased regulatory compliance. While there may be a role for the Province to regulate fundraising practices, to differentiate between not-for-profit and corporate structures, and to ensure some level of public accountability we do not think there is a role for government in regulating the internal governance of societies.

The responders request the opportunity to meet with you and to present our views in greater detail with the hope of providing you with a comprehensive understanding of the issues facing the sector in relation to the *Society Act*.

To contact this group of respondents, please forward any correspondence to:

Vancity Community Foundation  
Suite 510 – 815 West Hastings Street  
Vancouver, BC V6C 1B4  
Ph: 604-877-7647  
Fax: 604-709-6909  
e-mail: [vcf@vancity.com](mailto:vcf@vancity.com)