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BCLI Report on the BC Society Act and the Proposed Federal Non Share Capital Corporations Legislation

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*Miller Thomson Seminar
Charities & Not For Profit Update
October 23, 2008*

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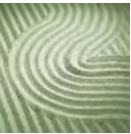
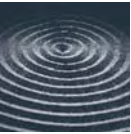
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Part One

**British Columbia Law Institute (“BCLI”)
Report on *a New Society Act***

REASONS FOR THE REPORT

- Growth and Sophistication of Not-For-Profit Sector
- Growth has resulted in more contact with the *Society Act*.
- *Society Act* provisions have not kept pace with developments in the Not-For-Profit Sector



REASONS FOR THE REPORT

- Attempt to modernize and harmonize procedural administrative rules that apply to societies.
- Harmonization with *Business Corporations Act*.

WHY REFORM OF SOCIETY ACT IS NEEDED NOW

- Current *Society Act* based upon 1973 *Company Act* which was replaced in 2004 with the *Business Corporations Act*.
- Repeal of the 1973 *Company Act* saddled Not-For-Profit societies with onerous provisions of the 1973 *Company Act* that no longer apply to the for Not-For-Profit Sector.

WHY REFORM OF SOCIETY ACT IS NEEDED NOW

- Not-For-Profit Sector has grown and developed significantly and new legislation is needed to establish an appropriate legal framework.
- Reform initiatives are underway in other jurisdictions, including the federal jurisdiction, to modernize their legislation.

MAIN FEATURES OF THE DRAFT REPORT

A. Structure

- **Part One** – background material and scope of the project
- **Part Two** – Recommendations of BCLI committee for reform including draft legislation intended to be a comprehensive model of a new *Society Act*.

B. Scope of the Report

- The Report is concerned with outdated organizational laws for societies and not for profits and reasons for change.

C. Brief History of the *Society Act*

- 1920 Original Act
- 1947 Replacement Act
- 1977 Replacement Act

D. Proposed Draft Legislation

- Incorporation and Naming
- Constitution and Bylaws
- Capacity and Powers
- Offices and Records
- Finance
- Directors and Officers

D. Proposed Draft Legislation

- Duties, Liabilities, and Conflicts of Interest
- Members
- Meetings of Members
- Members' Remedies
- Society Alterations
- Liquidation, Dissolution and Restoration

E. Miscellaneous and Transitional

- No reporting societies
- Rules for transition to New Act similar to BCBCA Transition rules
- 2 years for transitions

F. Conclusion

A new *Society Act*, one which better meets the needs of British Columbia Not-For-Profit organizations and which advances the goal of harmonizing corporate legislation in this province.

Part Two

**Bill 62-Modernization of Federal
Legislation Governing Not For Profit
Corporations**

REASONS FOR THE PROPOSED LEGISLATION

- There are approximately 161,000 not-for-profit organizations, which generate \$136 billion in annual revenues and contribute significantly to the economy.
- Modernizing the federal not-for-profit corporation legislation to recognize the importance of the sector.

WHY REFORM OF FEDERAL NOT-FOR-PROFIT LEGISLATION IS NEEDED NOW

- The Not-For-Profit Sector has grown and developed significantly and new federal legislation is needed to establish an appropriate legal framework.
- The current legislation, *the Canada Corporations Act Part II* (“CCA”), has remained unchanged since 1917 and lacks modern governance rules.

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- Reform initiatives are underway in other Canadian jurisdictions to modernize Not For Profit legislation.

BILL 62-PROPOSED NEW NOT-FOR-PROFIT CORPORATIONS ACT

- The purpose of the proposed legislation is to strengthen and clarify corporate governance rules for federally incorporated Not-For-Profit organizations.
- The proposed legislation will also make it easier for persons to take advantage of the protections offered by incorporation and the predictability and accountability offered by a modern corporate governance framework.

a) Role of the Director appointed under the Act (“Director”):

- Similar to a registrar in most other corporate jurisdictions.
- Will be responsible for the issuance of certificates of incorporation, amalgamation or dissolution.
- Will undertake compliance and enforcement activities.

b) Streamlined Incorporation Process:

- Eliminates the current requirement for ministerial review of every application for incorporation and approval of bylaws.
- Allows electronic filing.
- No review period - Director is required to issue a certificate of incorporation upon receipt of the articles of incorporation.

c) Powers of Not For Profit Corporations

- Purposes must be stated in the articles of incorporation.
- A corporation will have the capacity, rights, powers and privileges of a natural person.
- Corporation and its directors will have powers immediately upon incorporation, even prior to the passing of the corporate by-laws.
- Removes the need for a corporate seal.

d) Streamlined Regulatory Filings

- Requires corporations to send a copy of any by-laws and amendments to Industry Canada within 12 months after being enacted.
- Includes specific provisions allowing for electronic meetings, written resolutions in lieu of meetings, and absentee voting.

e) **Improved Financial Accountability**

- Recognizes differences in the size of corporations based on annual revenues and their source of funding and applies appropriate financial reporting requirements.
- Not-for-profit organizations will be categorized as either a "soliciting corporation" (corporation that solicits public donations or receives government funding) or a "non-soliciting corporation."

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- High-revenue soliciting corporations will be required to be audited.
- Medium-revenue soliciting corporations could resolve, with the consent of two thirds of their members, not to undertake an audit, but to undergo a review engagement, in which the scope of the review is less than that of an audit.

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- Low-revenue soliciting corporations will also require a review engagement.
- All not-for-profit corporations make their financial statements available to their members, directors, officers and also to the Director.
- Financial statements from soliciting corporations to be publicly available.



f) Rights and Responsibilities of Directors and Officers of Not-for-Profit Organizations

- Sets out the standard of care for directors; that they act honestly, in good faith and in the best interests of the corporation that a reasonably prudent person would exercise in comparable circumstances.
- Director is not liable if the director has exercised such care, in good faith, when relying upon the financial statements of the corporation or on professional advice.

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- Will provide directors with a "due diligence" defence against potential liabilities.

g) Enhancement and Protection of Members' Rights

- Members will be able to access corporate records (most importantly, the financial statements); access membership lists.
- Members may request a meeting and make proposals for discussion at the annual meeting.

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- Members will be allowed to seek oppression remedies and derivative actions.
- Gives non-voting members the right to vote on proposed amendments to membership classes and rights, sale of assets, amalgamation and dissolution.

h) Three Year Transition and Fees

- Corporations currently incorporated under Part II of the CCA will have *three years* to apply for corporate status (transition or continuance).
- No fee for this application.
- If a corporation does not apply for transition within the three-year period, it may be dissolved by the Director.

i) Fees

- The existing fees may change to ensure fair and equitable pricing of services provided by the government.
- Fees will be set in regulation following consultation with the public.



j) Business Corporations Created by Special Acts of Parliament

- Would move share capital corporations created by Special Acts of Parliament, now subject to Part IV of the CCA, into the *Canada Business Corporations Act*.

k) Repeal of the *Canada Corporations Act*

- Repeal of the CCA will be carried out in phases according to the type of corporations being moved to permit organizations to transition to the new regime but the sections of the CCA (parts I II VI) that govern standard not-for-profit organizations will be repealed after the three-year transition period.