

December 2009

Message from the Deputy Minister of Finance

The Ministry of Finance is embarking upon a policy review of British Columbia's *Society Act*, the statute that provides rules for the registration and corporate governance of not-for-profit entities.

The purpose of the *Society Act* review is to identify and address any legislative obstacles that may prevent societies from functioning fully and efficiently, and ensure that the public interest is being protected. We are seeking your input on any problems, gaps, inconsistencies or ambiguities in the *Society Act* and any reforms you would like considered.

This review forms part of the Ministry's ongoing revision of important framework statutes in the corporate, commercial, real estate and financial services sectors. In recent years this process has resulted in several pieces of new or revised legislation.

There are over 26,000 societies registered in the province, ranging in size from small community-based organizations to large charitable foundations. Societies are engaged in a wide variety of endeavours. They are increasingly involved in providing social services, including medical services and housing, and are often the entity of choice for incorporated community groups, such as sports or cultural organizations.

Although the *Society Act* has occasionally been amended (most notably in 2004 to streamline filing requirements for societies), it is outdated and in need of revision. There has been no revision of the *Society Act* since 1977. Other corporate statutes, such as the *Business Corporations Act* (BCA), which governs companies, and the *Cooperative Association Act* (CAA), which governs cooperatives, have been completely rewritten within the last decade.

There is considerable interest in updating the legislation. The Ministry is indebted to the British Columbia Law Institute for its extensive work on this issue, which culminated in a 2008 report recommending a new *Society Act* modelled on the BCA. As well, there have been recent revision projects pertaining to not-for-profits in other Canadian jurisdictions, including the passage of new federal legislation just a few months ago.

The Issues

Two fundamental structural issues regarding the Act have already been raised. The first concerns the nature of the corporate model most appropriate for societies and whether a more sophisticated business law framework should be adopted.

The lack of up-to-date corporate governance rules has been identified as a barrier to the efficient functioning of societies. For example, societies are currently required to have three directors (one of whom must be resident in the province), and directors can only be indemnified with the approval of the court. While these extra controls may be appropriate for certain types of societies (e.g. charities), societies that are not recipients of public money perhaps need not be so constrained. Other corporate statutes have moved toward greater streamlining and flexibility in these areas. For example, the BCA requires only one director (with no residency requirement) and indemnification of BCA directors no longer requires a court order. As well, the BCA's modern framework for corporate reorganizations and other fundamental changes is not available to societies.

One option would be to model a new *Society Act* after the BCA. The BCA corporate law framework is exhaustive and complex, and may be especially appropriate for larger, more sophisticated societies. However, many societies are community-based "grassroots" organizations that rely entirely on volunteer boards of directors for their administration. Given this context, an alternative approach might be to adopt more straightforward provisions akin to those in the CAA, or even to develop a new set of simplified rules specifically designed to meet the needs of societies. The Ministry is also aware that there have been calls for a whole new framework to enable a "hybrid" type of organization for not-for-profits engaged in socially-beneficial, profit-generating businesses.

The second fundamental issue concerns the extent to which the Act should contain regulatory provisions or other rules that constrain the operation of societies. Most corporate statutes are non-regulatory in nature -- that is, they merely provide a framework for incorporation, governance and dissolution, and contain few, if any, provisions that purport to regulate or control the composition or activities of the corporations created. The *Society Act*, however, contains a number of regulatory provisions, including the following:

- tighter accountability controls -- for example, a society must have three directors (as opposed to one director for private companies under the BCA) and must make its financial statements available to the public. There is no ability to waive financial statements (as there is for private companies under the BCA);
- provisions allowing the registrar to order a particular society (or class of society) to become a "reporting society", which then triggers greater accountability requirements -- for example, a reporting society must provide *audited* financial statements to its members;

- special rules regulating societies that exist for educational, religious, poverty-relief, community or other “charitable purposes” -- a society with such purposes cannot abandon those purposes or convert to a company, and may not, on dissolution, distribute its assets to its members; and
- ministerial investigations of societies that do not act in the public interest.

One option would be a move away from government regulation of societies. The extra controls that apply to societies could be replaced with self-enforcement tools for members. This approach is consistent with the trend under other corporate statutes, and also with the 2004 amendments to the *Society Act* (removing both the Registrar's responsibility to review submitted bylaws and societies' obligation to file annual financial statements). With respect to societies obtaining public funds, it can be argued that there is already sufficient regulatory oversight provided by the federal government (through its charitable tax status requirements) and through the requirements imposed by government and other funders under grant application processes.

Another approach would be to maintain, or even enhance, strict regulatory controls for some types of societies, such as those that solicit public funds. In this area, it can be argued that tighter regulation -- in particular in the area of financial disclosure and the reporting of directors' conflicts of interest -- and expanded government investigation powers, are justified.

In addition to the two fundamental structural issues discussed above, a number of other more specific issues have been identified for further analysis. These include improved dispute resolution processes for societies, new mechanisms to allow for electronic filings and communications for societies, and new rules respecting the personal liability of directors of societies. It is anticipated numerous further issues will be identified through this public consultation process, and your input in this area is expressly sought.

The Process

The *Society Act* review will likely consist of a number of consultation phases. In this first phase, our goal is to identify issues, priorities and objectives, and to explore possible structural frameworks. Following these initial consultations, it is anticipated that a discussion paper inviting more focussed public comment on specific issues and options will be published.

You are invited and encouraged to participate by commenting on the issues discussed above or other problems there may be with the current legislation. As our intention is to solicit as much input as possible, please invite others who may wish to contribute to do so. The deadline for feedback is **April 1, 2010**, to enable the Ministry to proceed with the next phase of the review.

Comments may be transmitted electronically to: fcsp@gov.bc.ca

However, if you wish to send comments in paper format, please direct them to:

Financial and Corporate Sector Policy Branch
Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria BC V8W 9V1
(Phone 250-387-1269)

Please note that the Ministry will be sharing comments it receives with the Corporate Registry of the Ministry of Citizens' Services, and others. Even where confidentiality is requested, freedom of information legislation may require the Ministry to make responses available to those requesting such access.

Thank you for your participation in this important review.

Sincerely,

A handwritten signature in black ink, appearing to read 'GWH', with a horizontal line drawn through the middle of the letters.

Graham Whitmarsh
Deputy Minister