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From: Kasey Nishimura <knishimura@sunpeaksgrand.com>
Sent: Wednesday, October 15, 2014 4:03 PM
To: FCSP FIN:EX
Subject: Society Act White Paper Consultation Process Feedback (338647-3)
Attachments: CSAE BC 2014 Society Act White Paper Consultation Process Feedback.pdf

Importance: High

To Whom It May Concern,

Please find attach the CSAE BC 2014 Society Act White Paper Consultation Process Feedback Report .

Should you have any questions regarding this submission, please contact me.

Thank you,
Kasey Nishimura
President
Canadian Society of Association Executives – BC Chapter

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CSAE (BC) 2014 Society Act White Paper Consultation Process Feedback

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October 2014

October 14, 2014

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Sent electronically to fcsp@gov.bc.ca

Thank you for the opportunity to provide input and participation on proposed changes to the Societies Act as outlined in the White Paper received from the Ministry of Finance. We are particularly pleased to have been asked to contribute as we are a significant, unique and inclusive stakeholder. The Canadian Society of Executives (CSAE) is Canada's only national organization with a primary focus on serving the needs of association professionals. Our British Columbia Chapter, who is submitting this response, represents a wide array of British Columbia associations in addition to registered charities and other not-for-profit organizations.

We are an umbrella organization composed exclusively of societies and suppliers to the sector. We position ourselves as representing multi sector societies, having significant expertise in both member funded and non-member funded organizations. This is extremely relevant given these two distinct categories in the newly proposed legalisation.

The CSAE-BC leadership team mandated a task force to solicit member opinion and expertise in formulating the response. This contributing task force consisted entirely of senior managers within the Societies sector. In addition, an online consultation conducted by 'The Portage Group' resulted in informative replies from CSAE-BC members. This was combined with a significant number of in-person meetings and telephone interviews, resulting in what we believe to be a well-balanced, responsible and educated submission.

While there are areas of concern, and others requiring clarification, we believe it is equally important to identify those areas that are well done. Throughout earlier consultations, stakeholders repeatedly requested that the new Act be kept simple and straightforward so that it could be effectively used by all participants in the non-profit sector, including those without legal counsel. In general, we support amendments that improve the efficacy, flexibility and transparency of British Columbian Societies.

The majority of the proposed changes appear to enhance those objectives.

To ensure this response is informative and effective, we have reviewed all two hundred and twenty four sections. Several years of careful consideration and previous stakeholder consultations have resulted in many sections that we believe are an improvement over the current Act, and we welcome these changes. In addition to identifying such provisions in our comments, our response also covers some areas that require clarification, and others that we ask you to reconsider. Lastly, for sections that did not raise any issues for us, we have not provided any commentary.

In conclusion, we are pleased to see that the Financial and Corporate Sector Policy Branch are moving, with haste, to modernize the Society Act. We believe, as do your previous stakeholders, that consultation is a two-way, ongoing process. Please let us know if there are any areas you would like us to clarify or expand upon. It would also be valuable for us to receive a short reply outlining those areas in which our feedback has affected the proposed legislation.

Sincerely,

Kasey Nishimura
President
Canadian Society of Association Executives
British Columbia Chapter

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18 – Change of registered office

Allowing societies to register a change in office through the filing of an annual report clearly eases an administrative responsibility for societies and will encourage compliance. If processes in the registrar's office ensure that an annual report filing is treated as reliably as a separate notice of a change of address, this change will be positive for all stakeholders.

19 – Records to be kept

As suggested in the ministry's gloss, this section does provide a very helpful check list to guide societies in the maintenance of their records and is a positive addition. Many societies may not understand what records are intended to be captured by s. 19(2)(c) regarding adequate accounting records and transactions materially affecting the financial position of the society.

Rephrase s. 19(2)(c) to specify more clearly what accounting records will indicate a transaction materially affecting the financial position of the society.

Compliance with s. 19(1)(e), specifically the contact information, will be difficult to maintain for societies. Directors often move and do not inform the board.

Compliance with s. 19(1)(h) will be impossible for student societies, which the legislation excludes from "member funded society" status. It would be impossible to maintain a directory of membership itself – this is maintained by the institution's Registrar's Office and the level of detail required (name, contact information) is not provided to students' societies as a common practice. I believe the issues are privacy concerns and legislation that applies specifically to the college, university/institute or private school.

20 – Old records need not be kept

Another positive addition that helps clarify the administrative responsibilities of societies.

21-27 – Location, maintenance, inspection, and copies of records

These sections contain positive changes that realistically reflect current standards in records maintenance by acknowledging that files may be stored off-site for some societies and that electronic records may be a suitable substitute for paper files. The interests of members and the public are well balanced in these provisions by setting standards for the integrity of electronic files and requiring reasonable access to records excluding the personal information of members contained in registers. Restricting member access to the registers of members and directors to purposes relating to the administration of the society is appropriate where the disclosure of that information otherwise might be harmful to the society or members.

The regulation of the offices and records of a society ensures the accountability of the society to its members, to organizations doing business with the society, to stakeholders, and to government. While potentially a burdensome and sometimes neglected responsibility, particularly for smaller organizations with less stable administration, the legislative requirements need to balance the bureaucratic requirements for the societies and for the government against the public values of transparency and accountability.

23 – Inspection of records

In general, this section presents an unfair and unnecessary administrative burden on societies. The government knows probably better than most that some people can be unreasonable in their demands, or make demands for unreasonable purposes. Complying with member requisitions under this section will detract from a society's ability to attend to its core constitutional functions.

The provision in s. 3(2)(b) is not an acceptable work-around as it puts the membership in a position of being asked to vote to restrict their rights by limiting their access to records. Such special resolutions of the membership are very unlikely to pass. We would rather see the legislation limit members' access to records to what is specified in the bylaws.

24 – Inspection of register of members

As previously mentioned, Student Societies have no way of complying with this requirement as the member records are held in the Registrar's Office of the college, university/institute, or private college.

We agree that members need to be able to contact other members to do things like get signatures on a petition, but a better way to allow for the anomalies (such as student societies) would be to provide that the society make all reasonable efforts within their power and control to assist petitioners in making contact with members.

26 – Copies of records

Building on comments on s. 23 and s. 24, there is tremendous administrative burden on the part of societies to comply with this requirement.

Specifically, s. 26(2) which stipulates a turn-around time of no more than 14 days is wholly unreasonable. A period of 25 working days would be reasonable in my opinion.

28-30 – How a record is sent, delivered, received, and served

These sections recognize the use of electronic transmission of documents and reasonably balance the responsibility for sending and receiving documents between the society and the person making the request. The added clarity provided by these sections will make compliance with the act easier for societies without any appreciable compromising of the rights of stakeholders.

35 – Reporting on remuneration of directors, employees and contractors

This section deals with reporting of remuneration and applies to all societies who do not qualify as Special Societies as provided for in Part 12. The White Paper cites a dual rationale of accountability and transparency for this section.

While both are desirable ideals, we believe the measures proposed here to purportedly achieve these ideals are onerous and equate to a governmental over-reach for reasons detailed.

Our main objections to S. 35 relate to (a) the level of detail required, and (b) what we believe would be the resulting dynamic and fall-out resulting from implementing this change.

S. 35 is an overly onerous requirement that will result in higher administrative, financial and reputational costs. S. 35 would also likely result in the unfair advantage to the “have” Societies through the creation of an openly competitive market, coupled with the loss of individual privacy of the majority of Directors and employees in the sector. The Whitepaper recognizes that stakeholders may object to remuneration reporting based on feelings of “discomfort” on the part of Societies and individuals. That is, at best, an over-simplification and a distraction from the real issues at hand.

1. **Directors’ Role in Expanding Society’s Capacity and Credibility:** All Societies need competent and respectable Directors, but some need highly-qualified and/or well-connected board members to succeed and achieve their mission and goals. The value these individuals can bring in terms of expertise and credibility is well understood. Making public how much each individual receives sets up open competition dynamics that can (a) potentially harm the public image of the individuals who are serving, thereby discouraging them to serve in the first place, and (b) sets the climate for a competitive, open market for boards, where individuals can demand a higher rate of remuneration, which clearly disadvantages the boards who have less funding –arguably the ones who need the participation of these individuals the most. This equates to a system dynamic where the wealthy/well-funded Societies have an unfair advantage. In this system, “rich get richer” but as a whole, the NFP sector will suffer from a “tragedy of the commons” where the goals of the few stand apart from the success of the many. In other words, when those Societies who can afford to pay receive an unfair advantage based upon ability to pay, the Societies who cannot afford to pay do not have equal access to the high-profile/high-demand individuals and will potentially suffer.
2. **Directors’ Role in Fundraising:** Fundraising in some societies relies upon the successful recruitment and retention of recognizable, well-known and well-connected individuals (e.g., local celebrities, well-known business people, etc.). They are offered remuneration on a “return on investment” rationale; i.e., the dollars the Society can raise based on the individual’s status or public image exceed the costs in recruiting them to put their name and connections to work for the campaign.

The same objection as stated in #1 above applies, but additionally and specifically in the area of fundraising, reporting on what each individual receives may lessen the perceived value of their contributions by members or members of the public. It also sets up the potential for a negative image of the Society itself (e.g. criticism for not getting cheaper celebrities to front a campaign).

3. Privacy of Employees: We object to reporting based on:
 - a. Under the new proposed legislation, per s. 188 not all reporting societies are charities so blanket treatment of reporting societies is neither appropriate nor fair. If s. 35 is approved, we believe S. 188 should be amended to remove the requirement (i.e., all of s. 35) for Societies identified in s. 188.
 - b. Contrary to the White Paper's assertion that the provision reflects a balance between promoting accountability and transparency and protecting individual privacy, s. 35 almost entirely emphasizes transparency at the cost of individual rights to privacy. *The vast majority of Societies in BC are relatively small* and the rights of individuals would be routinely infringed because it would be easy to tell who receives what in most cases.
 - c. Overall we believe accountability and transparency are more effectively achieved as a condition of award or acceptance of the funding envelope rather than through legislation. For example, it may be a positive change for more funding agencies to take into consideration the remuneration of Directors in consideration of who gets funding and/or how the reporting happens.
4. Contractors: While at the surface it seems reasonable to provide a list of suppliers/contractors and their remuneration, we object because:
 - a. It is a redundant transparency measure: Members already have access to this information through the minutes of the meetings at which the contracts are vetted and approved per s. 23.
 - b. Audit adequately assesses this issue but requiring this extra level of detail in reporting increases costs associated with auditing. This is an unfair disadvantage for Societies that have less funding, staff and/or capacity.
 - c. It will increase the confusion of members:
 - i. Outsourcing is an accepted cost-cutting, risk mitigation and interim capacity-expansion measure employed by several organizations, not just NFPs. These are intangibles that do not "show up" on balance sheets. Detailed reporting in the audited financial statements in essence "red flags" them as expenses from the average readers' perspective.

- ii. Members sometimes wonder why Contractor/Supplier X received more or less this Fiscal Year than last. This often happens with items such as legal expenses and capital costs, or with projects that span fiscal years. The resulting speculation and conjecture is a member and public relations challenge best addressed as a whole issue, rather than as would happen on a case-by-case basis.
5. Disclosure of remuneration (for societies other than member-funded): If the societies covered by these provisions are registered charities, the remuneration of the 10 highest paid employees is already disclosed in the registered charities' T3010 return. Furthermore, the provisions in the proposed Act go beyond the T3010 standards in that they require the actual salary of specific positions, unlike the T3010 which provides only ranges. The provisions in the proposed Act may also go beyond the disclosure requirements for public companies. Lastly, making available to the public information about the remuneration of specific positions without a correspondingly clear understanding on the part of the public about the complexity of the not-for-profit sector in general and the issues affecting a specific society in particular, would not necessarily allow for an appropriate assessment by the public of whether the compensation is appropriate. The Board of Directors of a particular society is in a much better position to be aware of the context and to provide oversight of what is or is not appropriate compensation. By bringing such a high level of remuneration detail into the public domain, this disclosure requirement is quite onerous and would likely have a chilling effect on the ability of societies to recruit appropriately qualified talent. In turn, this would likely have a negative impact on the performance of societies.

41 – Designation, election and appointment of directors

The proposed Act allows for the appointment of ex-officio directors (via provision in bylaws), thus eliminating the uncertainty arising from the current case law on whether all directors must be elected. This is a good development. Some clarification would be useful that a person who "holds a particular office or who has a specified attribute" can, in addition to being a director, appoint a director. This clarification may be useful in circumstance where, for example, the particular office being held is "Minister of", as this would allow the Minister to appoint a different person as director.

42 – Directors must be qualified

Provisions of s. 42, s. 43 and s. 53 (directors must be qualified, resign if not qualified and senior managers are deemed to be directors, respectively) raise concerns about (a) who would be caught by the wording “a person who is not a director of a society [but] manages or supervises the management of the society”; and (b) what would be the interaction between these provisions and employment law. For example, would a senior manager who is found to meet one of the disqualification criteria in s. 43 be required to resign from his/her position? Would there be severance implications?) This section is borrowed from the Business Corporations Act but did not bring in the provisions regarding certain classes of individuals that are specifically excluded from its application (e.g. individuals who act under the supervision of someone who manages the society, professional advisors). Bringing in the remaining provisions in the Business Corporations Act would be useful for providing clarity with respect to excluding persons who are simply performing acts that had been assigned to them under a contract of employment.

43 – Individuals disqualified as directors

See s. 42 comments above.

S. 43(c) is unreasonable as the Society would have to expend significant time and effort to obtain such information on a director. Although this may be an understandable requirement for registered charities or societies that solicit public funds, in practice, it would likely be an onerous task for societies to determine the bankruptcy status of its directors. It would also be an onerous task for societies to ensure that they continue to have access to a directors' financial information or background should the bankruptcy occur after appointment or election.

A better way to put it would be that Societies will make a reasonable effort to ensure that directors who have an undischarged bankruptcy are disqualified.

45 – Remuneration and reimbursement of directors

s. 45(4): Although understandable why the government would like to have the flexibility to make changes in the regulations, making sections 45(1)-45(3) be subject to provisions in the regulations provides too much power to regulations.

Our concern is with s. 45(4) is as it relates to Section 35. Our objections to Section 35 are provided in detail.

47 – Persons may rely on authority of societies and directors, senior managers and agents

The double negatives in this section create significant confusion. It is recommended that this section be revised to provide enhanced clarity.

50 – Removal of directors

Allowing societies to set their own process for removing directors mid-term is a welcome addition.

53 – Application of this Act to persons performing functions of director

See s. 42 comments, above.

56-58 – Disclosure of director's interest, Accountability, Validity of contracts

The more detailed provisions on conflicts of interest are a positive development in that they provide greater clarity than the current act. However, greater clarity regarding the definition of "material interest", as well as what are some exceptions to an interest that has to be reported (e.g. from the Business Corporations Act) would be useful.

59 – Directors’ liability for money or other property distributed

Logistically, it would be difficult to determine which directors voted for which resolutions. Generally, only the number of votes for and against are recorded, not the individual names. What would happen if a liability did arise and, in going back to the minutes, the only indication was that the resolution was passed but there was no information available on who voted for it? (unless it was unanimous) Who would be liable?

What happens when a senior manager approves a contract as a part of regular operations/ business which turns out to be improper?

60-61 – Limitations on liability, Directors’ indemnification and insurance

Statutory defences to liability and indemnification without the need for court approval are good developments.

62-63 – Senior managers, Disclosure of senior manager’s interest

Question regarding who is caught by “senior managers”. There is some concern regarding the fact that this provision now seems to be importing fiduciaries duties on non-fiduciaries. See also comments for s. 42, above.

64 – Membership

Fairly straightforward, although s. 64(3) should specify that authorization must be in writing.

69 – Deemed annual general meeting

This proposed amendment will be of great assistance to small societies with very little resources and where their business is not a matter of great debate.

72 – Requisition for general meeting

This section is similar to what is in the Act now, however, there are some changes. There is a shorter time frame to hold the general meeting requisitioned by the members (from 4 months to 60 days), but this does not appear to be onerous. Overall, there are no concerns with the proposed changes to this section.

74 – Notice of general meeting

More clarity regarding notice period, minimum and maximum, seems more than appropriate.

78 – Right to submit proposal

This new section, right to submit a proposal, may be problematic for some societies especially if the proposal has a monetary value attached to it. In the proposed amendment there is no “grounds of refusal” that Directors can use to limit the kinds of proposals that are voted on at an AGM. There should be.

98 – Complaints by members and other interested persons

The definition of “interested person” is too vague and could be burdensome on the part of the Society. The Society would have to incur legal and administrative costs to go to court to protect themselves against frivolous or malicious individuals who are simply seeking to further their own agenda, which may be to prevent the society from furthering its constitutional objects for self-interested, frivolous or malicious reasons. This provision could result in significant hardship to the Society and the members or beneficiaries that the society seeks to serve.

99 – Complaints by public

This proposed new section allows any person “whom the court considers to be an appropriate person” to seek an order from the BC Supreme Court that a society is acting unlawfully or is “carrying on activities that are detrimental to the public interest.” The court is empowered to make a wide range of orders against a society if it determines that the society has been acting unlawfully or against the public interest.

The explanation provided in the White Paper states that “there is a general expectation that societies will act in the public interest, especially since so many of them are funded by public money or monies solicited by the public. The risk that the provision could be used improperly is limited because the court effectively controls the process.”

We are concerned about this proposed provision for a number of reasons. We do recognize that some of the issues we raise are flaws in the existing Act. We submit this is an opportunity to correct those flaws rather than perpetuate them, while addressing new concerns arising out of proposed provisions in the amendments to the existing legislation.

We agree that there should be mechanisms in place to ensure B.C. societies act lawfully. Those mechanisms should be efficient and appropriate. They should not create an unreasonable risk that critics of a society’s purposes and operations may unjustifiably engage the society in costly and time-consuming litigation to the detriment of the organization, its members and the people it serves. Eligibility to apply to the court should therefore be strictly limited to individuals with a real and substantial interest in the organization’s operations.

We do not consider it appropriate that the legislation require societies to act “in the public interest” in the manner contemplated by the proposed amendments, for the reasons set out below.

We submit that the provision be limited in scope so that it is not open to persons without a real and substantial interest in the society and its operations to bring an application to the court.

a. “Appropriate person”

- i. It is submitted that the scope of the proposed provision is too broad, effectively permitting any individual to sue a society without limitation.
- ii. The proposed new section 99 utilizes the term “appropriate person,” without defining that term. By comparison, the existing legislation (section 84) refers to an “interested” person having the ability to apply for correction of an irregularity.

- iii. There is no guidance provided as to who might be considered an “appropriate person.” However, the change suggests a broader definition is intended. The title of the new provision—“Complaints by Public”—also suggests that the intent is to broaden the scope of the provision so that any member of the public may be eligible to apply to the court.
- iv. It is not appropriate that any third party should be able to undertake such action against any society. Some limitations on what constitutes an “appropriate” person should be drawn. At minimum, the definition should be limited to individuals or organizations with a real and substantial interest in the lawful operations of the society.
- v. As it stands, the proposed section invites harassment of societies by litigious individuals with no such real or substantial interest, on vexatious grounds. Societies may be forced into court to explain why a vocal critic or political opponent of its purposes or operational approach is not an “appropriate person” under this section, and justify its actions to the court. That has the potential to take valuable time and resources away from the work of the society with little or no benefit to any of the individuals it serves or, indeed, the public.
- vi. The government White Paper argues that the risk of this type of abuse will be low because “the court effectively controls the process,” but this argument fails to recognize that the act of forcing a society to appear before the court itself is a major concern.

b. “Public interest”

We submit that references to the public interest be removed from both the existing legislation and the proposed amendments.

1. Proposed provision:

- i. In support of the provision, the White Paper cites a general expectation that societies “will act in the public interest.”
- ii. However, neither the current or proposed version of the Society Act includes that specific requirement. No basis is given for the statement in the White Paper that societies are expected to act in the public interest, nor is any detail provided on what is meant by “the public interest.”
- iii. The White Paper acknowledges that this proposed process is unique. There is no equivalent power for the courts to examine the legality of the operations of business corporations, or other types of incorporated society.

Although business corporations can and do enter into contracts to receive public funds, only societies are singled out for this exceptional court scrutiny. If they are acting lawfully, there is no requirement to act in the public interest. Societies should be treated the same way.

- iv. What is meant by the “public interest” is a matter of subjective debate and prone to politicization. Environmental groups, First Nations, resource extraction industries, citizen advocacy groups and governments may all have differing views as to what comprises the public interest from time to time. The legislation provides no guidance to the court in this respect. It is submitted that it is in fact impossible for the court to make any clear determination in this regard.
- v. Given the uncertainty of what is meant by the term “public interest,” and the potential for it to be the subject of litigation to the detriment of societies otherwise acting lawfully and in accordance with their purposes, we do not consider it appropriate that any person can apply to the court on the basis that a society is acting against the “public interest.”

2. Existing provision

The current Act permits the Minister to order a society to cease acting in a manner contrary to the public interest (s. 84(4)(a)(1v)). The new provision places this in the hands of the court to determine on application by an “appropriate person.”

- a. We agree that if any such provision is included in the legislation, it is preferable that an independent court determine this than an elected official.
- b. However, for similar reasons to those provided above, we submit that societies should not be required to act in the public interest if they are otherwise acting lawfully, regardless of the source of their funds. We recommend deletion of this provision.

187 – Definitions

It is suggested that the definition for “public donations or gifts” be amended to replace the words “solicits or receives” with the word “receives”. Please see the comments for s. 188(2)(a)(ii)(A), below. In addition, it is unclear whether this definition was intended to include only donations and gifts from individuals within the public or also grants from other organizations.

Lastly, it is recommended that the definition be expanded to also include donations and gifts from spouses or close family members of voting members, directors, senior managers or employees, similar to provisions in the Canada Not-for-Profit Corporations Act.

188 – Statement in Constitution that member funded society exists primarily for members

S. 188(2)(a)(ii)(A) provides that a society will be disqualified as a member funded society if it “solicits public donations or gifts”. Due to the potential ambiguity regarding what could constitute a solicitation, it is suggested that the requirement be stated in terms of receiving public donations or gifts, rather than merely soliciting them.

S. 188(2)(a)(iv) provides that a society will be disqualified as a member funded society if it has a charitable purpose. Given the varied activities of member funded societies, it would be difficult to ensure that not even one of its activities can be seen as having a charitable purpose (e.g. education of its members). Given the common law definition of charitable purpose, this provision would have the potential of applying to many if not most societies. It is, therefore, recommended that this provision be removed. Alternatively, if the intention is to exclude registered charities, as indicated in the commentary to the proposed Act, the provision should refer to “if the society is a registered charity” rather than “if the society has a charitable purpose”.

190 – Altering constitution to become member funded society

The interaction among sections 188, 189 and 190 is somewhat unclear with respect to the application of these sections to the situation when a society that was originally formed as a member funded society subsequently ceases to qualify as such and, at a later point, qualifies once again. It is unclear whether the intention is that such society would also require court approval to once again become a member funded society. The draft provision indicates that court approval would be required for any society that wishes to add the qualifying statement to its constitution, but the explanatory notes refer to an intention that this provision apply to societies that were not *originally formed* as member societies. It is recommended that this lack of clarity be addressed. In addition, it is recommended that consideration be given to the fact that requiring court approval for societies that had once qualified as members societies is inordinately onerous and a lesser requirement, such as a special resolution, would suffice.

Part 14 – Offences and fines

There are no specific concerns with the provisions of Part 14 itself, other than the concerns expressed above with respect to some of the substantive provisions from which the offences arise. For example, s. 216(1)(c) offence applying to individuals who become or act as a senior manager. (See comments under s. 42-43, above)

Part 16 – Transitional provisions and repeal

The partial automatic application of the proposed new Act results in complex transition provisions that have the potential for confusion and mistakes. It is recommended that additional consideration be given to simplifying the transition provisions.

Wong, Gina G FIN:EX

From: Jared Nash <jnash@borins.ca>
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Subject: Commentary on the Societies Act White Paper (339185-1)
Attachments: White Paper Commentary - Oct 15 2014.pdf

Please see attached submission on the White Paper.

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**Commentary on the *Societies Act White Paper: Draft Legislation with
Annotations***

to the

Ministry of Finance, Financial and Corporate Sector Policy Branch

October 15, 2014

I. Introduction

This submission is a collaborative effort between the UBC Students' Union Okanagan (UBCSUO), the Kwantlen Student Association (KSA), the Capilano Students' Union (CSU), the University of Victoria Students' Society (UVSS), the Northern Undergraduate Student Society of UNBC (NUGSS), and the Alliance of British Columbia Students (ABCS) (collectively the "Group").

The UBCSUO, KSA, CSU, UVSS, and NUGSS are the official student associations at each of their respective universities.

The ABCS is an alliance of nine student associations, representing over 165,000 students, that lobbies on issues that affect post-secondary students in British Columbia. In addition to the CSU, the KSA, and the UVSS, who have each individually endorsed this commentary, the following student societies are members of the ABCS: the Alma Mater Society of UBC, the British Columbia Institute of Technology Student Association, the Graduate Student Society of UBC Vancouver, the Langara Students' Union, the University of the Fraser Valley Student Union Society, and the Royal Roads University Student Association.

Collectively, the Group represents over 190,000 post-secondary students across BC. The Group is pleased to offer comments on the Ministry of Finance's *Societies Act White Paper*.

The post-secondary experience extends far beyond academic studies pursued within the classroom. Students engage in post-secondary education to broaden their worldview, socialize with peers, and most importantly, develop the wide range of skills they will need to succeed in an increasingly competitive world.

Student societies play a vital role in supporting students and enhancing their post-secondary experience by representing their interests and by providing programs and services that reflect the diversity of the general student body. A few of the core activities of student societies are:

- 1) **Independent Student Representation** - Student societies provide an important means for post-secondary students and institutions to interact through student representation on university and college boards, senates, and committees. This involvement gives students the opportunity to have a direct role in setting education related policies and priorities.
- 2) **Provision of a Range of Student Services** - Student life on campus is enhanced by a range of services offered and financially supported by student societies, including, for example, health and dental plans, tutoring and counselling, safe walk programs on campus, child care, student society clubs, legal advice and representation, employment and employment assistance, student food banks, transit shuttles, universal transit passes (U-PASS), student accommodation services, women's centres, LGBTQ students' centres, First Nations students' centres, and student media such as student newspapers and radio stations.
- 3) **Contribution to University and College Capital Projects and Facility Maintenance Costs** - At a time when post-secondary institutions face budget restrictions, student societies have become valuable partners in supporting the construction and maintenance of essential infrastructure such as student union buildings with recreational, study, and lounge space. These capital projects are necessary to support growing student populations, enhance services on campus, and help build the reputations of post-secondary institutions nationally and internationally.

When student society fees support the delivery of services and contributions to capital projects, they come as a result of students democratically voting in favour of the establishment and collection of those fees.

II. Summary of Submission

All student societies in British Columbia are incorporated under the *Society Act* and, as a result, the central tenets of governance of student societies flow directly from the *Act*. Student societies, therefore, have a significant stake in the new proposed *Societies Act*. The proposed *Societies Act* enhances accountability, is more flexible, includes a wider range of judicial remedies, and modernizes the current legislation. That said, the Group has concerns with some of the proposed provisions within the new *Societies Act* and the potential impact certain changes will have on student societies. Our primary concerns are:

1. The proposed *Societies Act* may inadvertently impact universal collection of democratically approved student society fees as a result of the addition of a statutory right of resignation. Student society fees support a wide range of important services and finance large capital projects that benefit all students. The loss of these fees could be detrimental to these activities. Amendments should be made to the *University Act* and *College and Institute Act* to ensure universal collection of student society fees, regardless of membership in a student society.
2. The proposed *Societies Act* will modify the exclusive right of the membership to determine the composition of their society's board of directors. Selection of a society's board of directors should always be reserved for the membership without compromise.
3. The proposed *Societies Act* will permit for changes to unalterable provisions under societies' constitutions. Unalterable provisions ensure that the fundamental nature of a society cannot be changed. In light of the reliance on unalterable provisions by student societies and various other third parties, for example, by universities with respect to capital funding obligations by student societies, societies should continue to be allowed to maintain unalterable constitutional provisions.
4. The proposed *Societies Act* does not permit for persons less than 18 years of age to serve on the boards of directors of societies. As student associations, we have members under the age of 18, but rarely under the age of 16. We recommend permitting persons 16 years of age and older to serve on the boards of societies.

5. The proposed *Societies Act* will permit societies to have more non-voting members than voting members. The members' right to control the affairs of a society by exercising a vote represents a fundamental democratic cornerstone of society governance. If a society has non-voting membership classes, there should never be more non-voting members than voting members. Regardless, there should be additional statutory protections for non-voting members with respect to their participation and membership within societies.
6. Section 99 of the proposed *Societies Act* would entitle any member of the general public to file a complaint to the courts against a society on the grounds, *inter alia*, that the society "is carrying on activities that are detrimental to the public interest." Societies should be accountable to their members, not to the general public. Section 99 may open up societies to frivolous or politically-motivated lawsuits. We recommend that this section not be included.

We discuss the rationale behind these concerns and our proposals in more detail below.

III. Discussion

1. Changes to the Membership Requirements

Section 66(1)(c) of the *Societies Act White Paper* adds a new provision regarding termination of membership in a society:

Termination of membership

66(1) A member's membership in a society is terminated when:

- a) the member's term of membership, if any, expires,
- b) the membership is terminated in accordance with the bylaws
- c) the member resigns or dies, or
- d) the member is expelled in accordance with the bylaws or under section 67 (2).

Under the current *Society Act*, there is no parallel provision providing a statutory right of resignation. The result of section 66(1)(c) of the *Societies Act* appears to be that a member of a society may be guaranteed, by statute, the right to resign membership.

Currently, as a result of the bylaws of student societies in BC and requirements by post-secondary institutions, student society membership is universal. We have concerns regarding the impact a statutory right of resignation may have on collection of student society fees.

The collection of democratically-approved student society fees from all students has resulted in strong student societies across BC. Universal student society fee collection in BC has resulted in the ability of student societies to fund a significant number of programs, services, and capital projects for the benefit of students.

With respect to infrastructure, there are a number of current and past campus infrastructure projects where BC student societies are financial partners in funding capital costs. In 2008, through a democratically approved student society fee, the Alma Mater Society of UBC (AMS) made the largest single donation to UBC in the history of the institution: \$85 million towards the building of a new student union building.¹ The donation is being financed through an \$85 million loan from UBC to be repaid by student society fees collected from all students. A few other recent examples of capital projects funded by student societies are:

- In 2009, the students at Kwantlen Polytechnic University voted to establish a student society fee to fund the construction of a new \$15 million student union building. Millions of dollars have already been raised for the project.
- In November 2012, University of Victoria students voted to raise over \$2 million through a student society fee to fund a renovation to the student union building. These renovations are now complete.
- At Simon Fraser University, students voted in 2012 to raise \$65 million through a student society fee for the construction of a new student union building on the Burnaby campus. The University and student society are finalizing plans for this project.
- At Capilano University, the CSU funded the maintenance and expansion of student spaces across campus and pre-paid over \$1 million in rent to Capilano University for a new student lounge space through a student society fee that students supported by referendum. The CSU is

¹ UBC, "UBC Vancouver Students Endorse Largest Donation to Build New \$110M Student Union Building at University Square," July 31, 2008, <http://news.ubc.ca/2008/07/31/archive-media-releases-2008-mr-08-100/>.

currently in the planning stages to commence construction of a student union building within the next 5 years.

- In November 2014, the UBCSUO will be asking UBC-Okanagan students whether they support a new student society fee to finance a \$25 million student study space on campus. The amount of money being sought from students through student society fees is \$8 to \$10 million.

On the services side, student health and dental plans and universal transit passes (U-PASS) are examples of programs that rely on the universal payment of student society fees. As indicated above, student societies also provide services such as tutoring and counselling, child care, legal advice, employment assistance, student food banks, women's support services, transit shuttles, and student media (most often newspapers and radio stations). Almost all student societies also have student clubs programs that support a wide range of interests, activities, and engagement on campus. The UVSS supports over 200 clubs alone under its clubs program, playing a central role in enhancing the student experience at the University of Victoria.

The mechanism for collection of student society fees is contained in section 27.1 of the *University Act* and section 21 of the *College & Institute Act*, which are virtually identical. Under these sections, post-secondary institution administrations are required to collect and remit student society fees if "... the amount of the student society fees has been approved by a majority of the members of the student society who voted in a referendum of that student society." Therefore, no student society fee can be collected unless it has first been democratically approved by students. The ability to universally raise democratically approved fees from students has provided student societies with the ability to offer a wide range of services and to finance large capital projects.

The issue that arises with respect to the proposed statutory right of resignation under section 66(1)(c) of the new *Societies Act* is whether post-secondary educational institutions can legally continue to collect student society fees from individual students who resign their membership in a student society. Ambiguity arises from the language of section 27.1 of the *University Act* and section 21 of the *College and Institute Act* because these sections do not indicate whether "student society fees" are to be collected from:

- i) only those students who are student society members; or

- ii) all students in the general student population, regardless of their membership status in the student society.

Since student society membership has always been universal in BC, this issue has not arisen in the past.

Without a clear right to collect student society fees from all students, a threat arises to the services and capital contributions that are funded by and depend on universal collection of student society fees. For example, if students resign from student societies in significant numbers and are not required to pay student society fees, this could impact the AMS's repayment of UBC's \$85 million loan and the ability of the SFSS to guarantee and repay the loans it will require to finance its new \$65 million student union building. Funding for the planned new \$15 million student union building at Kwantlen Polytechnic University and the plan at UBC-Okanagan to build a new study space could also be threatened. Services such as U-PASS and student health and dental plans may also be faced with funding shortages.²

This issue could be resolved by an amendment to section 27.1(1) of the *University Act* and section 21(1) of the *College and Institute Act* to clarify that student society fees are collectable from *all* students regardless of their membership in the student society. Students would still be entitled to resign membership, but payment of fees that have been democratically approved by the student body would be universal, essentially establishing a "Rand Formula"³ for student societies.⁴ This will ensure that the services and capital projects funded by universal payment of student society fees are not disrupted and that the general benefit to students provided by projects and services funded by student society fees is recognized.

² The experience in Australia with voluntary student association fees resulted in a negative impact on students. In a 2008 report authored by the Australian Government's Department of Education, Employment and Workplace Relations entitled, "The Impact of Voluntary Student Unionism on Services, Amenities and Representation for Australian University Students", the consequences are clearly stated: "...the abolition of upfront compulsory student union fees...impacted negatively on the provision of amenities and services to university students, with the greatest impact at smaller and regional universities and campuses." Report available at: <http://www.unistudent.com.au/home/documents/VSU%20report.pdf>.

³ The "Rand Formula" originates in the context of Canadian organized labour, and provides that if a majority of workers at a particular workplace choose to affiliate to a trade union, then employers should be required to collect union dues from all workers, including from workers who have chosen to not be members of the union.

⁴ A statutory Rand Formula protecting financing of student societies exists in the United Kingdom. In the UK student societies are funded through block grants from post-secondary educational institutions that are, in turn, partially funded through tuition fees. UK law provides that while a student may resign from membership in a student society, resignation does not affect the financing of the student society or the right of the student to access society services (*Education Act 1994*, section 22(2)(c) (United Kingdom)).

2. Board of Directors Composition

Section 50(1) of the proposed new *Societies Act* will permit for removal of directors by a special resolution of the members or in accordance with another method specified under the bylaws of a society. The current *Society Act* permits for removal of a director only by special resolution. The proposed change could result in bylaws that bypass the membership in determining the removal of directors.

The Group's view is that since the election of members is solely within the purview of a society's membership, the removal of directors should also remain solely a right of the membership. Student societies have frequent elections of directors and the decisions as to who serves on their boards of directors should be reserved for the membership.

While the new *Societies Act* will improve governance over societies, we submit that this proposed change will actually make societies less accountable. For example, if under the bylaws of a society directors have the right to expel fellow directors, this could lead to inappropriate decisions, such as the removal of directors on the basis of their not adhering to the perspective of other members of the board, despite their democratic election to the board by the members of the society.

We recommend that the new *Societies Act* preserve the exclusive right of members of societies to determine the composition of their board of directors, including the removal of directors.

3. Unalterable Provisions in Society Constitutions

The current *Society Act*⁵ requires that a society identify whether a constitutional provision is alterable or unalterable. The type of provisions that are typically unalterable under constitutions of student societies relate to the fundamental purposes of the organization. These provisions were never meant to be alterable because they are fundamental to the purpose of a society and to alter them would change the very nature of the organization. The new *Societies Act* would automatically convert all unalterable constitutional provisions into alterable provisions. In conjunction with the new lower threshold for the adoption of special resolutions, the new *Societies Act* will permit changes to formerly unalterable provisions by a special resolution of the membership that achieves a two-thirds supermajority.

⁵ Section 22.

Student societies rely on the unalterable nature of the constitutions of other societies that they support with respect to funding arrangements. For example, the KSA funds the Polytechnic Ink Publishing Society (“PIPS”), which publishes the student newspaper at Kwantlen Polytechnic University. The KSA premised this funding decision on the unalterable nature of PIPS as a student run newspaper enshrined under its constitution. Many other student associations have similar arrangements with respect to funding their independent newspapers, radio stations, and public interest research groups, all of which are frequently organized as separate societies. The prospect that these organizations could amend their fundamental purposes and continue to rely on contractual agreements with student associations to insist on continued funding is troubling.

Furthermore, the unalterable nature of constitutional provisions of student associations themselves can be significant in negotiating contracts with third parties. Unalterable provisions in student association constitutions can be important to universities and colleges when they enter into long term leasing and financing arrangements with student societies. These contractual arrangements can span 30 and even 40 years in length. Unalterable provisions in student society constitutions can provide significant comfort and security to universities and colleges that the fundamental nature of the organizations with which they are entering into long-term contractual relationships cannot change over time. Unalterable provisions can, furthermore, guarantee that funding obligations to third parties will not be reversed prior to debt obligations having been discharged.

The Group submits that the requirement under the current *Society Act* that provisions in a constitution of a society must be designated as alterable or unalterable be preserved in the new *Societies Act*.

4. Minimum Age of Directors

Under the current *Society Act*, a person below the age of majority in BC can legally serve as a director of a society if the bylaws of that society provide for participation on the board of directors of individuals below the age of 19.⁶ The proposed *Societies Act* will explicitly require that all directors of a society must be at least 18 years of age.⁷ This provision will mean that our members who are below the age of 18 will now be statutorily prohibited from sitting on our boards of directors, regardless of our bylaws.

Young people need to be brought into the democratic institutions of our province at an earlier age in order not only to instill a respect and understanding for democracy, but also to encourage greater

⁶ *Society Act*, section 7(2).

⁷ *Societies Act*, section 43(a).

participation. Lowering the age to 16 will accommodate virtually all members of student associations and permit them to participate fully in the governance of their student societies. The Group's recommendation, therefore, is to permit those members 16 years of age and older to serve on the boards of directors of societies. In the alternative, the Group recommends an exception for student societies to permit those persons 16 years of age or older to serve on their boards.⁸

5. Voting vs. Non-Voting Members

The *Society Act* passively recognizes classes of membership by requiring that there must be more voting members than non-voting members.⁹ The new proposed *Societies Act* clarifies that societies may have more than one class of members and requires that a society doing so must indicate in its bylaws the rights and obligations of each class of members.¹⁰ With this clarification, additional classes of membership within student societies may become a more common occurrence under the new Act and, therefore, this issue is important to student societies.¹¹

We agree that the rights and obligations of all members must be clearly set out in the bylaws of a society. Members are the lifeblood of societies and they are entitled to clearly understand their rights and obligations. The Group, however, cannot support the proposed change that will allow for societies to have more non-voting members than voting members.

While flexibility to have different classes of members may be desirable, there is no rationale provided to explain the proposed change to permit a society to have more non-voting members than voting members. Fewer than half the members of a society should not be exclusively responsible for making the most important democratic decisions of societies including electing the board of directors, running for office, participating in decisions to remove directors, and changing the bylaws and constitution of the society.

⁸ The move towards permitting participation of younger individuals in our democratic institutions appears to be the direction being taken in modern western democratic countries. We note that in Scotland, people as young as 16 were permitted to participate in the referendum on separation from the United Kingdom. The active and full participation of young people in the referendum has now led to calls in the United Kingdom to grant the franchise in all elections to persons 16 years of age and over.

⁹ *Society Act*, section 7(5)(b).

¹⁰ *Societies Act*, section 65.

¹¹ We note that some student societies already have provisions in their bylaws for non-voting classes of members, such as honorary or life members.

The Group supports the existing requirement that societies are required to have more voting members than non-voting members. We agree that the discretion of the Registrar under the current Act to allow for more non-voting members than voting members should be discontinued. Maintaining a requirement for more voting members than non-voting members while eliminating Registrar oversight will reflect the Ministry's stated goal of reducing the oversight role of the Registrar under the new *Societies Act*. At the same time, the democratic cornerstone of societies, the voting membership, will be preserved.

At the very least, and whether or not a society is permitted to have more non-voting members than voting members, the new *Societies Act* should provide non-voting members with explicit statutory rights to ensure that their interests are respected in connection with the governance of societies.¹² Section 74 of the new *Societies Act* will provide non-voting members with the right to receive notice of all general meetings, which must include the text of all proposed special resolutions to be considered at that meeting. In addition to that right, the Group recommends that the new Act should also provide non-voting members with:

- a) The right to attend general meetings of the society and to speak at those meetings. There is little point in receiving notice for general meetings unless attendance by non-voting members is also permitted. The right to attend would ensure that non-voting members may participate in the affairs of their society, on a limited level, and that their views will be heard and taken into account by the voting members when significant decisions are made.

¹² We note that the *Canada Not-for-profit Corporations Act*, which permits for voting and non-voting membership classes, contains the following rights for non-voting members:

- i) Section 199: if a corporation's member are divided into classes, each class (even if the class's members are otherwise non-voting) has the right to vote on certain "fundamental changes" in the structure of the organization that specifically affect the rights of the particular class.
- ii) Section 206: all members, including non-voting members, have the right to vote on a special resolution approving an amalgamation of a federal corporation with another corporation.
- iii) Section 213: all members, including non-voting members, have the right to vote on a special resolution approving a continuance of a federal corporation into another jurisdiction.
- iv) Section 214: all members, including non-voting members, have the right to vote on a resolution approving the sale, lease, or exchange of "all or substantially all" of the property of a federal not-for-profit corporation.

- b) The right to requisition a special general meeting for the consideration of business by the voting members. This would ensure that if there are issues of importance to non-voting members these issues will be brought to the attention of the voting members.

6. Complaints from the General Public

Section 99 of the proposed *Societies Act* would enable a member of the general public to file an application in the Supreme Court of British Columbia against a society on the grounds, *inter alia*, that the society “is carrying on activities that are detrimental to the public interest.” The term “public interest” is not defined. The court is empowered to “make any interim or final order it considers appropriate,” up to and including liquidating the society. As acknowledged in the *White Paper*, this provision is unique and is not part of other corporate statutes in Canada.

Societies should be accountable to their members, not to the general public. Section 99 risks exposing societies to frivolous or politically-motivated lawsuits, including, for example, strategic lawsuits designed to frustrate the goals and purposes of societies engaged in, for example, social and environmental activism. The other enhanced judicial remedies proposed in Part 8 of the *Societies Act*, which substantially add to the remedies available under the *Society Act*, will provide adequate judicial oversight of societies without the need to include section 99.

A general and undefined statutory right that allows any member of the public to bring an application against a society on the basis of an allegation that it is not operating in the “public interest” is, in our view, over-reaching, uncertain, and highly subjective. The proposed judicial remedy could result in harm to societies. We recommend that section 99 be removed from the new *Societies Act*.

IV. Conclusion

In light of incorporation under the *Society Act*, student societies have a significant stake in this process. The six key recommendations included in this submission are fundamentally driven by the Group’s interest in ensuring that student societies remain well positioned to optimize the student experience at BC’s universities and colleges. We believe that with the addition of the proposed changes set out in this submission the new *Societies Act* will form an enhanced statutory framework that will assist us in better discharging our duties to our membership.

The Group is honoured to have the opportunity to contribute to this important process and hopes that the Ministry will incorporate the limited changes we have outlined herein. A more streamlined and progressive *Societies Act* will benefit tens of thousands of organizations across BC. We look forward to meeting with Ministry officials in the near future to discuss these matters in greater detail.

Wong, Gina G FIN:EX

From: Pierre Cenerelli <Pierrecenerelli@ams.ubc.ca>
Sent: Wednesday, October 15, 2014 1:18 PM
To: FCSP FIN:EX
Cc: Tanner Bokor; Bahareh Jokar; Abby Blinch
Subject: Society Act White Paper Consultation (340244-1)
Attachments: Societies Act White Paper Comment Letter.pdf

Importance: High

Hello,

I would like to respectfully submit the Alma Mater Society's official submission with respect to the Society Act White Paper Consultation launched in August 2014.

You may direct any questions or concerns to the signatories (Tanner Bokor or Bahareh Jokar) or to myself.

Sincerely,
Pierre Cenerelli

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cc:AAccount



ams
Student Society
of UBC Vancouver

Enhancing Student Life

October 15, 2014

Financial and Corporate Sector Policy Branch
Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria BC V8W 9V1

Subject: Submission to the British Columbia Ministry of Finance – *Society Act White Paper* (August 2014)

Dear Madam or Sir:

On behalf of the Alma Mater Society (AMS) of UBC Vancouver, we wish to thank you for providing us with the opportunity to make a submission with respect to the *Society Act White Paper* published by the Ministry of Finance in August 2014. The AMS is a non-profit society that strives to improve the lives of the nearly 50,000 persons studying at UBC's Vancouver campus. The society's activities are overseen by an elected team of student executives and councillors and are entirely funded by membership fees, investment returns and business revenues. In return, the society provides various services, organizes several social events and promotes high quality academic activities for UBC Vancouver students. In addition, we advocate for the interests of our members to governments, public authorities and other external organizations.

In general, the AMS believes that the White Paper proposes a number of positive changes to the Societies Act. We are especially pleased that the new act would allow some society directors to be remunerated for their work. We also welcome the clarified provisions with respect to the use of proxies in meetings and electronic media to conduct society business. And the financial accountability measures proposed by the new act should serve to increase the legitimacy of societies, including student societies. We should point out that the AMS already conforms to most of these new requirements.

The AMS nevertheless requests that several of the provisions in the *Societies Act White Paper* be modified or removed from the final bill that will be presented to the Legislature. The following sections are of particular concern to the AMS:

- **Inspection of records (s. 23) and inspection of registered members (s. 24):** *By forcing the AMS to release its register of members under certain circumstances to its membership, the proposed act may actually prevent us from fulfilling our requirement to keep an accurate and up-to-date list of members. Currently, the UBC administration*

transfers contact information to the AMS on the condition that we keep this personal information confidential. If the proposed act obliges us to open our register to our members, university policies and provincial legislation may actually force the university to stop transferring this information to us. Furthermore, since the AMS has close to 50,000 members, allowing our members to access the register is akin to making the information available to the public.

- **Individuals disqualified as directors** (s. 43): *Although we understand the very real liability issues associated with having under-aged society directors, the AMS would nonetheless request to have these provisions suspended for student societies, since it is only fair to allow all of our members to seek to become directors of the society. We are also of the view that this should be done with a view to encouraging young people to participate as early as possible in civil society. Evidence has shown that this will lead them to become better, more productive citizens and increase the likelihood that they will become life-long voters.*
- **Duties of directors** (s. 54): *The non-profit nature of societies may make it impossible for our directors to balance the AMS's financial (and other) interests against its purposes, since the latter may be of equal or greater importance to our members. It might be more appropriate to specify in this section that a society's purposes form an integral part of its interests and must therefore always be included in the decision-making process of its directors.*
- **Disclosure of director's interest** (s. 56): *The AMS's Student Council (board of directors) meetings are open to the public, unless they go in camera, which occurs only rarely. For societies with generally open board meetings, a compromise measure that would still respect the spirit of this provision could be to allow directors to remain in the public portion of a meeting, but require them to 1) openly declare any potential conflicts of interest before a topic is discussed and 2) refrain from discussing or voting on the issue. If a meeting goes in camera, directors with a declared conflict of interest would of course be required to leave.*
- **Complaints by members and other interested persons** (s. 98): *As the White Paper's commentary makes abundantly clear, this provision is not truly suited for non-profit organizations. In the context of corporations, this remedy is an essential (and often the only) tool for minority shareholders who wish to counter oppressive measures taken by the majority. It is necessary because shareholders have a concrete financial stake in the continued operations of a corporation. In a non-profit context, it might be acceptable to provide this measure to a society's members, since they have a direct stake in the future of the society. The Act, however, should clearly state that this is a measure of last resort, which must be used only when all other avenues provided by the Act and a society's bylaws have been exhausted. And since the AMS and other student societies are essentially funded by their members and do not typically receive public funds for their operations, non-members (the public) do not have any stake in these societies and therefore should not be allowed to use this specific remedy against them.*

In a few cases, we would like the following sections of the revised Act to be clarified:

- **Reporting on remuneration of directors, employees and contractors** (s. 35): *Does remuneration include the total compensation package (including salaries, benefits and bonuses) or only salaries?*
- **Reporting on financial assistance** (s. 36): *How much information must be provided? Do all instances of financial assistance need to be reported individually or would it be possible to lump together certain financial assistance by category, if they are below a certain value?*
- **Removal of directors** (s. 50): *It is our understanding that this provision makes it possible for our membership to remove a director by means of a special resolution, but that a society can add more requirements to this process through its bylaws and regulations.*
- **Termination of membership** (s. 66): *The AMS seeks greater clarity in the Act on how or even if this clause could be applied to societies with automatic membership rules, such as student societies, without harming these organizations and their members. The same clarification may be required for other organizations, such as professional or accreditation societies.*

In conclusion, we believe the issues mentioned above should be addressed by the government as it renews the *Society Act* in order to maintain the democratic nature of student societies and to address certain other issues specific to them. We would also like to suggest that the special nature of student societies might warrant adopting legislation specific to them, as is the case in Alberta and Québec. Such a law would allow these societies to continue to flourish and better serve their members.

Should you have any questions regarding this submission, do not hesitate to communicate with the signatories at the contact information indicated below.

Sincerely,



Tanner Bokor
President
Email: president@ams.ubc.ca
Phone: 604 822-3972



Bahareh Jokar
Vice-president External
vpexternal@ams.ubc.ca
604 822-2050

From: Chardaye Bueckert <president@sfss.ca>
Sent: Wednesday, October 15, 2014 7:13 PM
To: FCSP FIN:EX
Cc: Pierre Cassidy; Darwin Binesh; Colleen Knox
Subject: Simon Fraser Student Society Commentary Re. Society White Paper Consultations (340676-1)
Attachments: SFSS Submission re. Society's Act.docx

October 15, 2014

DELIVERED VIA E-MAIL: fcsp@gov.bc.ca

Financial and Corporate Sector Policy Branch
Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria BC V8W 9V1

Re: Submission by Simon Fraser Student Society ("**SFSS**") regarding the Societies Act White Paper (Aug. 2014)

We are writing on behalf of the Simon Fraser Student Society (SFSS). We are a "student society", as such term is defined in the *University Act* (B.C.), and write in response to the Ministry of Finance's Societies Act White Paper (August 2014). In particular, we take this opportunity to identify two provisions of the draft *Societies Act* (the "**Draft Act**") which we find to be particularly problematic.

SFSS Overview - Originally established in 1965, SFSS is a student-led organization that represents and advocates for the interests of the approximately 30, 000 undergraduate students at Simon Fraser University ("**SFU**"). SFSS provides various services to students (including, without limitation, food and beverage services, student-centric spaces, extended health and dental plans and a free legal clinic), organizes events and provides opportunities for students to become involved at and with SFU. SFSS also maintains a strong commitment to improving student life through its advocacy campaigns.

The members and directors of SFSS are drawn from the SFU undergraduate student body. All SFU undergraduate students must be SFSS members and must pay the requisite student activity fee. Furthermore, only SFSS members in good standing are eligible to be SFSS directors.

Section 66 - Our first comment is specific to our classification as a student society and pertains to Section 66 of the Draft Act. In particular, as with most student societies and as noted above, membership in the SFSS is mandatory for all undergraduate students. This is reflected in SFSS' by-laws and, indeed, membership is a requirement for enrollment in the undergraduate program at SFU. Such mandatory membership is essential in order to ensure that the benefit of student programs and the burden of their costs are shared equally among all undergraduate students.

The newly proposed Section 66 of the Draft Act purports to clarify the circumstances in which a member ceases to be a 'member' and includes, among the enumerated circumstances, when a member "*resigns or*

dies". Neither it - nor any other provision of the Draft Act - appear actually grant an express right of resignation to a society's members.

Accordingly, we view this section as simply clarifying that, once a member has resigned or died, he or she ceases to be a member. We do not read this section as creating a right of resignation that might not otherwise exist in a society's by-laws. In other words, if a society's by-laws provided for mandatory membership and did not permit member resignation, the corresponding portion of paragraph 66(1)(c) of the Draft would simply never be triggered (since the member would never resign).

We anticipate that our reading of this provision is in keeping with the intention of the drafters of the Draft Act. To this end, we have noted that the annotations accompanying this section of the Draft Act indicate that the section is included for clarity and do not indicate that any new substantive rights are being created. We are concerned however, that others might read this provision as creating a right of resignation where none exists under a society's by-laws and are aware of such interpretations already being suggested by others in the not-for-profit sector. So as to avoid having to rely on a judicial interpretation of this section (which, regardless of the outcome, will require valuable time and resources), we urge you to clarify the wording used in this section. For example, paragraph 66(1)(c) might be separated into two paragraphs and read instead: "(c) if permitted under the bylaws, the member resigns; (d) the member dies" or alternatively, the entire subsection could be made subject to a society's by-laws.

Section 99 - Our second comment pertains to section 99 of the Draft Act which, unique to non-profit legislation in B.C. and indeed across the country, would allow any person "*whom the court considers to be an appropriate person*" to seek an order from the BC Supreme Court that a society is acting unlawfully or is "*carrying on activities that are detrimental to the public interest*". We understand that SFSS is not alone in expressing concern about the impact of this provision.

In particular, section 99 of the Draft Act would appear to create a new statutory duty for all societies to act in the public interest and to be held accountable to all members of the public as to whether this public interest was being properly pursued. In our view, this is inappropriate. It is simply not true that all societies act in the public interest and indeed, we suspect there is no universal view of what it means to act in the public interest. We believe that this assumption is particularly inappropriate for student societies such as SFSS which are formed for the very purpose of acting in their members' interests.

We are extremely concerned about the potential for abuse of this provision. First, it is not clear who will be able to bring a complaint under section 99 as it will be open to the court to determine who might be an "*appropriate person*". Second, we are concerned about the ability of members of the public to bring complaints based on their personal views of what might be unacceptable conduct. This is particularly concerning for organizations carrying out activities that involve contentious issues.

While the annotations accompanying section 99 of the Draft Act suggest that such a risk is limited because the courts will act as a gatekeeper and 'effectively control the process', the time and cost for a society to participate in such a proceeding - even if the complaint is unsuccessful - can be quite high, with potential negative repercussions for the society's public image as well. Given the limited resources with which most societies are operating, having to defend such claims could be disastrous. Finally, outcomes in court proceedings are unpredictable and can be dependent on the facts involved in each particular proceeding; we are loath to rely on the courts - which are already struggling with scarce resources - to control these proceedings.

Accordingly, we urge you to delete section 99 of the Draft Act.

Thank you for your consideration of our comments. We would be pleased to discuss our submissions further with the Ministry as may be required.

Contact:

Chardaye Bueckert

President, Simon Fraser Student Society

778-683-1233 | president@sfss.ca

Colleen Knox

Executive Director, Simon Fraser Student Society

778-836-5741 | executive.director@sfss.ca

Darwin Binesh

Vice President, External, Simon Fraser Student Society

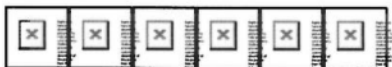
604-618-0696 | vpexternal@sfss.ca

Chardaye Bueckert

President

Board of Directors • Simon Fraser Student Society

Tel. 778-683-1233 • president@sfss.ca



October 15, 2014

DELIVERED VIA E-MAIL: fcsp@gov.bc.ca

Financial and Corporate Sector Policy Branch
Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria BC V8W 9V1

Re: Submission by Simon Fraser Student Society ("SFSS") in respect of the Societies Act White Paper (August 2014)

We are writing on behalf of the Simon Fraser Student Society (SFSS). We are a "student society", as such term is defined in the *University Act* (B.C.), and write in response to the Ministry of Finance's Societies Act White Paper (August 2014). In particular, we take this opportunity to identify two provisions of the draft *Societies Act* (the "**Draft Act**") which we find to be particularly problematic.

SFSS Overview

Originally established in 1965, SFSS is a student-led organization that represents and advocates for the interests of the approximately 30,000 undergraduate students at Simon Fraser University ("SFU"). SFSS provides various services to students (including, without limitation, food and beverage services, student-centric spaces, extended health and dental plans and a free legal clinic), organizes events and provides opportunities for students to become involved at and with SFU. SFSS also maintains a strong commitment to improving student life through its advocacy campaigns.

The members and directors of SFSS are drawn from the SFU undergraduate student body. All SFU undergraduate students must be SFSS members and must pay the requisite student activity fee. Furthermore, only SFSS members in good standing are eligible to be SFSS directors.

Section 66

Our first comment is specific to our classification as a student society and pertains to Section 66 of the Draft Act. In particular, as with most student societies and as noted above, membership in the SFSS is mandatory for all undergraduate students. This is reflected in SFSS' by-laws and, indeed, membership is a requirement for enrollment in the undergraduate program at SFU. Such mandatory membership is essential in order to ensure that the benefit of student programs and the burden of their costs are shared equally among all undergraduate students.

The newly proposed Section 66 of the Draft Act purports to clarify the circumstances in which a member ceases to be a 'member' and includes, among the enumerated circumstances, when a member "*resigns or dies*". Neither it - nor any other provision of the Draft Act - appear actually grant an express right of resignation to a society's members.

Accordingly, we view this section as simply clarifying that, once a member has resigned or died, he or she ceases to be a member. We do not read this section as creating a right of resignation that might not otherwise exist in a society's by-laws. In other words, if a society's by-laws provided for mandatory membership and did not permit member resignation, the corresponding portion of paragraph 66(1)(c) of the Draft would simply never be triggered (since the member would never resign).

We anticipate that our reading of this provision is in keeping with the intention of the drafters of the Draft Act. To this end, we have noted that the annotations accompanying this section of the Draft Act indicate that the section is included for clarity and do not indicate that any new substantive rights are being created. We are concerned however, that others might read this provision as creating a right of resignation where none exists under a society's by-laws and are aware of such interpretations already being suggested by others in the not-for-profit sector. So as to avoid having to rely on a judicial interpretation of this section (which, regardless of the outcome, will require valuable time and resources), we urge you to clarify the wording used in this section. For example, paragraph 66(1)(c) might be separated into two paragraphs and read instead: "(c) if permitted under the bylaws, the member resigns; (d) the member dies" or alternatively, the entire subsection could be made subject to a society's by-laws.

Section 99

Our second comment pertains to section 99 of the Draft Act which, unique to non-profit legislation in B.C. and indeed across the country, would allow any person "*whom the court considers to be an appropriate person*" to seek an order from the BC Supreme Court that a society is acting unlawfully or is "*carrying on activities that are detrimental to the public interest*". We understand that SFSS is not alone in expressing concern about the impact of this provision.

In particular, section 99 of the Draft Act would appear to create a new statutory duty for all societies to act in the public interest and to be held accountable to all members of the public as to whether this public interest was being properly pursued. In our view, this is inappropriate. It is simply not true that all societies act in the public interest and indeed, we suspect there is no universal view of what it means to act in the public interest. We believe that this assumption is particularly inappropriate for student societies such as SFSS which are formed for the very purpose of acting in their members' interests.

We are extremely concerned about the potential for abuse of this provision. First, it is not clear who will be able to bring a complaint under section 99 as it will be open to the court to determine who might be an "*appropriate person*". Second, we are concerned about the ability of members of the public to bring complaints based on their personal views of what might be unacceptable conduct. This is particularly concerning for organizations carrying out activities that involve contentious issues.

While the annotations accompanying section 99 of the Draft Act suggest that such a risk is limited because the courts will act as a gatekeeper and 'effectively control the process', the time and cost for a society to participate in such a proceeding - even if the complaint is unsuccessful - can be quite high, with potential negative repercussions for the society's public image as well. Given the limited resources with which most societies are operating, having to defend such claims could be disastrous. Finally, outcomes in court proceedings are unpredictable and can be dependent on the facts involved in each particular proceeding; we are loath to rely on the courts - which are already struggling with scarce resources - to control these proceedings.

Accordingly, we urge you to delete section 99 of the Draft Act.

Thank you for your consideration of our comments. We would be pleased to discuss our submissions further with the Ministry as may be required.

Contact:
Chardaye Bueckert
President, Simon Fraser Student Society
Contact: 778-683-1233 | president@sfss.ca

Wong, Gina G FIN:EX

From: AVED Strategic Policy and Planning AVED:EX
Sent: Wednesday, November 12, 2014 11:57 AM
To: FCSP FIN:EX
Cc: Avison, Claire AVED:EX; Brewster, Kevin AVED:EX; Brown, Susan B AVED:EX; Cotie, Kate L AVED:EX
Subject: Societies Act (340770-3)

To: Marcus Gill
c/o fcsp@gov.bc.ca

Marcus, your Ministry recently invited comment on proposed draft legislation for a new *Societies Act* as part of your recently released White Paper. While I appreciate that the deadline for formal submissions has passed, I wanted to flag a couple of issues with the proposed changes that have been brought to our attention by students and post-secondary institutions.

The concerns focus largely on access to capital for student societies and relate to proposed changes that would:

- make it no longer possible for a society to place an unalterable provision in its Constitution regarding a loan repayment obligation, and
- enable members to resign from a society.

The proposed changes around unalterable provisions (migrating provisions from Constitution to Bylaws) may create uncertainty for lenders as members of a student society would have the ability to vote through a future referendum to cease collection of fees for projects that were approved in a previous referendum. This change, along with a legal structure that allows fluctuations in members, has the potential to increase the cost of projects by impacting the rate at which student societies are able to secure lending. Simon Fraser University's student society has recently encountered this challenge with prospective lenders.

There are currently at least three student society capital projects in various stages of development at British Columbia's public post-secondary institutions. Collectively, they represent over \$180 million of capital that is being jointly funded by the student societies and the institutions. ^{s.13}

s.13

A second concern with the proposed changes that would enable members to resign from a society is around universal programs and services offered through student societies. The costs of health, dental and transit programs for students are established based on full membership from the student body. ^{s.13}

s.13

I appreciate the opportunity to bring these issues to your attention. If you need further information, please contact me by phone at (250) 387-6193 or by email at Susan.B.Brown@gov.bc.ca.

QUESTIONS AND ANSWERS

SOCIETIES ACT

White Paper Consultations and Response

1. What consultations on the legislation have been held?

Substantive policy consultations took the form of a Discussion Paper that was published in 2011. This was followed up, in late summer 2014, by a White Paper containing draft legislation. Over 200 individual responses were received, in addition to approximately 7000 emails focussing on court remedies.

In January, I held a meeting with key/representative stakeholders to hear firsthand about their concerns.

2. What was the outcome of those consultations?

The proposed new Act has been generally well received. Individual stakeholders have naturally raised various issues, both policy-related and technical, many of which have been addressed in the legislation now under consideration, but the overall message was positive.

General/Background

8. Why is a new Societies Act needed?

The current Society Act was introduced in 1977 and has not been significantly revised since. The current Act is based on the 1973 Company Act, which was itself replaced by the Business Corporation Act (BCA) in 2004. Many other Canadian jurisdictions have significantly revised both their non-profit and for-profit corporate legislation in the interim and BC's non-profit statute has fallen behind, in terms of both corporate law developments and technological advances.

The new Act will maintain the basic framework of the current Act, supplemented with enhancements taken from the BCA and other modern corporate legislation. As well, the new Act will provide societies with more flexibility in their internal governance, by allowing societies to use their bylaws to structure themselves in ways that meet their unique needs.

9. To whom does the Society Act apply?

The act applies to all B.C. not-for-profit organizations that have been incorporated or otherwise formed under it. There are approximately 27,000 societies in the province. BC Registry Services retains records on B.C. societies as well as societies from other jurisdictions that have registered to carry on activities here.

s.13

Page 50 to/à Page 54

Withheld pursuant to/removed as

s.13

Wong, Gina G FIN:EX

From: Tyra Bermudez <vpexternal@bcitsa.ca>
Sent: Friday, October 10, 2014 2:52 PM
To: FCSP FIN:EX
Cc: Caroline Gagnon; s.22
s.22

Subject: Societies Act White Paper Feedback (339078)
Attachments: BCITSA - Societies Act White Paper Feedback Memo.pdf

Good afternoon,

Attached is The Student Association of the British Columbia Institute of Technology's comments and feedback to the Societies Act White Paper published in August 2014.

Do not hesitate in contacting me, shall there be any further comments required in regards to The Student Association of the British Columbia Institute of Technology's concerns of the proposed changes to the BC Societies Act.

Best Regards,

Tyra Bermudez

BCIT STUDENT ASSOCIATION - VP External
C: 778-869-0105 T: 604-432-8491
vpexternal@bcitsa.ca

Memorandum



Student Association of the British Columbia Institute of Technology

To: British Columbia Ministry of Finance
From: Tyra Bermudez
CC: Caroline Cagnon, BCITSA Executives
Date: 10/10/2014
Re: Societies Act White Paper Feedback

Background

The Student Association of the British Columbia Institute of Technology (“**BCITSA**”) is a not-for-profit student services and advocacy organization for the British Columbia Institute of Technology (“**BCIT**”). BCIT is the second largest post-secondary institution in British Columbia; therefore, BCITSA provides services and representation for the second-largest student body in the province.

In August 2014, as a part of the process of developing, modernizing and updating the current *Society Act* (British Columbia) (the “**Current Act**”), the Ministry of Finance published the *Societies Act White Paper: Draft Legislation with Annotations* (the “**White Paper**”) and invited stakeholders to submit any feedback, in regards to the proposed developments in the White Paper, by October 15, 2014.

Given the unique nature of student societies, some of the proposed changes can negatively impact such organizations, including BCITSA. Proposed changes that are of particular concern for BCITSA are illustrated and elaborated upon below.

Areas of Dissonance for BCITSA with Proposed Changes

The following sections of the proposed legislation included as a part of the White Paper (the “**Proposed Act**”) negatively affect BCITSA and potentially other student societies in British Columbia.

1. Section 43: Individuals Disqualified as Directors

Under Section 43(a) of the Proposed Act, individuals under the age of 18 years will now be deemed unqualified to be directors of a society. We note that the Current Act does not contain any such age requirement that could disqualify individuals under the age of 18 years from being directors of a society.

Memorandum

This newly proposed age requirement was justified under the grounds that directors of societies take on certain duties under the Current Act, the breach of which could lead to legal liability, and that it is not desirable for certain directors to be relieved of their obligations because of their age.

Despite its legal reasoning, such reforms to this section will exclude students under the age of 18 years to take on leadership roles in their student societies[, and depending on the organizational structure of some student societies, it has been deemed that it will take away voting rights from council members as a whole]. Many students who take on leadership roles in student societies do so at the beginning of their academic careers when they may be under the age of 18 years; and accordingly, we request that an exception be made for student societies.

Section 66: Termination of Membership

Section 66(c) of the Proposed Act allows a member to terminate his or her membership in a society by simply resigning. This is a dramatic departure from Section 6(1)(b) of the Current Act which only requires the bylaws of a society to contain provisions with respect to the conditions under which membership ceases and does not require that a member be permitted to resign and voluntarily terminate his or her membership. Given the nature of student societies, which requires mandatory membership in the applicable student society for all students at the applicable academic institution, this proposed change is of particular concern and could lead to individual students voluntarily resigning from student societies; and therefore, potentially exempting such students from paying a portion of their student fees that student societies rely on as part of their funding model. Such funding losses and the resulting impact on student societies could be significant; and as a result, we request that an exception be made for student societies.

Wong, Gina G FIN:EX

From: Colúm Connolly <president@gss.ubc.ca>
Sent: Wednesday, October 15, 2014 12:13 PM
To: FCSP FIN:EX
Subject: Society Act White Paper Consultation (340176-1)
Attachments: Graduate Student Society response to White Paper on Society Act.doc

Hello,

My name is Colúm Connolly, I am the current President of the Graduate Student Society (GSS) at the University of British Columbia. The GSS is the independent voice of all 10,000 graduate students at UBC.

Here is our submission for the consultation on the Society Act white paper.

Thank you for the opportunity to provide feedback.

Cheers.

C.

--

Colúm Connolly
President | Graduate Student Society
University of British Columbia - Vancouver
225-6371 Crescent Rd
Vancouver, BC V6T 1Z2
P: 604.729.2760
F: 604.822.6858
president@gss.ubc.ca





Financial and Corporate Sector Policy Branch
Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria BC V8W 9V1

October 14, 2014

Re: Societies Act White Paper

Dear Minister de Jong,

The Graduate Student Society (GSS) of the University of British Columbia (UBC) Vancouver is a student society representing over 10,000 members at the University of British Columbia. The society's mission is to provide academic, professional, social, and recreational services to graduate students, and to advocate on behalf of its members on issues such as post-secondary education funding, transit, housing, and childcare.

We would like to thank the Ministry for including draft legislation as part of the *Societies Act White Paper* and for the ability to provide comment. The GSS recognizes that most of the proposed changes are common sense improvements on the current Act and is supportive of changes that will provide the society with greater operational flexibility within our bylaws. However, we wish to bring to your attention some sections of the draft legislation which we feel may unduly restrict our operations, and the operations of other societies in the province.

Member resignation [S.66(1)c of the draft legislation]

This clause presents a unique challenge for student societies, which rely on universal membership to effectively advocate for the rights of students and to provide high quality service. The establishment of a provision allowing for the resignation of members would provoke tremendous uncertainty, given that our member membership composition is completely determined by university enrolment trends which are out of the Society's

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control. If members have the discretion to resign and not pay membership fees, it would undermine the capacity of such organizations and similarly undermine their financial stability.

In order to address this uncertainty, we propose concomitant amendments to Section 27.1 of the *University Act* to clarify that resignation from a student society does not obviate a student's obligation to pay student society fees. This compromise would allow members to resign from BC's societies in the broader context, while clarifying the terms of membership in student societies. Such a change would ensure that BC's student societies will be able to continue their important work on behalf of more than 400,000 post-secondary students in the province.

Complaints by Public [S.99 of the draft legislation]

The GSS believes that this new section will serve neither the interests of the province's societies, nor the interests of the public at large. In our view, this section provides no assurance that the GSS will not become engaged in vexatious litigation from members of the public. The GSS solely represents the interests of graduate students at UBC and is accountable to those students, our members. The GSS does not represent the interests of the general public and it would therefore be unreasonable to expect the society to be accountable to the entirety of the general public's interests.

The draft legislation already contains provisions by which a society acting improperly or detrimental to the public interest can face appropriate discipline. A society may be subject to a court action brought by one of its members. In addition, sections have been carried forward from the existing Act which empowers the Minister to investigate complaints against societies and, if warranted, apply to the courts for a remedy. Limiting appropriate standing in court to either a society's own members or the Minister responsible, strikes a reasonable balance between maintaining accountability and preventing unreasonable court applications by persons with no legitimate interest in a society. We recommend that the provision allowing for members of the public to bring court actions be removed entirely from the Act.

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www.gss.ubc.ca



The Student Societies Act

BC's student societies are funded primarily through membership fees. They are governed by, and accountable to, those members. However, because public bodies (universities and colleges) determine those societies' membership and collect fees on their behalf, the *Society Act* considers students societies to be publicly funded. This discrepancy between the way student societies conduct themselves and the way in which the law views them –

especially on matters as fundamental as the administration of membership and funding - places them in a class of their own.

As a point of perspective, the BC Law Institute has repeatedly expressed in its submissions on *Society Act* reform that the issues presented by Occupational Title societies are unique enough to merit their own statute. We feel that student societies are likewise unique enough to merit a separate statute governing their composition and activities. This solution would more effectively address persistent issues facing student societies for which provisions of the *Society Act* may be insufficient.

We thank you for the opportunity to provide comment and for the Ministry's ongoing efforts to renew the *Society Act*. We hope that you will thoroughly consider our comments and recommendations. Please feel free to get in contact with the us should you seek any more information.

Colúm Connolly

President, Graduate Student Society of UBC Vancouver

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Wong, Gina G FIN:EX

From: Devon Cass, GSS CERO <cero@sfugradsociety.ca>
Sent: Wednesday, October 15, 2014 1:21 PM
To: FCSP FIN:EX
Subject: Concerns with changes to the Society Act (340246-1)
Attachments: Letter from GSS at SFU regarding Society Act.pdf

Dear Hon. Michael de Jong, Q.C., Minister of Finance,

I attach a letter of concern regarding the proposed changes to the Society Act from the Graduate Student Society at SFU

Best Wishes,

Devon Cass
Coordinating and External Relations Officer
The Graduate Student Society at Simon Fraser University
MBC 2203, Simon Fraser University, Burnaby, BC, V5A 1S6
Ph: 778-782-3899 - cero@sfugradsociety.ca - <http://www.sfugradsociety.ca>



The Graduate Student Society at Simon Fraser University

October 14, 2014

Financial and Corporate Sector Policy Branch
Ministry of Finance
P.O. Box 9418 Stn Prov Govt
Victoria BC V8W 9V1

By email to: fcsp@gov.bc.ca

Dear Hon. Michael de Jong, Q.C., Minister of Finance,

Re: Society Act White Paper
s.66, "Termination of membership"
s.98, "Complaints by members or other interested persons"

We, the Graduate Student Society (GSS) at Simon Fraser University (SFU), write you in response to the draft legislation of the *Society Act* White Paper (the "Paper") as circulated in August 2014. Student societies play an essential role in representing student's interests; in addition, they provide important services, and foster a sense of community. The GSS at SFU has been instrumental in advocating for the highest quality of graduate education and research environment. We continue to support our 4,500+ members with needs based bursaries, professional development grants, and designated campus space. We worry that the proposed changes to the *Society Act* may pose a substantial threat to the health and functioning of student societies such as our own.

Mandatory membership, including fees, is fundamental to the successful operation of our Graduate Student Society. We would be unable to resource our staff and activities, meet overhead costs, and function in our current capacity, if not for mandatory membership and related levies. In 2008, graduate students at SFU voted through referendum to impose mandatory membership in order to ensure the continued operation of a robust student society. **We are concerned that section 66 of the Paper can be interpreted as providing a freestanding right to resignation that would be inconsistent with our by-laws and, more importantly, pose a substantial risk to the vitality of our Society.**

Section 66 draws alarming parallels to the Higher Education Bill 2005 in Australia, which "failed to deliver" its promise of self-sustaining student organizations "able to survive off voluntary membership, investments, and trading operations" as reported in the *First Annual Report into the Impact of Federal VSU*. Twenty-five of 30 student organizations have had critical or total job losses and "much of these cuts have come in the area of professional support to students." Other consequences have included the usurp of major student services by the universities, among which has been support for student rights advocacy. And so, in 2013, eight years after implementation of voluntary student unionism in Australia, students took to the streets to voice frustration with the inability of student societies to revitalise services and representation at governmental levels. We worry that the proposed changes to the *Society* open the possibility for student societies in Canada to face similar harm.

In addition, we worry that the threats posed by section 66 are compounded by section 98, which opens student societies to vexatious litigation. This could be the case, for instance, if mandatory membership and fees, or other activities of the Society, were considered "oppressive to one or more interested persons, including the applicant, or [...] unfairly prejudicial to one or more interested persons, including the applicant." It is justifiable for a student society to prefer some student issues over others, as for any democratically-governed organization. Members may not always find consensus; and we believe that the diversity of the Society, across 37 academic programs and three different campuses in the Lower Mainland (Burnaby, Surrey, and Vancouver), is not adequately protected in section 98.

Mandatory membership makes sense for student societies because of the fact that the work that these societies carry out benefit all members of the student body. The advocacy that student societies offer is a public good for all students, so it only makes sense that all students should contribute to the functioning and vitality of their student society.

We hope you will consider these points and more clearly articulate the intent and implications of section 66 and 98 of the proposed changes to the Society Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Devon Cass", with a stylized, flowing script.

Devon Cass, External Relations Officer

The Graduate Student Society at Simon Fraser University

MBC 2203, Simon Fraser University, Burnaby, BC, V5A 1S6

(778) 782-3899

cero@sfugradsociety.ca

<http://www.sfugradsociety.ca>

Wong, Gina G FIN:EX

From: Zachary Crispin <z.crispin@cfs.bc.ca>
Sent: Wednesday, October 15, 2014 7:23 PM
To: FCSP FIN:EX
Subject: Society Act Review (340678-1)
Attachments: CFS-BC-Submission.pdf

Hello,

Please find our submission regarding the Ministry's draft amendment to the Society Act attached.

Thank you,

--

Zachary Crispin
Chairperson
Canadian Federation of Students-British Columbia
T. (604) 733.1880
F. (604) 733.1852
www.cfs.bc.ca



Response to the Ministry of Finance's Draft Amendment to the Society Act

submitted by the

Canadian Federation of Students-British Columbia

2014

October 15, 2014

Financial and Corporate Sector Policy Branch
Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria, B.C.
V8W 9V1

To whom it may concern,

Re: Societies Act White Paper

We are writing to provide you with our comments on the Societies Act White Paper.

The Canadian Federation of Students–British Columbia (“CFS-BC”) is incorporated pursuant to the *Society Act* of British Columbia. CFS-BC was established in 1981 to advocate for delivery of accessible, high-quality public post-secondary education in BC. CFS-BC is composed students in every region of the province and includes those students belonging to the following local students’ unions:

Camosun College Student Society;
Douglas Students’ Union;
Emily Carr Students’ Union;
Kwantlen Student Association;
College of New Caledonia Students’ Union;
North Island Students’ Union;
North British Columbia Graduate Student Society;
Northwest Community College Students’ Union;
Okanagan College Students’ Union;
Selkirk College Students’ Union;
Thompson Rivers University Students’ Union;
Students’ Union of Vancouver Community College; and,
Vancouver Island University Students’ Union.

CFS-BC endorses certain of the proposed changes to the current Act as set out in the White Paper. In particular, we are in agreement with the following:

- Section 1, definition of “special resolution”, by which the threshold for passing special resolutions would require only a 2/3 vote;
- Section 16, by which “unalterable” bylaw provisions would become alterable; and
- Sections 19 and 20, to the extent that those sections provide for greater clarity in the area of record retention.

There are, on the other hand, certain proposed changes which we oppose:

Section 35, Reporting

Under this proposed section the society's auditor would be required to disclose the remuneration paid to the society's directors, and to its employees and contractors, where those payments exceed the amounts shown in the regulations. While it is difficult to measure the impact of this proposed section without knowing the contents of the proposed regulations, we are concerned that this provision will unnecessarily add to the time and expense of the annual audits. Such audits are required for all B.C. student societies as a condition for fee collection and remittance, pursuant to the applicable legislation¹, with the result that members of student societies are already provided with detailed financial information showing the amount of payments to directors and staff.

Section 66, Termination of Membership

The draft Act sets out what might appear to be an innocuous provision by which a person's membership in the society terminates, "when the member resigns or dies". For convenience of reference, the draft section states:

66. (1) *A Member's membership in a society is terminated when*
- (a) *the member's term of membership, if any, expires,*
 - (b) *the membership is terminated in accordance with the bylaws,*
 - (c) *the member resigns or dies, or*
 - (d) *the member is expelled in accordance with the bylaws or under section 67(2).*
- (2) *Unless the bylaws provide otherwise, the rights of a person as a member of a society, including any rights in the money or other property of the society, cease to exist when the person's membership in the society is terminated.*

The explanatory text following the proposed language begins by stating that, "(t)his section is for clarity. It lists the circumstances in which a member ceases to be a member...". Nonetheless, our concern is that this provision may become the unintended vehicle for an attack on the principle of mandatory membership, a fundamental element in the successful operation of student societies.

Currently, all students attending B.C. post-secondary institutions governed by the *University Act* and the *College and Institute Act* are *ipso facto* members of the applicable student society. That is because the bylaws of the student society provide that students become members upon enrolling in a course of studies at the institution,

¹ The *University Act* s. 27.1(4) or the *College and Institute Act*, s. 21(4)

and they remain members for so long as they are students at the institution. There is typically no right for students to resign from membership in the society.

Student Society fees are collected by the institution, along with tuition fees and other levies, and remitted to the student society in accordance with the legislation noted at footnote 1, above. There is no legal option for a student to “opt out” of membership in the student society. It is well established that this system of mandatory student society membership as a condition of university or college enrolment is lawful. The B.C. Court of Appeal affirmed this point in *Feldhaus v. British Columbia* 95 B.C.L.R. (2d) 382, decided in 1994.

The current *Society Act* contains no provision addressing membership termination. However, it defines a “member” as being an applicant for incorporation, and “every other person who becomes and remains a member in accordance with the bylaws”. The implication is that the matter of membership termination is governed entirely by the bylaws of the society.

By contrast, the proposed new provision in s. 66 is open to the interpretation that there is an independent, free-standing right to resign from membership in a society, apart from whatever the bylaws may provide. In the case of student societies, it might be argued that even if the bylaws made membership mandatory, there would still be a right of resignation given by s. 66(c) of the Act. On this basis, it might be argued, a student who had resigned would have no obligation to pay student society fees, and the institution would have no right to collect such fees from the student.

On every campus there are a few students who object to having to pay student society fees. While it is doubtful that a court would accede to the argument that the wording of the proposed s. 66 was intended to open the door to a challenge to mandatory membership, the provision might still be an invitation to litigation.

One simple remedy would be to change the current draft subsection (b) of s. 66, so that it stated, “the membership is terminated, or the member resigns, in accordance with the bylaws”. Subsection (c) would simply state, “the member dies, or...”. This would mean that the right, if any, to resign from the society would continue to be governed by the bylaws. A simple alternative would be to exempt student societies from the effect of the proposed new provision.

Section 98, Complaints by Members

This section would be in addition to the proposed retention of the former s. 85 of the Act, (now s. 102 in the White Paper), under which the court is given a wide power to correct errors, defects, omissions or irregularities in the conduct of a society, including contraventions of the Act or defaults in compliance with the bylaws.

The White Paper’s explanatory notation to section 98 acknowledges that some critics of the proposed provision have made the point that “even if there is a need for such a

remedy, it should not be available where the directors are acting in furtherance of the society's purposes". While recognizing that a society may legitimately have to prefer some interests over others, or apply the society's funds for one purpose over another, the authors of the White Paper nonetheless assert that such a qualification could "severely restrict the usefulness of the remedy".

We agree with the concern expressed by the critics of the proposed provision. With the retention of the current s.85 society members will continue to have a full range of remedies for negligence and misconduct in the operation of a society, and the addition of the "oppression remedy" would be simply an invitation to nuisance litigation. We submit that it is difficult to imagine a situation in which a society that is acting in accordance with its constitution and bylaws, and within the Society Act, could at the same time be acting oppressively.

Section 99 – Complaints by public

Our concern with this proposed addition to the Act is similar to our concern arising from the proposed s. 98. Under the draft s. 99, a member of the public, whom the court considers to be "an appropriate person to make an application", could apply to court for a remedy against a society, where it is shown that the society has acted in a fraudulent or unlawful manner, or was carrying on activities that were "detrimental to the public interest".

Any conduct on the part of a society that amounted to acting "in a fraudulent or unlawful manner" could be remedied under the current s. 85 of the Act. Our concern is with the vagueness and generality of the term, "detrimental to the public interest". We think that such a provision would have no realistic application to student societies, and would simply be a lure for nuisance litigants.

In the explanatory notes to the proposed provision, the authors acknowledge the possibility of vexatious litigation, but they state that the risk "is limited because the court effectively controls the process". This last statement is, in our view, wholly unrealistic. Experience has shown repeatedly that the courts have, in practice, very limited means to control nuisance litigants until very substantial cost and inconvenience has been inflicted on innocent parties.

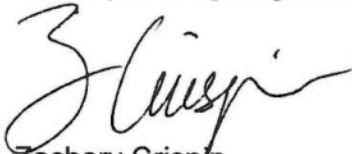
From time to time student societies have been required to take positions on controversial issues of concern to the public. For example, student society decisions on whether to charter anti-abortion clubs have generated administrative tribunal complaints and lawsuits against student societies from certain of their members. The same is true of the issue of mandatory membership in student societies. Our concern is that the expression "detrimental to the public interest" in the proposed s. 99 is so broadly drawn as to encourage vexatious litigation.

Nowhere in the paper is the term "public interest" defined. In any event, student societies are not designed to serve the "public interest", but rather, the interests of their

members. While we note that the commentary to the draft s. 99 refers to the fact that many societies are supported through public funding, student societies are funded entirely by their members.

At the least, our view is that student societies should be exempt from this provision. Such societies are already made subject to the requirements of s.27.1 of the *University Act*, and s.21 of the *College and Institute Act*, to maintain and disclose current audited financial statements and to remain in good standing as a society, as conditions for fee collection and remittance. In addition, they would remain subject to the current s.85 of the *Society Act*.

Thank you for giving these matters your consideration.

A handwritten signature in black ink, appearing to read 'Z. Crispin', written in a cursive style.

Zachary Crispin
Chairperson

Wong, Gina G FIN:EX

From: Anna Rozario <Anna.Rozario@rucbc.ca>
Sent: Friday, October 10, 2014 10:43 AM
To: FCSP FIN:EX
Subject: Feedback on the Society Act White Paper 9 (339046-1)
Attachments: 2014-10-06 Ltr to AVED re Societies Act.pdf; Societies Act - Consequential Proposed Amendments to the UA and CIA (September 22 2014)(v 2).pdf

From: Ken Armour, The Research Universities' Council of British Columbia
Subject: Feedback on the Society Act White Paper

Further to your request for feedback on the Society Act White Paper, please see the attached document which sets out the consequential amendments that The Research Universities' Council of British Columbia is recommending for the *University Act*, flowing from the government's proposed changes to the Society Act. This document has also been provided to the Ministry of Advanced Education.

Anna Rozario
Executive Administrative Assistant
THE RESEARCH UNIVERSITIES' COUNCIL OF BC
Suite 400 - 880 Douglas Street, Victoria, BC V8W 2B7
Tel (250) 480-4859 anna.rozario@rucbc.ca

THE Research
Universities' Council
OF BRITISH COLUMBIA

October 6, 2014

Ms Sandra Carroll
Deputy Minister
Ministry of Advanced Education
P O Box 9157 Stn Prov Govt
Victoria BC V8W 9H2

Dear Sandra:

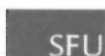
I am writing to you with respect to the Ministry of Advanced Education's proposed consequential amendments to the *University Act*, flowing from the government's proposed draft legislation for a new *Societies Act*.

The Research Universities' Council of British Columbia (RUCBC) agrees with the consequential changes that the Ministry of Advanced Education has proposed. The attached paper outlines some additional proposed amendments to the *University Act* which also flow from the proposed changes to the current *Society Act*. The language of RUCBC's amendments appear in bold in track-change in Appendix A (the Ministry's proposed amendments are also in track-change, but are not in bold).

In summary, RUCBC's proposed amendments includes language that would:

- eliminate the ambiguity regarding from whom student society fees must be collected and that would ensure universal collection of student society fees from all students, regardless of their decision as to whether they choose to resign membership in their student society,
- provide post-secondary educational institutions with the discretion and flexibility to cease collecting and/or remitting student society fees to a student society once the process for winding up has commenced (i.e. - *prior* to the actual winding up of the society), and

... / 2.



Ministry of Advanced Education
October 6, 2014

2.

- provide post-secondary institutions with the discretion not to collect and/or remit student society fees to a student society if the society is not in good standing under the Societies Act.

These proposed amendments are important to RUCBC and its member institutions. We trust you will encourage the Ministry of Finance to address our request. Please contact me if you would like to discuss further.

Sincerely,



Robin Ciceri
President

cc: Claire Avison, Assistant Deputy Minister, Sector Strategy & Quality Assurance
Ministry of Advanced Education

Tony Loughran, Executive Director, Research Universities and Health Programs
Ministry of Advanced Education

Katherine Thiessen-Wale, Director, Legislation
Ministry of Advanced Education

**Proposed Amendments to the *University Act* and the *College and Institute Act*
Consequential to the Adoption of the new *Societies Act***

Introduction

Thank you for the opportunity to comment on the Ministry of Advanced Education's proposed consequential amendments to *University Act* and *College and Institute Act* flowing from the government's proposed draft legislation for a new *Societies Act* contained in the Ministry of Finance's recently released White Paper.

The Research Universities' Council of British Columbia agrees with the consequential changes that the Ministry has proposed. This paper outlines some additional proposed amendments to the *University Act* and *College and Institute Act* which also flow from the proposed changes to the current *Society Act*. The language of the RUCBC's amendments appears in bold in track-change at Appendix A (the Ministry's proposed amendments are also in track-change, but are not in bold).

We have set out a brief rationale for each of the RUCBC's proposals below.

1. Student Society Fee Collection and Remittance (see proposed amendments - *University Act* s.27.1(1) & *College and Institute Act* s.21(1))

Section 27.1 (1) of the *University Act* and section 21 (1) of the *College and Institute Act* require the board of a post-secondary institution to collect "student society fees" and to remit these fees to a student society. However, these provisions do not specify *from whom* student society fees are to be collected. One interpretation is that the board is required to collect student society fees *only* from the *members* of the student society, yet another interpretation is that the board is required to collect student society fees from *all* students comprising the general undergraduate or graduate student body. Until now this has not been an issue because the bylaws of the various student societies result in automatic mandatory membership of the general undergraduate or graduate student body (or both) and the current *Society Act* does not contain a statutory right of resignation.¹

However, the proposed new *Societies Act* materially differs from the existing *Society Act* by explicitly granting a member the statutory right to resign from a society. Section 66(1) of the proposed new *Societies Act* provides as follows:

A member's membership in a society is terminated when

- (a) the member's term of membership, if any, expires,
- (b) the membership is terminated in accordance with the bylaws,
- (c) **the member resigns** or dies, or

¹ The courts have not been required to directly interpret the application of s.27.1 of the *University Act* or s.21 of the *College and Institute Act* with respect to the issue of the application of student society fees or consider issues of mandatory membership in student societies.

- (d) the member is expelled in accordance with the bylaws or under section 67 (2).

No similar provision exists under the existing *Society Act*. The proposed new statutory language would clearly apply to members of a student society and explicitly permit them to resign their membership in a student society.

The RUCBC's proposed language would eliminate the ambiguity regarding from whom student society fees must be collected and the proposed language would ensure universal collection of student society fees from all students, regardless of their decision as to whether they choose to resign membership in their student society. The RUCBC views universal collection of student society fees as important because of the number of services and projects that depend on the universal collection of student society fees.

With respect to services, student health and dental plans and universal transit passes are examples of programs that rely on universality of student society fees. The cost of student health and dental insurance plans or transit programs, such as the popular UPASS, would not be affordable without universal, or near universal, collection of student society fees.

With respect to capital projects, a few current examples are the new Student Union Buildings at UBC and SFU. With respect to UBC, the new SUB is being financed internally by UBC. Under the terms of the financing, the Alma Mater Society is funding approximately \$78 million of the capital cost of the new SUB through a dedicated student society fee. This loan is to be repaid over a maximum period of forty years at a 5.75% interest rate. Financing projections at UBC were conducted on the basis that the student society fee for the new SUB is mandatory for all students. At SFU, the financing arrangement for the new Student Union Building is similar, although financing will not be internal to SFU and will rely on outside financial institutions. The financing of the approximately \$65 million at SFU that the student society must arrange is to be secured against the mandatory student society fee collected for the new SUB and the banks have indicated that the mandatory and universal nature of student society fees is a requirement to their agreement to finance the project. Thus, the universal collection of the student society fees is essential to both financing arrangements.

Without the proposed consequential amendments, the statutory right of resignation in section 66(c) of the proposed new *Societies Act* in the context of the ambiguity of the current *University Act* and *College and Institute Act* invites a potential legal challenge to the universal collection of student society fees. In light of the significant revenue currently being collected at post-secondary institutions funding capital projects, there is a risk that a representative legal action against one or more post-secondary institutions could be brought by a class of students who have resigned student society membership claiming damages for the wrongful collection of student society fees. If this were to occur and a court agreed that the current *Acts*, as worded, do not support universal collection of student society fees, this would not only result in substantial liability to post-secondary institutions, but would also undermine those programs that depend on universal collection of fees.

The proposed consequential amendments to the *University Act* and the *College and Institute Act* explicitly provide that “student society fees” are to be collected from the “general student body”, or, in the case of a university student society, from the “general undergraduate or graduate student body”. While the right to resign from a society would be preserved, as it should be, all students would be required to universally pay student society fees in recognition of the general benefit provided to all students by initiatives financed by student society fees that have been approved by referenda of the student body. The result would be, essentially, a Rand formula with respect to student societies and student society fees.

2. Dissolution of a Student Society (see proposed amendments - *University Act* s.27.1(4)(b) & *College and Institute Act* s.21(1)(4)(b))

The RUCBC supports the consequential amendments proposed by the Ministry of Advanced Education with respect to the sections of the *Acts* relating to dissolution of student societies.

Although the dissolution of a student society (voluntary or involuntary) would be unusual, if dissolution occurs, post-secondary educational institutions should have the discretion and flexibility to cease collecting or remitting student society fees to that student society. The proposed amendment would provide discretion to post-secondary institutions to cease collection and/or remittance of certain student society fees as soon as the process for dissolution has commenced (i.e. *prior* to the actual dissolution of the society). This discretion would permit post-secondary boards to examine the full circumstances of the dissolution of a student society and, if appropriate, cease collection and/or remittance of student society fees at any stage.

3. Voluntary Liquidation of a Student Society (see proposed amendments - *University Act* s.27.1(4)(c) & *College and Institute Act* s.21(1)(4)(c))

Section 124 of the proposed new *Societies Act* provides that a society may be voluntarily liquidated if resolved by a “special resolution” of the members of that society.² As with involuntary dissolution, an event like this is quite unlikely, but it is possible that the members of a student society could, by special resolution, vote to liquidate their student society. The RUCBC recommends that post-secondary educational institutions be provided with the discretion and flexibility to cease collecting and/or remitting student society fees to a student society once the process for winding up has commenced (i.e. - *prior* to the actual winding up of the society). This is because, as with dissolution, there may well be circumstances where it is appropriate to cease collection or remittance of certain student society fees at a stage of liquidation prior to actual liquidation.

² Section 1 of the proposed new *Societies Act* defines “special resolution” as a resolution consented to by two-thirds of the votes cast at a general meeting of the society or by referendum.

4. Student Society Accountability (see proposed amendments - *University Act* s.27.1(4)(d) & *College and Institute Act* s.21(1)(4)(d))

Under the existing *Acts*, post-secondary educational institutions are largely powerless to cease collecting or remitting student society fees to a student society, even if they are aware that a student society is mismanaging student funds. As detailed below, the proposed *Societies Act* has mechanisms to address issues of abuse and mismanagement of societies, but, without consequential changes to the *University Act* and *College and Institute Act*, the *status quo* may well continue: university and college boards could be forced to collect and remit student society fees even in the face of significant student society accountability issues.

Sections 98 and 99 of the proposed new *Society Act* (see attached Appendix B) provide enhanced mechanisms to ensure the accountability of a society to its members and to the public. On application of an interested person, section 98 of the proposed Act authorizes the Supreme Court to intervene in the internal affairs of a society if the affairs of the society are being conducted in a manner that is “oppressive” or “unfairly prejudicial” to one or more members. On application of a person whom the court considers to be an appropriate person, Section 99 authorizes the Supreme Court to intervene in the internal affairs of a society if the affairs of the society are being conducted in a manner that is unlawful or contrary to the public interest. These sections are powerful tools to ensure that societies, including student societies, are being run in a lawful and responsible manner.

Under section 98(3) of the proposed *Societies Act*, the relief that the court may order is broad and includes any “interim or final order it considers appropriate ...”, but in the face of the specific statutory requirements of section 27.1 of the *University Act* and section 21 of the *College and Institute Act* regarding collection and remittance of student society fees, the court would not likely be empowered under section 98(3) to order that a post-secondary institution cease collecting and remitting a student society fee. The proposed consequential amendments to the *University Act* and the *College and Institute Act* would remove any ambiguity by expressly granting the Supreme Court the power to order that the board of a post-secondary educational institution cease collecting or remitting student society fees as a remedy under section 98 or 99 of the *Societies Act*. This would provide an additional layer of accountability for student societies.

5. Student Societies not in Good Standing (see proposed amendments - *University Act* s.27.1(4)(e) & *College and Institute Act* s.21(1)(4)(e))

The RUCBC recommends increasing the discretion of post-secondary institutions by providing discretion to institutions not to collect and/or remit student society fees to a student society if the society is not in good standing under the *Societies Act*. In light of the significant student society fees collected and remitted by post-secondary institutions across the province, student society accountability with respect to these funds is essential. Providing discretion to post-secondary institutions to withhold or not to collect student society fees where a student society is not in good standing will provide a strong incentive to student societies to ensure that their corporate affairs and governance are in order and protect against transferring funds to those that are not.

APPENDIX A

Proposed Amendments to the *University Act* and the *College and Institute Act* Consequential to the Adoption of the new *Societies Act*

University Act

Definitions

1 In this Act:

"student society" means ~~an organization incorporated as a society as defined in section 1 of the *Societies Act* under the *Society Act*~~ whose purpose is to represent the interests of the general undergraduate or graduate student body, or both, but does not include a provincial or national student organization;

Student society fees

27.1 (1) Subject to subsection (2), on annual notice from a student society, the board must collect student society fees from the general undergraduate or graduate student body, or both, as the case may be, and remit them to the student society if

(a) the board collected fees on behalf of the student society between June 1, 1998 and June 1, 1999, or

(b) the student society has been designated by regulation and the amount of the student society fees has been approved by a majority of the members of the student society who voted in a referendum of that student society.

(2) If a student society referred to in subsection (1) (a) or (b) changes student society fees, the new amount or the rate of change must be approved, before a notice is issued under subsection (1), by a majority of the members of the student society who vote in a referendum of that student society.

(3) On annual notice from a student society, the board must collect fees on behalf of a provincial or national student organization, and remit them to the student society or directly to the provincial or national student organization, as may be agreed by the board and the student society, if

(a) the board collected fees on behalf of the provincial or national student organization between June 1, 1998 and June 1, 1999, or

(b) the student society has held a referendum and the majority of the members of the student society voting in that referendum voted in favour of joining the provincial or national student organization.

(4) The board may cease to collect or remit student society fees to a student society if one of the following applies:

(a) the student society fails to do one of the following in a timely manner:

(i) make available to its members annual audited financial statements and a report on those financial statements by an auditor who meets the requirements of section ~~42-108~~ of the ~~*Society*~~ *Societies Act*;

(ii) inform the board in writing that the requirements set out in subparagraph (i) have been met;

(b) the student society is dissolved, or in the process of being dissolved, under section 123, 160(3), 211 or 212 struck off the register in accordance with section 71 of the ~~Society~~ Societies Act;

(c) the student society is undergoing voluntary liquidation under section 124 of the Societies Act;

(d) the board is ordered or authorized to cease collecting or remitting student society fees by the court acting under section 98 or 99 of the Societies Act; or

(e) the student society is, otherwise, not in good standing under the Societies Act.

College and Institute Act

Definitions

1 In this Act:

"student society" means ~~an organization incorporated as a society as defined in section 1 of the Societies Act under the Society Act~~ whose purpose is to represent the interests of the general student body, but does not include a provincial or national student organization;

Student society fees

21 (1) Subject to subsection (2), on annual notice from a student society, the board must direct the institution to collect student society fees from the general student body and remit them to the student society if

(a) the institution collected fees on behalf of the student society between June 1, 1998 and June 1, 1999, or

(b) the student society has been designated by regulation and the amount of the student society fees has been approved by a majority of the members of the student society who voted in a referendum of that student society.

(2) If a student society referred to in subsection (1) (a) or (b) changes student society fees, the new amount or the rate of change must be approved, before a notice is issued under subsection (1), by a majority of the members of the student society who vote in a referendum of that student society.

(3) On annual notice from a student society, the board must direct the institution to collect fees on behalf of a provincial or national student organization and remit them to the student society or directly to the provincial or national student organization, as may be agreed by the board and the student society, if

(a) the institution collected fees on behalf of the provincial or national student organization between June 1, 1998 and June 1, 1999, or

(b) the student society has held a referendum and the majority of the members of the student society voting in that referendum voted in favour of joining the provincial or national student organization.

(4) The board may direct that the institution cease to collect or remit student society fees to a student society if one of the following applies:

(a) the student society fails to do one of the following in a timely manner:

(i) make available to its members annual audited financial statements and a report on those financial statements by an auditor who meets the requirements of section ~~42-108~~ of the ~~Society Societies Act~~;

(ii) inform the board in writing that the requirements set out in subparagraph (i) have been met;

(b) the student society is ~~struck off the register in accordance with section 71 of the Society Act dissolved, or in the process of being dissolved,~~ under section 123, 160(3), 211 or 212 of the *Societies Act*;

(c) the student society is undergoing voluntary liquidation under section 124 of the *Societies Act*;

(d) the board is ordered or authorized to cease collecting or remitting student society fees by the court acting under section 98 or 99 of the *Societies Act*; or

(e) the student society is, otherwise, not in good standing under the *Societies Act*.

APPENDIX B

Sections 98 and 99 of the draft *Societies Act*

Complaints by members and other interested persons

- 98** (1) In this section, “**interested person**”, in relation to a society, means
- (a) a member of the society, or
 - (b) another person the court considers to be an appropriate person to make an application under this section.
- (2) An interested person may apply to the court for an order under this section on the grounds that
- (a) the activities or internal affairs of the society are being or were conducted, or the powers of the directors are being or were exercised, in a manner oppressive to one or more interested persons, including the applicant, or
 - (b) an act of the society was done or is threatened, or a resolution of the members or directors was passed or is proposed, that is unfairly prejudicial to one or more interested persons, including the applicant.
- (3) On an application under this section, the court, with a view to remedying or bringing to an end the matters complained of, may make any interim or final order it considers appropriate, including an order
- (a) directing or prohibiting any act,
 - (b) regulating the conduct of the society’s activities or internal affairs,
 - (c) removing a director or appointing a new director,
 - (d) varying or setting aside a transaction to which the society is a party and directing any party to the transaction to compensate any other party to the transaction,
 - (e) varying or setting aside a resolution,
 - (f) requiring the society, within a period specified by the court, to produce to the court or to a specified person financial statements or an accounting in any form the court may determine,
 - (g) directing the society to compensate an aggrieved person,
 - (h) directing correction of the records of the society,
 - (i) appointing a receiver or receiver manager,
 - (j) directing that the society be liquidated and dissolved and appointing one or more liquidators, or

- (k) appointing an investigator to conduct an investigation of the society, providing directions in relation to that investigation and setting the investigator's remuneration.
- (4) If the court makes an order under subsection (3) (k), section 210 (4) and (5) [*investigation of society by minister*] applies.

Complaints by public

- 99** (1) A person whom the court considers to be an appropriate person to make an application under this section may apply to the court for an order under this section on the grounds that a society
- (a) is conducting its activities or internal affairs with intent to defraud a person or to otherwise act unlawfully, or
 - (b) is carrying on activities that are detrimental to the public interest.
- (2) On an application under this section, the court, with a view to remedying or bringing to an end the matters complained of, may make any order it considers appropriate, including an order referred to in section 98 (3).
- (3) Section 98 (4) applies for the purposes of this section.